

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

Monday, May 10, 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, and Commissioners Philip R. Cousin Jr., Becky M. Heron, and Mary D. Jacobs

Absent: None

Presider: Chairman Reckhow

Closed Session

5:00 P.M.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to adjourn to closed session to consider the competence, performance, or fitness of a public officer or employee pursuant to G.S. § 143-318.11(a)(6).

The motion carried unanimously.

7:00 P.M. Regular Session

Opening of Regular Session—Welcome and Pledge of Allegiance

Agenda Adjustments

- Commissioner Jacobs added “City-County Planning Commission Appointment—Triangle Township Position” to the agenda to receive a report from the County Attorney.
- Vice-Chairman Bowser added a closed session item to receive an update on the Brannon v. DSS case. He also added “Call Monitoring in Tax Administration”.
- Chairman Reckhow amended the agenda to include “Discussion of Initiation of the Human Resources Audit” and “State Delegation Meeting Report”.

Announcements

- Vice-Chairman Bowser commented on two publications in the Herald-Sun concerning his alleged failure to inform the two Caucasian Commissioners of an April 19 Special Session of the Board. Vice-Chairman Bowser stated that on April 16 he informed both Commissioners of the meeting.

Chairman Reckhow clarified that she did not learn about the meeting from Vice-Chairman Bowser but from an employee.

Commissioner Heron stated that Vice-Chairman Bowser did not notify her of the meeting.

- Chairman Reckhow announced an informational workshop regarding the widening of Alston Avenue from NC 147 to US 70 Business (Holloway Street) to be held on May 17, 2004 from 5:00 to 8:00 p.m. in the Eastway Elementary School Gymnasium, 610 North Alston Avenue, Durham, NC.

Minutes

Commissioner Heron moved, seconded by Commissioner Jacobs, to approve as submitted the following minutes:

June 1, 1998 Closed Session	March 3, 2003 Closed Session
January 10, 2000 Closed Session	March 24, 2003 Closed Session
April 10, 2000 Closed Session	April 14, 2003 Closed Session
February 12, 2001 Closed Session	September 8, 2003 Closed Session
December 3, 2001 Closed Session	November 10, 2003 Closed Session
February 11, 2002 Closed Session	November 24, 2003 Closed Session
June 24, 2002 Closed Session	December 8, 2003 Closed Session (1 st)
September 23, 2002 Closed Session	December 8, 2003 Closed Session (2 nd)
October 21, 2002 Closed Session	February 23, 2004 BOCC/DPS
November 1, 2002 Closed Session	April 5, 2004 Worksession
November 11, 2002 Closed Session	April 26, 2004 Regular Session
January 27, 2003 Closed Session	

The motion carried unanimously.

Chairman Reckhow referenced a directive given to staff at the April 5, 2004 Worksession to write letters to Senators Dole and Edwards, thanking them for their support of an increase in child daycare subsidies. She asked the County Manager to inform her when the letters are ready for her signature.

Resolution for Outgoing Duke University President—Dr. Nannerl O. Keohane

Dr. Nannerl O. Keohane has served as Duke's eighth president since July 1, 1993. She was the first woman to serve as Duke's president, and during her leadership, the university raised more than \$2 billion through the "Campaign for Duke". She further

established Duke as a much more diverse and international educational institution. Dr. Keohane would resign as president at the end of June. She plans to return to teaching and academic study.

County Manager's Recommendation: The Manager recommended that the resolution be presented to Dr. Nannerl O. Keohane, along with sincere thanks for her extraordinary accomplishments at Duke University and wishes for her next career.

Chairman Reckhow read the following resolution into the record:

RESOLUTION

WHEREAS, Dr. Nannerl O. Keohane has led Duke University for more than 11 years; and

WHEREAS, during her dynamic and visionary leadership, the university raised more than \$2 billion through the "Campaign for Duke"; and

WHEREAS, she has enhanced the university by actively promoting inclusion and diversity among its student body and faculty, thus making the campus appealing to all; and

WHEREAS, through her efforts, Duke University has become a university more committed to partnering with local adjacent neighborhoods to improve health, safety, and educational opportunities for its residents; and

WHEREAS, Dr. Keohane has overseen the development of the prestigious Duke University Health System, as well as the implementation of new academic programs including genomics, photonics, and ethics; and

WHEREAS, her legacy will forever be linked with serving as Duke University's eighth, as well first female, president; and

WHEREAS, Dr. Keohane will be remembered as one of the institution's most innovative and creative leaders:

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

DR. NANNERL O. KEOHANE.

We call upon citizens of Durham County to remember the extraordinary and numerous contributions she made in this community and beyond, particularly while serving as President of Duke University.

This the 10th day of May, 2004.

/s/ Five Commissioners
Durham County Commissioners

Dr. Keohane gave an acceptance speech, thanking the Board for the acknowledgement.

Chairman Reckhow presented the resolution to Dr. Keohane.

Resolution for Dr. Ralph Snyderman, Outgoing Duke University Chancellor for Health Affairs

Dr. Ralph Snyderman, Duke University's Chancellor for Health Affairs, will resign at the end of June, following 15 years as the university's senior medical official.

Dr. Snyderman also served as President and Chief Executive Officer of Duke University Health System (DUHS). He plans to take a one-year sabbatical and then return to Duke to continue working on prospective health care and other crosscutting medical issues, as well as pursue teaching and research.

County Manager's Recommendation: A community farewell has been planned on May 17 for Dr. Snyderman. The Chairman will present this resolution at that time along with sincere thanks for his extraordinary accomplishments at Duke University Health System.

Chairman Reckhow read the following resolution into the record:

RESOLUTION

WHEREAS, Dr. Ralph Snyderman oversaw the development of the Duke University Health System, one of the few fully-integrated academic health systems in the country; and

WHEREAS, he had the vision to lease Durham Regional Hospital from Durham County, and bring it under the Duke University Health System umbrella; and

WHEREAS, Dr. Snyderman is internationally renowned for his contributions in inflammation research and continues to contribute to the body of scientific knowledge; and

WHEREAS, Dr. Snyderman's legacy will forever be present at Duke University and within the Durham community; and

WHEREAS, Dr. Snyderman is credited for helping to draw millions of patient visitors to Durham; and

WHEREAS, he has created economic impact from Duke University medical patents, technology transfer, and helped advance Durham as a Center of Creativity; and

WHEREAS, under Dr. Snyderman's leadership, Duke University Health System contributed more than \$2.5 million dollars a year to Lincoln Community Health Center to care for the needy; and

WHEREAS, he will be forever and fondly known for his extensive knowledge of the health care industry, as a scholar of medicine, and for his vision of prospective healthcare:

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

DR. RALPH SNYDERMAN

a compassionate public servant who unselfishly gave his talents to improve the lives of others. We call upon citizens of Durham County to remember the numerous contributions he made in this community, particularly while serving as Chancellor for Health Affairs at Duke University.

This the 17th day of May, 2004.

/s/ Five Commissioners
Durham County Commissioners

Proclamation for 50th Anniversary of Brown v. Board of Education

On Sunday, May 16, the City and County of Durham will observe the 50th anniversary of the historic Brown v. Board of Education decision. The program, entitled "The Unfinished Business of Brown v. Board of Education: Looking Back, Moving Forward in Durham", will be held from 3:00 until 5:00 p.m. at the Durham School of the Arts, Weaver Auditorium. The free event will include the premiere of a testimonial video, panel discussion, and reception. A proclamation was prepared as part of the observance.

County Manager's Recommendation: The Manager recommended that the Board approve the proclamation and include it in the commemoration on Sunday, May 16.

Chairman Reckhow asked Commissioner Cousin to read the following proclamation into the record:

PROCLAMATION

WHEREAS, the U.S. Supreme Court case of Brown v. Board of Education is a landmark in the nation's march towards equality and a testament to the legal system's ability to establish and protect our rights; and

WHEREAS, the work of dedicated lawyers in Brown v. Board of Education and in hundreds of other cases challenging segregation demonstrated the highest standards of advocacy in the service of a great cause; and

WHEREAS, Brown v. Board of Education not only ended legally-imposed segregation in the schools but was instrumental in ending it in parks, libraries, and all other public institutions; and

WHEREAS, the decision in Brown v. Board of Education inspired and gave heart to the civil rights movement and helped usher in an unprecedented era of progress; and

WHEREAS, May 17, 2004, is the 50th anniversary of the decision in Brown v. Board of Education:

NOW, THEREFORE, as we celebrate the 50th Anniversary Commemoration of Brown v. Board of Education Supreme Court decision, we acknowledge this great milestone case and its moral and legal imperative of equality under law. We renew our commitment to a society of equality of opportunity and to a recognition of the value and richness of our diversity as a people. The Durham County Board of Commissioners does hereby proclaim Sunday, May 16, 2004, as

“BROWN V. BOARD OF EDUCATION DAY”

in Durham and urge all citizens to recognize our celebration and participate in its observance.

This the 10th day of May, 2004.

/s/ Five Commissioners
Durham County Commissioners

Chairman Reckhow thanked Commissioner Cousin for reading the proclamation.

Report on Triangle United Way’s 211 Call Service Center

In August 2001, Triangle United Way launched its 211 information and referral service. United Way 211 is a single source for information about community services and for referrals to health and human service programs. This service operates throughout most of the Triangle (Chatham, Durham, Orange, and Wake Counties), 24 hours a day, and 365 days a year. Bilingual services are available Monday through Friday from 9:30 a.m.-6:00 p.m. Staff members are nationally certified as information and referral staff and are nationally accredited. These professional caseworkers help callers with complex issues such as substance abuse, support groups, domestic violence, financial assistance, daycare, and much more.

Resource Person(s): Susan King-Cope, Vice President, United Way 211

County Manager's Recommendation: The Manager recommended that the Board receive the presentation.

Ms. King-Cope presented an update and report on services provided by Triangle United Way's 211 Call Service Center.

Chairman Reckhow requested a report on the number of calls received daily.

Commissioner Jacobs inquired about marketing strategies to target the hearing-impaired population.

Ms. King-Cope explained that the center utilizes State marketing materials that do not include the hearing impaired. However, hearing- and speech-impaired citizens are referred to Relay North Carolina, as the call center has no TDD/TTY access service.

Commissioner Heron asked the County Manager to research ways to incorporate the County's information into the Triangle 211 Call Service Center database.

Chairman Reckhow echoed Commissioner Heron's request to use additional marketing tactics to promote within the community. She expressed concern about the service not being utilized copiously. According to the call data, less than ten calls a day are made to the call center.

Commissioner Heron suggested that information pertaining to the call center appear on The Durham County Government Show as a free marketing tool.

Chairman Reckhow informed Ms. King-Cope that Deborah Craig-Ray, Public Information Director, would contact her about appearing on the broadcast.

Ms. King-Cope thanked the Board for offering United Way 211 opportunities to promote its services.

Consent Agenda

Commissioners Jacobs moved, seconded by Vice-Chairman Bowser to approve the following consent agenda items:

- *a. Budget Ordinance Amendment No. 04BCC000069—
Social Services—Durham's Alliance For Child Care Access (DACCA) (approve the budget ordinance amendment to decrease the adopted budget by \$9,956);
- *b. Budget Ordinance Amendment No. 04BCC000070—
General Services—To Fund Increased Cost of Solid Waste Services (approve the budget ordinance amendment for \$70,000 from General Government to Environmental Protection);
- c. Contract Amendment for Brown-Ferris Industries (BFI) for Solid Waste Services (approve the amendment to increase the contract amount by \$90,000, resulting in an amended contract that will not exceed \$350,155.92);

- d. Standard Non-Reimbursable Utility Contracts for the Extension of the County Sanitary Sewer System (authorize the County Manager to execute the Utility Contracts for Bradbury Trace Subdivision, Bradbury Glen Subdivision, Erwin Property—Phase I, Wood Chapel Subdivision, and Fairfield Subdivision—Phase 4B);
- e. Approval of Construction Contract for the Renovation of the Operation Breakthrough Child Development Center (formerly YMCA Daycare Center) (Project No: DC081-56; Bid No: IFB 04-024) (authorize execution of contract with Riggs-Harrod Builders Inc. for \$326,950 for the renovation and authorize execution of any change orders or related contracts, if necessary, not to exceed a project cost \$336,899);
- f. Sublease for 501 Willard Street to Telecare Mental Health Services of North Carolina Inc. (approve the sublease of approximately 300 square feet of leased space and authorize the Manager to execute the proposed sublease agreement);
- g. Conveyance of 1123 Jackson Street (Surplus Property) to the City of Durham (approve the conveyance of 1123 Jackson Street (PIN #0821-10-47-2168) by Non-Warranty Deed to the City of Durham on the condition that the outstanding judgment for \$3,427.63 on the property is first satisfied);
- h. Durham County Stormwater Management Program—Fee Schedule for Buffer Determinations in the Cape Fear River Basin (approve the fee schedule effective May 10, 2004 as recommended);
- i. Durham Public Schools First Refusal to Purchase Five Acres of the Carrington Middle School Property (exercise right of first refusal and purchase five acres of the Carrington Middle School property for \$125,000 for use as a branch library site);
- *j. Adoption of Capital Project Ordinance for Two-Thirds and General Obligation Bond Projects (approve the capital project ordinance authorizing setting up the capital project budget appropriations necessary); and
- k. Relocation of the Welcome Baby Program to the County Agricultural Building (authorize staff to: A) consolidate the Welcome Baby Program into the newly renovated Agricultural Building, B) negotiate with USDA to reduce its space requirements in the Agricultural Building to accommodate Welcome Baby, and; C) negotiate with Shoppe's of Lakewood to extend the County's lease through August 30, 2004.

The motion carried unanimously.

Commissioner Heron complimented Chairman Reckhow for suggesting utilization of the Agricultural Building for the Welcome Baby Program to conserve County dollars.

Chairman Reckhow thanked Commissioner Heron for the auspicious remarks.

*Documents related to these items follow:

Consent Agenda Item No. a. Budget Ordinance Amendment No. 04BCC000069—Social Services—Durham’s Alliance For Child Care Access (DACCA) (approve the budget ordinance amendment to decrease the adopted budget by \$9,956).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000069

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 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	\$299,753,375	(\$9,956)	\$299,743,419

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$358,729,080	(\$9,956)	\$358,719,124

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

This the 10th day of May, 2004.

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

Consent Agenda Item No. b. Budget Ordinance Amendment No. 04BCC000070—General Services—To Fund Increased Cost of Solid Waste Services (approve the budget ordinance amendment for \$70,000 from General Government to Environmental Protection).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
 FY 2003-04 Budget Ordinance
 Amendment No. 04BCC000070

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>Expenditures:</u>			
Activity			
<u>GENERAL FUND</u>			
General Government	\$23,891,915	(\$70,000)	\$23,821,915
Environmental Protection	\$2,611,451	\$70,000	\$2,681,451

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

This the 10th day of May, 2004.

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

Consent Agenda Item No. j. Adoption of Capital Project Ordinance for Two-Thirds and General Obligation Bond Projects (approve the capital project ordinance authorizing setting up the capital project budget appropriations necessary).

DURHAM COUNTY CAPITAL PROJECT ORDINANCE

Be it ordained by the Board of County Commissioners of Durham County that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. Projects are authorized as described in Section 3 involving the construction and acquisition of capital assets for capital improvement.

Section 2. It is estimated that the following revenues will be available to complete those projects described in Section 3.

• Funding Sources

Voter Approved General Obligation Bonds Issued	\$40,155,835
Two Thirds General Obligation Bonds Issued*	\$10,107,664
Bond Issuance Cost	\$555,501
Total	\$50,819,000

*\$381,000 was issued on January 12, 2004 for renovations to the Head Start/YMCA Building. The total Two Thirds G.O. Bond issuance for projects is \$10,488,664, bringing the total funding up to \$51,200,000.

Section 3. The following amounts are appropriated for County projects.

- Voter Approved General Obligation Bonds

<i>Expenditures</i>	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
NC Museum Of Life & Science Bioquest Project	\$5,785,487	\$5,184,513		\$10,970,000
South Regional Library	\$1,050,000	\$4,637,262		\$5,687,262
Durham Tech. Community College Campus Improvements	\$0	\$1,200,000		\$1,200,000
Durham Tech. Community College Student Services Building	\$0	\$3,000,000		\$3,000,000
Pearson Elementary	\$0	\$374,000		\$374,000
Smith Elementary	\$0	\$210,000		\$210,000
Githens Middle School	\$0	\$2,048,000		\$2,048,000
Staff Development Center	\$0	\$540,000		\$540,000
Technology Improvements	\$0	\$1,987,000		\$1,987,000
Playground Safety Compliance	\$0	\$1,025,000		\$1,025,000
Activity Buses	\$0	\$356,000		\$356,000
Mobile Classrooms	\$325,000	\$325,000		\$650,000
System Wide Security Measures	\$0	\$475,000		\$475,000
Burton Elementary	\$0	\$90,000		\$90,000
Parkwood Elementary	\$0	\$628,000		\$628,000
Chewing Middle School	\$3,998,000	\$2,000,000		\$5,998,000
Spaulding Elementary	\$0	\$2,371,360		\$2,371,360
New "C" Elementary Land Purchase	\$0	\$675,000		\$675,000
New "D" Elementary	\$0	\$10,354,700		\$10,354,700
New "E" Elementary Land Purchase	\$0	\$675,000		\$675,000
New "A" Middle School Land Purchase	\$0	\$1,000,000		\$1,000,000
New "B" Middle School Land Purchase	\$0	\$1,000,000		\$1,000,000
Total	\$11,158,487	\$40,155,835		\$51,314,322

- Two Thirds General Obligation Bonds

<i>Expenditures</i>	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
New Justice Center	\$330,000	\$7,627,637		\$7,957,637
Human Services Complex	\$2,915,485	\$2,480,027		\$5,395,512
Head Start Facility*	\$568,500	\$0		\$568,500
Total	\$3,813,985	\$10,107,664		\$13,921,649

*This project was created on January 12, 2004 with funds (\$381,000) from this issuance already appropriated.

- Bond Issuance Cost

<i>Expenditures</i>	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
Bond Issuance Cost	\$494,178	\$555,501		\$1,049,679
Total	\$494,178	\$555,501		\$1,049,679

Section 4. The Finance Director is hereby directed to maintain within the County Capital Projects Fund sufficient specific detailed accounting records for each capital project authorized.

Section 5. The Finance Director is directed to report annually on the financial status of each capital project and on the total revenues received.

Section 6. Upon its adoption, this capital project ordinance supersedes any previously adopted county construction project ordinances.

Section 7. Copies of this capital project ordinance shall be filed with the Clerk to the Durham County Board of Commissioners and the Finance Director.

Adopted this the 10th day of May, 2004.

Consent Agenda Items Pulled for Discussion

Consent Agenda Item No. 1. Adoption of the FY 2004-2005 Consolidated Action Plan (adopt the Consolidated Action Plan, such that the plan may be submitted to HUD by May 14, 2004).

Chairman Reckhow called the following signed speakers forward:

Ms. Karen E. Curran, 5E 700 Raynor Street, Durham, NC 27703, representing NAMI and CFAC, spoke in support of the Consolidated Action Plan.

Ms. Nancye Bryan, Vice Chair of The Durham Center Area Board and President of Next-Step Housing, 3408 Dover Road, Durham, NC 27707, spoke in support of the Consolidated Action Plan; however, she emphasized that equity needs more focus in the subsequent five-year plan.

Chairman Reckhow thanked the speakers and asked the County Manager to follow-up on a past directive to speak with the Department of Housing and Community Development staff about funding for the homeless and shelter assistance.

County Manager Mike Ruffin recognized Housing staff to respond to Commissioner questions.

Chairman Reckhow announced that \$100,000 is appropriated for an undetermined County initiative, possibly for housing to assist the mentally ill, an essential County priority.

Commissioner Cousin moved, seconded by Commissioner Jacobs, to approve Consent Agenda Item No. 1.

The motion carried unanimously.

Katherine Simmons, Associate Director, Department of Housing and Community Development, thanked the County Manager and his staff for their assistance and cooperation throughout the process.

Chairman Reckhow expressed appreciation to Housing staff.

Public Hearing—Plan Amendments A03-12 Triangle Metro Center South and A03-13 Triangle Metro Center West

The Board was requested to hold a public hearing to receive public comment on A03-12 and A03-13 amending the *Triangle Township Plan* and adopt a resolution amending the Plan.

Planning Department Recommendation - Approval
Planning Commission Recommendation – Approval (10/22/03 – 8 to 4)

Resource Person(s): Frank M. Duke, Planning Director

County Manager's Recommendation: The Manager recommended that the Board conduct a public hearing and, if appropriate based on the comments received, approve Plan Amendments A03-12 and A03-13.

Mr. Duke conveyed that the plans were presented separately; hence, separate votes were required for each amendment.

Chairman Reckhow asked whether it would be appropriate to combine the public hearings for both plan amendments (South and West).

County Attorney Chuck Kitchen suggested holding one public hearing to prevent duplicate comments from signed speakers.

Chairman Reckhow stated that the Board would proceed with a joint public hearing but vote for each plan separately. She recognized Mr. Duke to provide brief overviews of Plan Amendments A03-12 Triangle Metro Center South and A03-13 Triangle Metro Center West.

Mr. Duke responded to Chairman Reckhow's questions.

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

Mr. Mack Little, Craig Davis Properties, P.O. Box 1448, Raleigh, NC 27602

Ms. Juanita Shearer-Swink, Triangle Transit Authority, P.O. Box 13787, Durham, NC 27709

Ms. Liz Rooks, Research Triangle Foundation, 2 Hanes Drive, RTP, NC 27709

Mr. Patrick Byker, Craig Davis Properties, 2614 Stuart Drive, Durham, NC 27707

Each speaker expressed support of the plan amendments.

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

Commissioner Cousin moved, seconded by Commissioner Heron, to approve Plan Amendment A03-12 Triangle Metro Center South.

The motion carried unanimously.

The resolution to amend the Triangle Township Plan follows:

AMENDING TRIANGLE TOWNSHIP PLAN
CASE A03-12—Triangle Metro Center South

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 Triangle Township Plan be amended as follows:

---to identify as Office the recommended future uses of parcel 0747-01-15-6880 (partial) and 0747-03-14-7865 as shown on the map.

SECTION 2

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

(Tax Map number: _____; recorded in Ordinance Book _____, page _____.)

Commissioner Heron moved, seconded by Commissioner Jacobs, to approve Plan Amendment A03-13 Triangle Metro Center West.

The motion carried unanimously.

The resolution to amend the Triangle Township Plan follows:

AMENDING TRIANGLE TOWNSHIP PLAN
CASE A03-13—Triangle Metro Center West

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 Triangle Township Plan be amended as follows:

---to identify as Commercial and High-Density Residential the recommended future uses of parcel 0747-01-15-6880 (partial) and 0747-01-05-2301 as shown on the map.

SECTION 2

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

(Tax Map number: ____; recorded in Ordinance Book ____, page ____.)

Commissioner Cousin applauded the developer on optimum use of the area in conjunction with the proposed transit site.

Chairman Reckhow, after endorsing Commissioner Cousin's commendation, stated that the plans would provide an alternative living and transportation option for Research Triangle Region citizens.

Public Hearing Regarding the Amendment of the Durham County Animal Ordinance

The Board was requested to hold a public hearing to consider proposed changes to Chapter 4 of the Durham County Code of Ordinances, entitled "Animals", which regulates the keeping of animals within the county and establishes the general administration of Durham County Animal Control. The Ordinance was last amended in 2001. Significant changes were being proposed to increase fees and penalties, to prohibit certain dangerous animals from being kept in the county, and to clarify or reflect the current manner in which the County administers the Animal Control program. An Ordinance Review Committee, comprising Cindy Bailey, Carol Hammett, Susan Teer, Mike Turner, and Kim Willis, met for 18 months reviewing and revising the ordinance. On March 23, 2004, the proposed changes were submitted to the Advisory Committee, which unanimously approved the changes and recommended them to the Board for approval.

Resource Person(s): Mike Turner, General Services Director; Cindy Bailey, Animal Control Administrator; and Carol W. Hammett, Assistant County Attorney

County Manager's Recommendation: The Manager recommended that the Board hold the public hearing and, based upon public comment, enact the proposed Ordinance Amending Chapter 4 of the Durham County Code of Ordinances.

Chairman Reckhow recognized Mr. Turner to present this item.

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

Mr. George Webb, 4137 Trotter Ridge Road, Durham, NC 27707

Ms. Kimberly E. Willis, Durham County Animal Control Advisory Committee, 220 Monmouth Avenue, Durham, NC 27701

Mr. Webb and Ms. Willis voiced support for the Animal Ordinance amendments.

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

Staff responded to Vice-Chairman Bowser's question concerning a deletion in the ordinance.

Commissioner Heron moved, seconded by Vice-Chairman Bowser, to approve the Durham County Animal Ordinance amendments.

The motion carried unanimously.

The ordinance amendment follows:

ORDINANCE AMENDING CHAPTER 4 OF THE
DURHAM COUNTY CODE OF ORDINANCES

WHEREAS, the North Carolina Legislature has, through Article 6 of Chapter 153A of the North Carolina General Statutes, delegated to counties the power to regulate by ordinance acts, omissions or conditions detrimental to the health safety and welfare of its citizens and the peace and dignity of the county; and

WHEREAS, the Commissioners of the County of Durham, pursuant to their authority granted under Article 6 of Chapter 153A of the North Carolina General Statutes, enacted an Animal Control Ordinance to regulate acts, omissions and conditions detrimental to the health safety and welfare of its citizens and the peace and dignity of the county; and

WHEREAS, the Board of County Commissioners wishes to amend the Animal Control Ordinance to address concerns of the public health safety and welfare.

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

- 1) That Chapter 4, Article I, Section 4-1 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-1. Authority.

This chapter is established pursuant to the following grants of statutory authority:

- (1) G.S. § 153A-121 which delegates to counties the power to regulate by ordinance, acts, omissions or conditions detrimental to the health, safety or welfare of its citizens and the peace and dignity of the county.
- (2) G.S. § 153A-123 which authorizes counties to levy fines and penalties for violation of its ordinances and allows counties to secure injunctions and abatement orders to further ensure compliance with its ordinances.
- (3) G.S. § 153A-127 which authorizes counties to define and prohibit the abuse of animals.
- (4) G.S. § 153A-131 which authorizes counties to regulate, restrict or prohibit the possession or harboring of animals which are dangerous to persons or property.
- (5) G.S. § 153A-442 which authorizes counties to establish, equip, operate and maintain animal shelters.
- (6) G.S. § 153A-153 which authorizes counties to levy an annual license tax on the privilege of keeping dogs and other pets within the county.
- (7) G.S. § 130A-192 which authorizes animal control directors to determine if there are any dogs and cats not wearing valid rabies vaccination tags.
- (8) G.S. § 67-4.1(ff) which authorizes the animal control director to declare a dog dangerous or potentially dangerous.
- (9) G.S. § 19A-45 which authorizes counties to appoint one or more animal cruelty investigators.

- (10) G.S. § 130A-186 which authorizes the local health director to appoint one or more certified rabies vaccinators.
- 2) That Chapter 4, Article I, Section 4-2, of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-2. Purpose and objective.

This chapter is established for the following purposes and objectives:

- (1) *Animal license.* To establish rules and procedures for licensing a dog or cat.
 - (2) *Animal abuse.* To define and prohibit the abuse of animals.
 - (3) *Rabies.* To protect citizens and other animals of the county from rabies transmitted by unconfined, uncontrolled or unimmunized dogs, cats or other animals.
 - (4) *Animals at large.* To regulate, restrict and prohibit the running at large of any domestic animals.
 - (5) *Stray animals.* To regulate, restrict or prohibit the keeping of any stray domestic animals.
 - (6) *Animal nuisance.* To regulate animals that may be a nuisance.
 - (7) *Exotic animals and dangerous animals.* To regulate, restrict or prohibit the harboring, keeping, or ownership of Exotic Animals and dangerous animals.
 - (8) *Animal bites.* To establish rules and procedures for dealing with animal bites.
 - (9) *Impoundment of animals.* To regulate and establish procedures for the impoundment and confinement of animals.
 - (10) *Redemption of impounded animals.* To regulate and establish procedures for redeeming animals impounded in the county's animal shelter.
 - (11) *Destruction of animals.* To regulate and establish procedures for destroying diseased, stray, unwanted or unclaimed animals.
- 3) That Chapter 4, Article I, Section 4.5 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-5. Same--Officers.

All persons employed by the animal control division to enforce the animal control regulations shall be considered animal control officers and shall have the rights, powers and immunities granted under this chapter and by the laws of this state to enforce the provisions of this chapter and the General Statutes of North Carolina as they relate to animal control and animal welfare. All animal control officers are hereby appointed ex-officio animal cruelty investigators. Animal control officers shall be classified as nonsworn or sworn as set forth below and shall have all the rights, powers and immunities conferred by this chapter:

- 1) Nonsworn animal control officers are those animal control division employees who have not taken or successfully completed the law enforcement education and training course as prescribed by the North Carolina Criminal Justice Education and Training Standards Commission, pursuant to G.S. § 17C-8. Nonsworn animal control officers are not authorized to carry on their person any firearms, but are authorized to store at

the animal control administrative offices, or carry in departmental vehicles, firearms approved for use when necessary to enforce the provisions of this chapter or other applicable law for the control of wild, vicious, dangerous, or diseased animals. Nonsworn animal control officers are authorized to store drugs, chemicals, and equipment at the animal control administrative offices as necessary to enforce the provisions of this chapter or other applicable law for the control of wild, vicious, dangerous, or diseased animals. Nonsworn animal control officers shall not have the power of arrest, but shall have all rights, powers, and immunities as described in section 4-3.

- 2) Sworn animal control officers are those animal control division employees who have taken and have successfully completed the law enforcement education and training course as prescribed by the North Carolina Criminal Justice Education and Training Standards Commission, pursuant to G.S. § 17C-8. These officers must have also taken the prescribed law enforcement personnel oath of office. All sworn animal control officers are hereby vested with the same rights, powers, and immunities granted to nonsworn officers and, in addition, they are granted the same rights, powers, and immunities of all law enforcement officers of this state. Included in such rights and powers is the authority to obtain and serve warrants and summons, the authority to issue citations and the authority to make arrests. All sworn animal control officers are hereby authorized to carry firearms on their person and within any departmental vehicles for use when necessary to enforce sections of this chapter or other applicable laws for the control of wild, vicious, dangerous, or diseased animals and the enforcement of state law.

- 4) That Chapter 4, Article I, Sec. 4-9, of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-9. Sanctions and penalties.

- (1) *Civil penalties.* Unless otherwise provided in a particular section, animal control is authorized to assess civil penalties in the following manner:
 - (a) A civil penalty of \$50.00 shall be assessed for the first violation of any provision of this chapter.
 - (b) A civil penalty of \$100.00 shall be assessed for each second or subsequent violation of this chapter.
 - (c) A civil penalty of \$500.00 shall be assessed for violation of any provision of this chapter by a dog that has been declared dangerous or potentially dangerous.
 - (d) A civil penalty of \$150.00 may be assessed for habitual violation of any provision of this chapter, other than a violation of Article VIII.

A civil penalty is due and owing upon assessment. Surrender of an animal or failure to redeem an animal shall not relieve the owner of responsibility for payment of any outstanding civil penalty that was assessed prior to the animal being surrendered or as a result of the animal being impounded. If payment of a civil penalty is not received within five (5) working days of

issuance, animal control may initiate legal proceedings to recover the amount of the penalty.

- 2) *Seizure/impoundment.* In addition to criminal or civil penalties, animal control is authorized to seize or impound an animal for violation of specific provisions of this chapter as set forth herein.
- 5) That Chapter 4, Article I, Section 4-10 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-10. Interference with officers.

- (1) It shall be unlawful for any person to interfere with, hinder or molest an animal control officer while in the performance of duty and such conduct is punishable as a class 1 misdemeanor pursuant to G.S. § 19A-48.
- (2) It shall also be unlawful for any person to seek to release, attempt to release, or to release any animal in the custody of the animal control division, except as otherwise specifically provided in this chapter.

- 6) That Chapter 4, Article I, Section 4-11 of the Durham County Code of Ordinances, is hereby amended to read as follows:

Sec. 4-11. Method of service and return of notices.

Unless otherwise specified in this chapter, all notices or civil penalties required by this chapter to be sent or delivered shall be made by personal service; certified mail; or affixing the notice to the last known residence and first class mail.

- 7) That Chapter 4, Article I, Section 4-12 of the Durham County Code of Ordinances, is hereby amended to read as follows:

Sec. 4-12. Appeal procedures

- (1) Any owner affected by any ruling or action taken by the animal control administrator with regards to any of the following may request a review of such action by filing a request for appeal with the Director of Durham County Department of General Services.
 - (a) Seizing an animal pursuant to article III of this chapter, unless said seizure was authorized by a judicial official.
 - (b) Declaring a dog dangerous or potentially dangerous pursuant to article VIII or G.S. § 67-4.1(c).
 - (c) Issuing a notice of intent to destroy.
 - (d) Denying or revoking a permit or license pursuant to article II or XI of this chapter.
- (2) Unless otherwise provided by law, a request for appeal must be made in writing and mailed to the Director of Durham County General Services Department within three (3) days of the action or decision complained of and must state the grounds for the appeal. An appeal hearing shall be

scheduled by the animal control review board within ten days of receipt of the request for appeal, unless otherwise provided by law.

(3) All testimony offered at an appeal hearing held pursuant to this chapter shall be given under oath and recorded by tape recording or any other reasonable manner. The hearing shall be open to the public and the person requesting the appeal may be represented by an attorney.

The animal control administrator shall have the burden of proving that this chapter has been violated and that the sanction is in compliance with this chapter. The person requesting the appeal will be given an opportunity to prove that this chapter has not been violated and/or that the sanction is not in compliance with this chapter. The animal control administrator will be given a final opportunity to clarify any conflicts, ambiguities, or inconsistencies created by or arising from the statements or evidence. The animal control review board may ask questions at any time during the appeal hearing and may request additional evidence from either party.

If the decision is against the person requesting the appeal, the animal control administrator shall implement the sanction(s) approved by the animal control review board. The person requesting the appeal may appeal the decision of the animal control review board to the county superior court by filing a notice of appeal and petition for judicial review within ten days of the final decision of the review board. Any sanctions or penalties imposed shall be enforceable during the pendency of any appeal.

If the decision is against the animal control administrator, he shall immediately cease efforts to implement the sanction(s). Any decision rendered by the animal control review board applies only to the violation(s) and sanction(s) appealed and does not prevent the animal control division from enforcing a subsequent violation of the same provision or any other provision of this chapter.

8) That Chapter 4, Article I, Section 4-13, of the Durham County Code of Ordinances is hereby amended to read as follows:

(1) *Abandon* means to intentionally, knowingly, recklessly, or negligently leave an animal at a location without providing for the animal's care.

(2) *Adequate shelter* means an enclosure having at least three solid sides, a roof and a floor, that remains dry inside, is ventilated and has sufficient room for an animal to move about freely and lie down comfortably and promotes the retention of body heat.

(3) *Animal* means every nonhuman species, both domestic and wild

(4) *At large* means any animal found off the property of its owner and not under restraint or any animal previously determined to be dangerous or potentially dangerous that is not confined to a secure enclosure while on the property of its owner. This definition shall exclude any dog, which is

in a dog park. This definition shall exclude any dog being used by a law enforcement officer while carrying out the law enforcement officer's official duties.

(5) *Bite* means the act of an animal seizing flesh with its teeth or jaws, to tear, pierce or injure the flesh.

(6) *Board of Commissioners* means the Durham County Board of County Commissioners.

(7) *Cats* means all domestic felines.

(8) *City* means the City of Durham, North Carolina.

(9) *Confinement* means impoundment within the county's animal shelter or other appropriate facility.

(10) *County* means Durham County, North Carolina.

(11) *Cruelty* and *cruel treatment* means every act, omission, or act of neglect whereby unjustifiable pain, suffering or death is caused or permitted, or attempted to be caused or permitted against animals, as well as acts or attempted acts of teasing, molesting, baiting or trapping of animals unlawfully.

(12) *Dangerous dog* means any dog that without provocation has killed or inflicted severe injury on a person, or any dog that has been determined by the animal control administrator to be potentially dangerous pursuant to G.S. § 67-4.1.

(13) *Dog park* means an area or tract designated by the owner of the property to be a place in which a dog or dogs are not required to be under restraint. The area or tract designated by the owner of the property must be a secured enclosure. The owner of the property shall post in a conspicuous place and manner a sign on the outside of the enclosure, which designates the area or tract as a dog park.

(14) *Dogs* means all domestic canines.

(15) *Exotic Animal* means an animal that would ordinarily be confined to a zoo, or is a species of animal not indigenous to this state. The term specifically does not include animals of a species customarily held in this state as ordinary household pets, animals of a species used in the state as a domestic farm animal, fish, birds, non-venomous insects, non-venomous reptiles, and species that are deemed inherently dangerous under Article XII of this ordinance or regulated by the North Carolina Wildlife Resource Commission.

(16) *Feral cat* means a domestic cat which has adapted to survive in the wild, is homeless and ownerless, and having descended from stray and possible generations of abandoned house pets.

(17) *Flood-prone area* means an area in which two or more inches of standing water is likely to accumulate during a period of normal rainfall.

(18) *Habitual* means three or more violations of this chapter in the past three years and the most recent violation was within the past 12 months.

(19) *Impoundment* means possession or seizure of an animal by the county animal control division for placement in the county's animal shelter or other appropriate facility.

(20) *In estrus* means a female animal in what is commonly called "heat."

(21) *Livestock* shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, and swine as set forth in N.C.G.S. Chapter 68 Article 3.

(22) *Microchip* refers to a tiny permanent identification system, implanted under the animal's skin and read by a chip scanner which identifies the owners name and address, which is available on regional or national databases. Implantation is done with an injector that places the chip under the loose skin over the animal's shoulder.

(23) *Nuisance* means any act of an animal that annoys or disturbs rights and privileges common to the public or enjoyment of private property. The commission on more than one occasion of the following acts shall be evidence of a nuisance:

- (a) Gets into or turns over garbage containers.
- (b) Walks on and/or sleeps on automobiles of another
- (c) Damages gardens, foliage or other real or personal property.
- (d) Continuously or frequently roams or is found on the property of another.
- (e) Is maintained in an unsanitary condition to be offensive to sight or smell.
- (f) Is not confined to a building or secure enclosure while in estrus.
- (g) Chases, snaps at, attacks, or otherwise molests pedestrians, bicyclists, motor vehicle passengers, farm stock, or domestic animals.
- (h) Eliminates on private property without the permission of the owner.
- (i) Continuously barks, howls, whines, or mews in an excessive manner (one or more times per minute, each minute, during a ten-minute period).
- (j) Is a dangerous or potentially dangerous dog as determined by the animal control administrator.
- (k) Is diseased or dangerous to the health of the public.

(1) Is housed or restrained less than 15 feet from a public street, road, or sidewalk and, in the discretion of the animal control officer, poses a threat to the general safety, health, and welfare of the public.

(24) *Owner* means any person, group of persons, firm, partnership, or corporation owning, keeping, having charge of, taking care of an animal, or allowing an animal to remain on his/her property.

(25) *Owner's property* means that area described in a deed of conveyance or the area described in a lease. In a situation involving town homes or condominiums, animal control will treat the common areas as being owned by the homeowner's association. In a situation involving leased apartments, animal control will treat the common areas as being owned by the lessor/property owner. A motor vehicle is not a part of the owner's property unless it is physically located on the area described in a deed of conveyance or the area described in a lease. A motor vehicle that is physically located in or on the common areas of town homes, condominiums or leased apartments, or other public areas shall be treated as being off of the owner's property.

(26) *Person* means any human being, firm, partnership, or corporation, including any nonprofit corporation.

(27) *Pet shop* means a business or enterprise, that acquires for the purpose of resale animals bred by others whether as owner, agent or on consignment and sells, trades or offers to sell or trade such animals to the general public at retail or wholesale.

(28) *Rabies vaccinator* means a person appointed and certified to administer rabies vaccine or a licensed veterinarian

(29) *Restraint* means a secure enclosure located on the owner's property, or a chain, leash or other physical or electronic device of sufficient strength which allows the owner to maintain control of an animal. Voice command is not recognized as adequate restraint.

(30) *Secure enclosure* unless otherwise specifically defined herein, means an enclosure from which an animal cannot escape by means of digging under or jumping over the enclosure, or otherwise becoming free unless freed by the owner. A motor vehicle shall not constitute a secure enclosure. Minimum space and height requirements and other specifications for secure enclosures shall be obtained from animal control based on the breed, age, height, and weight of the animal.

(31) *Stray, lost, or unwanted* means any animal found within the County wandering At Large which does not have identification of an owner.

(32) *Vaccination* means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator.

(33) *Wild animal* means any animal that is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being native or migratory.

(34) *Working days* means any day of the week excluding Saturday, Sunday and legal holidays. If the last day of the time period specified herein shall fall on a Saturday, Sunday or legal holiday, then the action required shall be undertaken on the next day that is not a Saturday, Sunday or legal holiday.

- 9) That the title of Chapter 4, Article I of the Durham County Code of Ordinances is hereby amended by adding a section, to be numbered Section 4-14, which section shall read as follows:

Sec. 4-14. Jurisdiction.

This Chapter shall be effective within the corporate limits and extraterritorial jurisdiction of any municipality within the County that shall so agree by appropriate resolution.

- 10) That Chapter 4, Article II, Section 4-36, of the Durham County Code of Ordinances is hereby amended to read as follows:

The owner of every dog or cat over four months of age shall comply with the provisions of this section:

(1) *Licensing of animals, payment of license fee.* There is hereby levied on the owner of every dog or cat an annual license fee for the privilege of keeping any dog or cat above the age of four months within the territorial boundaries of the County. Said annual license fee shall be set and may be changed, from time to time, by the Board of Commissioners.

(a) The owner of every dog or cat that is kept within the territorial boundaries of this county for more than 30 days shall register the animal with the animal control division within 30 days of bringing the animal into the county, such that a license is generated for each animal.

(b) Any person who owns, maintains, possesses, or controls five or more animals of the same species may apply to the animal control division for a kennel license at a reduced fee as set forth in section 4-37.

(c) The animal control division shall mail to all owners of dogs and cats an annual license form. The owner shall complete and return the license form with the appropriate fee to the animal control division by the last day of the month when due.

(d) The license fee imposed by this article shall be collected by the animal control division or other designated department or agency. The owner of every dog or cat shall retain the owner's copy of the animal license form or

kennel license application. This constitutes the animal's license when the entire fee is paid.

(e) If a dog or cat is impounded pursuant to any provision of this chapter or state law, the animal control division, before allowing such dog or cat to be redeemed by a person claiming ownership, shall determine whether the animal license fee has been paid as provided by this article. The license fee, then due and owing, shall be immediately payable and the dog or cat shall not be redeemed by the person claiming ownership until such license fee, together with any other fees or penalties authorized by this chapter, is paid in full.

(2) *Transfer of license.* The license issued pursuant to the provisions of this article shall not be transferable to another dog or cat or owner. If an animal is transferred to a new owner, the new owner must obtain a new license for the animal.

- 11) That Chapter 4, Article II, Section 4-37 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-37. Kennel licenses.

(1) Any person may apply to the animal control division for a kennel license as follows:

(a) *General kennel license:* Any person who owns, maintains, possesses, or controls five or more animals of the same species that have been spayed or neutered may apply for a general kennel license. The general kennel license is offered at a reduced fee to encourage responsible ownership of multiple animals.

- i. 5-10 animals . . . \$ 40.00
- ii. 11-20 animals . . . \$ 80.00

(b) *Show/breeder kennel license:* Any person who owns, maintains, possesses, or controls five or more animals of the same species that have *not* been spayed or neutered may apply for a show/breeder kennel license. The show/breeder kennel license is offered at a reduced fee to encourage responsible ownership of multiple animals where the owner intends to show the animals in competition or breed the animals.

- i. 5-10 animals . . . \$ 300.00
- ii. 11-20 animals . . . \$ 675.00
- iii. 20 or more animals . \$ 1,200.00

(c) *Individual hunter kennel license:* Any person who owns, maintains, possesses, or controls five or more animals of the same species may apply for an individual hunter kennel license. The individual hunter kennel license is offered at a reduced fee to encourage responsible ownership of multiple

animals where the owner intends to use the animals in lawful hunting activities.

- i. 5-8 animals . . . \$ 300.00
- ii. 9-15 animals . . . \$ 420.00
- iii. 16-24 animals. . . \$ 675.00

(d) *Hunt club kennel license*: Any person who owns, maintains, possesses, or controls five or more animals of the same species may apply for a hunt club kennel license. The hunt club kennel license is offered at a reduced fee to encourage responsible ownership of multiple animals where a group of animals are housed together and maintained for the purpose of lawful hunting or sport activities.

- i. 25-49 animals . . \$1,200.00
- ii. 50 or more . . . \$3,000.00

These fees may be changed, from time to time, by the Board of Commissioners.

(2) Each applicant for a kennel license shall submit an application to the animal control division containing the following information:

- (a) The type of kennel license for which the application is submitted.
- (b) The name, breed, sex, and age of each animal.
- (c) The location where the animals are to be housed, kept or maintained.
- (d) If the applicant is a hunter, proof of a valid hunting license for the current year.

(3) The following conditions must be met before a kennel license will be issued:

- (a) *General kennel license*:
 - (i) Proof of ownership of each animal identified in the license application.
 - (ii) Proof of current rabies vaccination for each animal identified in the license application.
 - (iii) Proof that all animals identified in the application have been spayed or neutered
 - (iv) No outstanding violations of the county animal control regulations, including outstanding redemption or boarding fees or civil penalties.
 - (v) Inspection of the area where the animals are housed by the animal control administrator or his designee. It shall be a continuing condition of the kennel license that the animal control administrator or his/her designee are permitted to inspect the area where the animals are housed at any time and at least once annually.

(b) *All other types of kennel license:*

- (i) Proof of ownership of each animal identified in the license application.
 - (ii) Proof of current rabies vaccination for each animal identified in the license application
 - (iii) No outstanding violations of the county animal control regulations, including outstanding redemption or boarding fees or civil penalties.
 - (iv) Inspection of the area where the animals are housed by the animal control administrator or his designee. It shall be a continuing condition of the kennel license that the animal control administrator or his/her designee are permitted to inspect the area where the animals are housed at any time and at least once annually.
- (4) The kennel license shall be valid for one year and is renewable each year. The owner shall submit a renewal application to the animal control division if there has been a change to any of the information contained in the original application. Failure to submit a renewal application when required by this article may result in revocation of the license or refusal to renew the license.
- (5) *Sanctions, penalties, fines, remedies.*
- (a) The animal control administrator may deny, revoke, or refuse to renew a kennel license if an investigation reveals that any of the following conditions exist:
 - (i) A material misstatement in the initial application or a renewal application required by this article.
 - (ii) Failure to comply with all conditions required for the type of kennel license for which an application has been submitted or renewal or reinstatement is sought.
 - (iii) Violation of any provision of this chapter.
 - (iv) Failure to pay all fees or penalties required by this article.
 - (b) If the issuance or renewal of a kennel license is denied, or if a kennel license is revoked, the animal control administrator shall serve upon the applicant or owner a written notice stating the reasons for the denial or revocation and indicating what measures must be taken before the license will be issued, renewed or reinstated.
 - (i) In the case of a revocation or a refusal to renew, the animal control administrator shall allow the owner a reasonable amount of time not to exceed ten (10) working days to comply with all license requirements.
 - (ii) A kennel license shall be reinstated or reissued upon a showing that the owner is in compliance with all license requirements and payment of any civil penalty issued as a result of the revocation of the license.

(iii) If the owner fails to comply with all kennel license requirements within the time period allow for corrective action the owner shall pay the full non-kennel license fee for each animal in accordance with section 4-36 and shall no longer be eligible for the reduced kennel license fee.

(iv) The revocation or refusal to renew a license may be appealed pursuant to the provisions of section 4-12.

(c) In addition to the foregoing provisions, the animal control administrator may impose any sanction, fine, penalty, or remedy authorized for the violation of any provision of this chapter, including but not limited to the following:

(i) Issuance of a civil penalty in accordance with section 4-9

(ii) Seizure and impoundment of an animal or animals.

(iii) Issuance of a criminal summons.

- 12) That Chapter 4, Article II, Section 4-38 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-38. Reduced fee or exemption.

(1) The following persons or organizations shall be eligible for an exemption or partial exemption from the licensing fees:

(a) Any person owning, possessing, or utilizing an animal primarily for serving the public, or that has been certified to assist handicapped individuals, upon showing proof that the animal has been certified by a duly authorized agency as a service animal. This shall include retired service animals upon proof of satisfactory service record.

(b) An owner 62 years of age or older shall be exempt from the license fee upon showing proof that his/her animal has been spayed or neutered.

(c) Research institutions owning animals solely for research purposes shall be exempt from the license fee.

(d)) An owner of a dog or cat who can furnish a statement from a licensed veterinarian that the animal has a health condition that permanently precludes the animal from undergoing sterilization because of a significant risk of injury or death may pay the license fee assessed for spayed or neutered animals.

(2) An owner may apply at any time for an exemption by making application to the animal control division. The animal control administrator or his designee shall have the authority to grant the requested exemption upon showing proof of one or more of the conditions described above. However, in no event shall an exemption be granted for a license fee for a dog that has been declared dangerous or potentially dangerous pursuant to Sec. 4-191.

(3) The animal control division shall maintain a master file designated by year to contain all applications for a reduced fee or exemption and any documentation relating to action taken on the application. The animal

control division shall maintain a listing of all owners to whom a reduction or exemption has been granted. Animal control is hereby authorized to amend, change, or delete information contained on any county-owned computerized information system to reflect official action taken on an application.

(4) Nothing in this section shall relieve an owner of any animal from the licensing or vaccination requirements set forth in this Article.

- 13) That Chapter 4, Article II, Section 4-39 of the Durham County Code of Ordinances is hereby amended to read as follows:

(1) Every owner shall comply with the requirements of G.S. § 130A-184 et seq., and other applicable state laws concerning rabies control.

(2) If an owner of an animal fails to produce proof of rabies vaccination or fails to have the animal vaccinated, after having been issued a notice to vaccinate pursuant to G.S. § 130A-192, animal control may initiate the issuance of a criminal summons.

(3) In lieu of the foregoing, the Owner may consent to allow an animal control officer, who is also a certified rabies vaccinator, to vaccinate the animal.

(a) The owner shall be responsible for all costs associated with animal control's effort to vaccinate the animal.

(b) If an owner fails to pay the costs of having the animal vaccinated, the County may commence legal proceedings to recover these costs.

(4) Nothing in this article shall be construed to preclude any criminal remedy available under the laws of the State of North Carolina or the United States, or the pursuit by any person, of civil or criminal remedies available under said laws.

- 14) That Chapter 4, Article II, Section 4-40 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-40. Bites

(1) Every owner of an animal that has bitten a human being, or any person bitten by an animal shall comply with the reporting requirements of G.S. § 130A-196 or G.S. § 130A-198 and other applicable state laws concerning animal bites.

(2) An animal that is confined to the animal shelter pursuant to the provisions of G.S. § 130A-196 or G.S. § 130A-198 shall become the property of the county if the owner does not redeem the animal within 24 hours following the last day of the ten day confinement period required by statute.

(3) Upon seizing an animal pursuant to G.S. § 130A-196, animal control shall leave with the owner or affix to the owner's residence, a notice containing the beginning and ending dates of confinement and stating that the owner must redeem the animal within 24 hours of the ending date of confinement stated in the notice.

(4) The owner of an animal confined at the animal shelter pursuant to this section shall be responsible for the costs of caring for the animal while at the shelter and all fees shall be paid at the time of redemption.

- 15) That the title of Chapter 4, Article III, of the Durham County Code of Ordinances is hereby amended to read as follows:

ARTICLE III. ANIMAL ABUSE

- 16) That Chapter 4, Article III, Section 4-62 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-62. General care; prohibited acts

All animals shall be kept and treated under sanitary and humane conditions and it shall be unlawful for any person to engage in one or more of the following acts:

(1) Failure to provide adequate food. All animals, unless otherwise indicated in this chapter, shall be given at suitable intervals, not to exceed 24 hours, a quantity of wholesome foodstuff in a container suitable for the age and species of the animal and sufficient to maintain a healthful level of nutrition

(2) Failure to provide adequate water. All animals shall have constant access to a supply of clean, fresh, potable water or a supply of clean, fresh potable water provided at suitable intervals. If access is not constant, then adequate amounts of water must be provided at least twice in a 24-hour period. If water is provided at intervals, it must remain in the animal's enclosure for at least one hour during each interval.

(3) Failure to provide adequate shelter. All animals shall be provided with adequate shelter from the weather at all times. It shall be within the discretion of animal control officers to determine what constitutes adequate shelter. Examples of inadequate shelter include, but are not limited to the following:

1. Underneath outside steps, decks and stoops.
2. Underneath houses.
3. Inside or underneath motor vehicles.
4. Inside metal or plastic barrels.
5. Inside cardboard boxes.
6. Inside temporary animal carriers or crates.
7. Shelters located in flood-prone areas.
8. Shelters surrounded by waste, debris, obstructions, or impediments that may endanger an animal.

(4) Failure or refusal of any Owner in contact with or having knowledge of a sick, diseased or injured animal to provide proper medical treatment for the animal or notify the animal control division of the condition. A sick animal shall go no longer than 24 hours without veterinary care.

(5) Animal Abuse. Examples of animal abuse include, but are not limited to the following:

- a. Allowing a collar, rope, or chain to become embedded in or cause injury to an animal's neck.
- b. Allowing a choke or pinch collar to be used as a primary collar when the animal is left unsupervised.
- c. Allowing a dog or cat to be left outside in inclement weather or extreme temperatures without adequate shelter.
- d. Intentionally allowing animals to engage in a fight.
- e. Allowing animals to live in unsanitary conditions.
- f. Allowing animals to live in crowded conditions (less than 100 square feet of unobstructed area per animal).
- g. Failure or refusal to obtain medical treatment for an animal when in an animal control officer or animal cruelty investigator's opinion such treatment is needed.
- h. Trapping a dog or cat without a permit issued by animal control.
- i. Permitting any exhibit, function, or activity where animals are being cruelly treated or animals run the risk of causing injury to the public or themselves. The animal control division shall have the authority to inspect and to close down public exhibits of animals which are part of fairs, carnivals, festivals, fund raising events, petting zoos and any other activity or function carried out in the county if it is determined that animals are being cruelly treated, abused or run the risk of causing injury to the public or themselves.

(6) Chaining or tethering an animal to a stationary object for a period of time or under conditions that an animal control officer or animal cruelty investigator deems harmful or potentially harmful to the animal. Examples of improper chaining or tethering include, but are not limited to the following:

- a. Using a length or weight of a chain or tether that is not appropriate for the size, weight, and age of the animal. Guidelines for the proper weight and length of chains or tethers can be obtained from the animal shelter or animal control.
- b. Using a chain or tether made of rope, twine, cord, or similar material.
- c. Using a chain or tether that is less than ten feet in length and/or does not have swivels on both ends. All chains or tethers must be attached to the animal by means of a properly fitting harness or collar of not less than one inch in width.
- d. Using a chain or tether that exceeds ten percent of the animal's body weight.
- e. Allowing an animal to be chained or tethered such that the animal is not confined to the owner's property or such that the chain or tether can become entangled and prevent the animal from moving about freely, lying down comfortably or having access to adequate food, water and shelter.

- f. Using a chain as a primary collar. All collars used for the purpose of chaining or tethering an animal must be made of nylon or leather.
- (7) Leaving an animal in a closed vehicle or other enclosure for such duration or at such temperatures as an animal control officer or animal cruelty investigator deems harmful or potentially harmful to the animal.
- (8) Carrying or causing to be carried in or upon the open area of a truck or other motor vehicle any animal that is not secured in an animal carrier or by a harness or other device, such that the animal cannot fall from, jump from or be thrown from the vehicle.
- (9) Failure or refusal to report injured or killed domestic animals.
 - a. All persons who injure or kill a domesticated animal by running over, into or otherwise coming into contact with such animal with an automobile, motorcycle, bicycle or other vehicle shall notify the owner of the animal immediately.
 - b. If the owner is unknown, the person who injured or killed the animal shall immediately notify the animal control administrator, or the police department if the injury or death occurred in the city, or the sheriff's department if the injury or death occurred in the county by giving his or her name and address, a description of the animal and the location of the incident.
- (10) Unless otherwise permitted by law, giving away or offering any animal as a prize, premium or advertising device for or as an inducement to enter any contest, game or other competition involving skill or chance, or auctioning, raffling or otherwise offering as a prize or premium any animal for fundraising or charitable purposes.
- (11) Displaying any dog or cat on public property for the purpose of selling or giving the animal away. This subsection (11) shall not apply to the display of animals in a Pet Shop, commercial kennel, veterinarian's office, or display by a non-profit animal welfare entity organized and operated under 501(c)(3) of the Internal Revenue Code.

This section 4-62 is not intended in any manner to regulate the care of animals that fall under the exclusive province of federal or state laws.

- 17) That Chapter 4, Article III, Section 4-63 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-63. Sanctions, penalties, fines, remedies

Any person who fails, refuses or otherwise violates this article shall be subject to the following sanctions or penalties:

- (1) Pursuant to G.S. § 19A-46, an animal control officer may obtain a magistrate's order to take possession of the animal.
- (2) If the conditions pose an immediate threat to the health or safety of the animal or the public, animal control may summarily seize the animal.
 - a. A notice of seizure describing the exigent circumstances warranting the seizure shall be left with the owner or affixed to the

premises. Examples of exigent circumstances include, but are not limited to the following:

1. Unsanitary conditions resulting from the number of animals involved.
2. Unsanitary conditions resulting from the owner's inability or unwillingness to clean the area where the animals are housed.

b. The owner of an animal seized pursuant to this section may appeal the seizure by filing a request for appeal as set forth in section 4-12.

c. If the owner fails to redeem the animal within the time limit provided by this chapter, or fails to timely request an appeal, the County may initiate an action in district court for permanent custody of any animal impounded. The costs of caring for the animal pending final determination of court proceedings shall be charged against the owner.

(3) If it is determined by the animal control officer that the animal is not in immediate danger, or the problem which gives rise to the inadequate treatment or abuse can be corrected within 72 hours, the officer may, in lieu of subsection (1) or (2) above issue a written notice of violation directing the owner or possessor of the animal to correct the problem within 72 hours. If the condition or problem is not corrected within 72 hours, the animal control officer may take action as outlined in subsection (1) or (2) above.

(4) Notwithstanding the other provisions and sanctions of this article, the animal control division may issue a civil penalty for violation of any provision of this section in accordance with section 4-9.

(5) Violation of state law. When it has been determined by the animal control officer that there has been a violation of one or more provisions of state law regarding cruelty to animals, including G.S. § 14-360, the officer shall initiate a criminal summons or warrant.

(6) Failure to report. Failure to report any event for which a report is required under this article shall be subject to a civil penalty as indicated in section 4-9.

- 18) That Chapter 4, Article IV, Section 4-87 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-87. Sanctions, fines, penalties, remedies

(1) If an animal control officer receives a first-time At Large complaint and the officer does not personally observe the dog at large, the officer shall investigate the complaint. Upon finding probable cause to believe the dog was At Large he shall issue a first civil penalty in accordance with section 4-9.

(2) If an animal control officer personally observes a dog At Large animal control may seize and impound the animal and shall issue the appropriate civil penalty in accordance with section 4-9.

(3) Nothing in this article shall prevent a private citizen from bringing an action against the owner of an animal, which has caused injury to the private citizen or his property, for damages or any other loss resulting from an animal being At Large.

- 19) That Chapter 4, Article VI, Section 4-136 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-136. Animal creating a nuisance.

It shall be unlawful for any animal to engage in any of the acts listed in section 4-13(23). Upon receipt of a complaint, an animal control officer shall investigate to determine whether a violation of this article has occurred and the officer shall make a written report of the findings of the investigation.

- 20) That Chapter 4, Article VI, Section 4-137 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-137. Sanctions, fines, penalties, remedies.

(1) Upon determining that a violation of this article has occurred, the animal control officer shall issue a written declaration of nuisance to the owner of the animal along with a civil penalty in accordance with section 4-9 of this chapter. Notwithstanding the foregoing, if the nuisance for which the declaration of nuisance is issued is a condition which is offensive to sight or smell, the owner shall have 72 hours within which to abate the condition before a first civil penalty is issued.

(2) Subsequent violations of this article shall subject the owner of the animal to civil penalties in accordance with section 4-9 or criminal penalties as provided by law.

(3) Any animal found off the property of its owner after having been declared a nuisance may be seized and impounded. A notice of impoundment shall be served upon the owner or affixed to the owner's premises.

(1) The animal may be redeemed pursuant to the provisions of Article IX of this chapter.

(2) Animal control may initiate an action in district court for permanent custody of any animal impounded after having been declared a public nuisance. The costs of caring for the animal pending final determination of court proceedings shall be charged against the owner.

(4) Nothing in this article shall prevent a private citizen from bringing an action to abate a nuisance or from bringing an action for damage, loss, or injury to the private citizen or his property resulting from the animal being a public nuisance.

- 21) That Chapter 4, Article VI, Section 4-138, of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-138. Animal housed or restrained less than 15 feet from public right of way.

(1) In addition to any penalties proscribed by section 4-137 above, when it has been determined that an animal housed or restrained less than 15 feet from a public right of way constitutes a nuisance, but the animal is not in the right of way, the animal control officer shall issue a notice to the owner directing the owner to move the animal. If the animal is found in the public right of way and the owner is not available, or refuses to remove the animal from the public right of way, the animal may be seized and impounded.

(2) When an animal has been impounded three times or the owner has been cited three times for housing the animal less than 15 feet from the public street, road, or sidewalk, upon the fourth violation, the animal control administrator may impound the animal and may initiate a civil action in district court to gain permanent custody of the animal. The owner may also be subject to penalties for habitual violation of this chapter as provided in section 4-9.

- 22) That Chapter 4, Article VII, Section 4-166 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-166. Notification to animal control division.

(1) Any person who has knowledge of or keeps, feeds, harbors or possesses a stray or abandoned animal must notify animal control within 24 hours of having knowledge of the animal or the animal coming into his possession or control.

(2) Any person required to notify animal control under subsection 4-166(a) shall provide the following information to animal control:

(a) The name, address, and telephone number of the person completing the lost/found report.

(b) A description of the animal, including its color, breed, sex, and age.

(c) The location where the animal was discovered.

(3) Any person who gives away, sells or allows an otherwise stray or abandoned animal to be adopted without first surrendering said animal to the animal shelter shall have no authority over the animal and ownership shall remain with the previous owner to the extent the previous owner can be identified.

- 23) That Chapter 4, Article VII, Section 4-167 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-167. Surrender of stray animals.

(1) Any person having knowledge of or keeping, feeding, harboring or possessing a stray animal shall surrender the animal upon demand by the animal control division.

(2) All stray animals surrendered to animal control shall be taken to the county animal shelter. If the owner does not redeem the animal within five working days, the animal shall become the property of the county and may be disposed of according to this chapter.

- 24) That the title of Chapter 4, Article VIII of the Durham County Code of Ordinances is hereby amended to read as follows:

ARTICLE VIII. DANGEROUS AND POTENTIALLY DANGEROUS DOGS

- 25) That Chapter 4, Article VIII, Section 4-191 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-191. Determination of dangerousness.

(a) The animal control administrator or his designee shall determine whether a dog shall be declared dangerous or potentially dangerous pursuant to G.S. § 67-4.1.

(b) The animal control administrator or his designee shall issue a written declaration of dangerousness within fifteen (15) working days of the incident necessitating a determination of whether the dog is dangerous or potentially dangerous.

(c) The owner of an animal which has been declared dangerous or potentially dangerous pursuant to this Section has the right to appeal said determination in the manner set forth in Section 4-12 of this Chapter.

- 25) That Chapter 4, Article VIII, Section 4-192 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-192. Confinement and restraint of Dangerous or Potentially Dangerous Dogs.

(1) It is unlawful for an owner or caregiver to leave a dangerous dog or potentially dangerous dog unattended on the owner's real property unless the dog is confined indoors or in a secure enclosure which has been approved by animal control;

(2) It is unlawful for an owner or caregiver to permit a dangerous or potentially dangerous dog to go beyond the owner's real property unless the dog is muzzled and under restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. Voice command is not recognized as adequate restraint.

(3) Animal Control shall routinely inspect all secure enclosures to ensure that they meet the minimum standards regarding height, dimensions, and construction as defined by the Animal Control Administrator.

(4) The owner of a dangerous or potentially dangerous dog shall immediately notify animal control of any change in address.

- (5) The owner shall notify the animal control division immediately if the dog escapes or is otherwise freed from the secure enclosure or other restraint.
 - (6) The owner of a dangerous or potentially dangerous dog shall display sign(s) warning that there is a dangerous dog on the property. The sign(s) shall be conspicuously placed clearly visible from the public right of way or property line at an actual or customary point of entry into the premises.
- 26) That Chapter 4, Article VIII, Section 4-193 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-193. Transfer of ownership

The owner of a dog that has been declared dangerous or potentially dangerous shall immediately comply with the requirements of G.S. § 67-4.2 concerning transfer of ownership.

- 27) That Chapter 4, Article VIII, Section 4-194 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-194. Sanctions, fines, penalties, and remedies

In addition to criminal penalties provided by state law and civil penalties set forth in section 4-9, any person who violates this article shall be subject to the following sanctions, and remedies:

(1) If a dog which has been declared dangerous or potentially dangerous is found at large it shall be seized and impounded. If attempts to seize the dangerous or potentially dangerous dog are unsuccessful, animal control may tranquilize or humanely destroy the animal, without prior notice to the owner, upon authorization of the animal control administrator. The animal control officer shall thereafter make a good faith attempt to notify the owner of the incident.

(2) If the dog has caused injury to a person or another animal while at large and not confined within a secure enclosure, the animal control administrator shall, in addition to seizing the dog, issue to the owner a notice of intent to destroy the dog. The owner may appeal this intended action by filing a written request for appeal as specified in section 4-12.

(3) If an inspection of the premises where a dog which has been declared dangerous or potentially dangerous is confined reveals that the owner has not complied with the requirements for confining a dangerous dog, animal control shall issue a \$500.00 civil penalty in accordance with section 4-9 and may impound the dog at the animal shelter.

(4) If the impounded dog is not redeemed within five working days the dog shall become the property of the county and shall be disposed of in accordance with this chapter

(5) Nothing in this article shall prevent a private citizen from bringing an action against the owner of an animal, which has caused injury to the private citizen or his property, for damages or any other loss resulting from the animal being dangerous or potentially dangerous.

- 28) That Chapter 4, Article VIII of the Durham County Code of Ordinances is hereby amended by adding a section, to be numbered Section 4-195 which section reads as follows:

Sec. 4-195. Microchip requirements for Dangerous/Potentially Dangerous Dogs.

All dogs declared Dangerous or Potentially Dangerous pursuant to this Article must be permanently identified by a Microchip implanted under the dog's skin within thirty (30) days following the final determination of dangerousness under Sec. 4-191 and any appeal period allowed by this ordinance. The owner shall supply animal control with the Microchip number immediately for their records.

- 30) That Chapter 4, Article IX, Division I, Section 4-221 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-221. Authority

(1) Not inconsistent with the preceding articles of this chapter and excluding feral cats, any healthy animal which appears to be lost, stray or unwanted, or any dog or cat which is impounded pursuant to any provision of this chapter, or any Exotic Animal which has escaped or poses the danger of escaping may be confined to the animal shelter or any other appropriate facility in a humane manner for a minimum of five working days, unless otherwise specified in this chapter, for redemption by the owner. Any animal not redeemed within five working days shall become the property of the county and shall be disposed of pursuant to this chapter.

(2) The county animal control division is authorized to obtain suitable board, maintenance and care from any available source for any impounded animal for which the animal shelter is not equipped to care. Unless otherwise provided herein, the owner of any animal impounded and cared for under any provision of this chapter may redeem the animal upon payment of all fees, costs, and penalties authorized by this chapter.

- 31) That Chapter 4, Article IX, Division I, Section 4-222 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-222. Feral cats

A panel of three persons designated by the animal control administrator shall determine whether a cat suspected of being feral shall be deemed a feral cat within the meaning of this chapter. The panel must unanimously declare the cat to be feral. A feral cat shall be held for three working days for redemption by a possible owner. If the feral cat is not redeemed within three working days it may be euthanized pursuant to this chapter. If the panel cannot agree unanimously that the cat is feral, then the cat must be held for five working days.

- 32) That Chapter 4, Article IX, Division I, Section 4-224 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-224. Boarding fees

The animal control administrator or his designee is authorized to collect the actual expenses of boarding an impounded, lost or stray animal at the animal shelter or other appropriate facility in the following amounts (per day):

- (1) Boarding fees for dogs . . . \$12.00
- (2) Boarding fees for cats . . . \$8.00
- (3) Boarding fees for all other domestic animals housed at the shelter . . . \$6.00
- (4) Boarding fees for all livestock housed at the shelter... \$15.00
- (5) Per day boarding fees for all other animals that cannot be housed at the shelter: Actual cost charged by third-party caregiver.

Boarding fees include the costs of food, water, and shelter for the animal and do not include costs for transportation, veterinary treatment and other costs. Boarding fees must be paid at the time of redemption and are charged in addition to any other fees, costs and penalties authorized by this chapter. Boarding fees may be changed, from time to time, by the Board of Commissioners.

- 33) That Chapter 4, Article IX, Division II, Section 4-242 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-242. Proof and acknowledgment of ownership

(1) Any person attempting to redeem an impounded animal shall present proof sufficient to satisfy animal control and/or shelter personnel of ownership of the animal. Evidence of ownership may include, but is not limited to, the following:

- (a) A valid animal license from Durham County or another county;
- or
- (b) A valid rabies tag for the animal; or

(c) Ownership documents, pedigree papers, bill of sale, or any other document identifying the person as the owner of the animal;
or

(d) Photographs of the animal with the person claiming ownership or their immediate family members.

(2) In addition to the requirements set forth in subsection (1) above, any person attempting to redeem an animal on behalf of an owner shall present proof sufficient to satisfy animal control and/or shelter personnel that he/she is acting as an agent for the person claiming ownership.

- 34) That Chapter 4, Article IX, Division II, Section 4-244 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-244. Payment of redemption fees and other fees, costs and penalties

(1) In addition to any other fees, costs or penalties authorized by this chapter, any person attempting to redeem an impounded animal must pay a redemption fee in the following amount:

- | | |
|--|----------|
| (a) First redemption | \$25.00 |
| (b) Second redemption | \$60.00 |
| (c) Third redemption | \$95.00 |
| (d) Fourth and subsequent redemption | \$150.00 |

(2) Any person attempting to redeem an impounded animal shall be required to pay all costs for transportation, veterinary treatment and other costs associated with the care of the animal, in addition to boarding and redemption fees, all outstanding license and vaccination fees, and all outstanding civil penalties. Surrender of an animal or failure to redeem an animal shall not relieve the Owner of responsibility for payment of any outstanding medical costs, penalties, and fees that have accrued prior to the animal being surrendered or as a result of the animal being impounded.

- 35) That Chapter 4, Article IX, Division III, Section 4-261 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-261. Unredeemed, injured, sick, or diseased animals.

(1) An impounded animal shall become the property of the county without further notice to the owner if the owner fails to pay all amounts due at redemption or if the owner fails to redeem the animal before the time limit for redemption has expired.

(2) Once the animal becomes the property of the county, ownership shall transfer, by operation of law, to the agency responsible for operating the Durham County Animal Shelter.

(3) Any animal impounded, which is badly injured sick or diseased and has no identification shall be destroyed immediately in a humane manner. If the animal has identification, animal control shall attempt to notify the owner before disposing of such animal; but if the owner cannot be reached

readily, and the animal is suffering, animal control may destroy the animal in a humane manner within its discretion.

- 36) That Chapter 4, Article IX, Division III, Section 4-262, of the Durham County Code of Ordinances is hereby repealed in its entirety.
- 37) That Chapter 4, Article IX, Division III, Section 4-263, of the Durham County Code of Ordinances is hereby repealed in its entirety.
- 38) That Chapter 4, Article IX, Division III, Section 4-264 of the Durham County Code of Ordinances is hereby repealed in its entirety.
- 39) That Chapter 4, Article IX, Division III, Section 4-265, of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-265. Disposal of dead animals.

(1) Domesticated Animal. Any person who owns or possesses any domesticated animal that has died shall comply with the requirements of G.S. § 106-403 regarding the burial or removal of such animal carcass. When the Owner of a dead domesticated animal is unknown, the Durham County Director of General Services may provide for the removal and disposal of any dead domesticated animal located within the limits of the County, but without the limits of the City, pursuant to G.S. 106-403. All costs incurred by the County in the removal of the dead domesticated animal shall be recoverable from the owner of such animal upon admission of ownership. Nothing in this section shall affect the Department of Transportation's responsibility to pick up dead animals that lie on the Right of Way.

(2) Exotic Animal. Any person who owns or possesses any Exotic Animal that has died shall promptly contact the animal control division to obtain instructions for disposing of the animal.

- 40) That the title of Chapter 4, Article XI, of the Durham County Code of Ordinances, is hereby amended to read as follows:

ARTICLE XI. EXOTIC ANIMALS

- 41) That Chapter 4, Article XI, Section 4-301, of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-301. Exemptions.

The following persons, organizations, and institutions shall be exempt from the provisions of this article:

(1) Any nonprofit institution, which owns or harbors Exotic Animals for research or educational purposes, provided that such institution is licensed by the U.S. Department of Agriculture.

(2) Pet Shops.

- 42) That Chapter 4, Article XI, Section 4-302, of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-302. Permit requirements.

Every owner of an Exotic Animal, as defined in this Chapter, shall be subject to the following regulations:

(1) *Permit required.* No owner may keep an Exotic Animal within the territorial boundaries of the county for more than 5 days without first obtaining and then maintaining all permits required by the federal government, the state, and the county animal control department.

(2) *Application.* An owner of an Exotic Animal must complete an application, which may be obtained from the animal control division. The application, once completed, shall contain the following information

- a. Name, address, and telephone number of the applicant.
- b. If a corporation, the state of incorporation, the address of the principal office and the names and addresses of its officers.
- c. If other than a cooperation, the name thereof, the location of its office(s) and the names and addresses of its principal officers, directors, trustees or managing officials or partners.
- d. Statement of the applicant/owner's purpose in keeping the animal.
- e. The place of origin of the animal or class of animal.
- f. A description of the animal, including species.
- g. The address of the premises where the animal will be kept.
- h. A description of the method, materials, and square footage of facilities for confinement of the animal.
- i. Proof of applicant's ability to respond in damages for bodily injury or death of any person or for damages to property owned by another person which may result from the ownership, keeping, or maintenance of such animal.
- j. Copies of all federal and state permits and licenses required for the animal.
- k. A schedule of personnel who will service and maintain the enclosure or confinement facility.
- l. A listing of the applicant's training and experience with animals, especially the species stated on the application.
- m. Any other information the animal control administrator deems necessary.

(3) *Inspection and issuance of permit.* Upon completion of the application, the animal control administrator, or his designee, shall inspect the enclosure or confinement facility to determine whether it is adequate for the purposes of restraining and confining the particular species of animal for which the permit is requested and meets or exceeds the confinement requirements set forth in Sec. 4-304. The animal control administrator shall also determine whether or not the enclosure or

confinement facility can be maintained in a sanitary manner and whether the enclosure or confinement facility is designed to prevent injury to the animal and other persons who may come onto the property where the enclosure or confinement facility is located. It shall be a condition of the permit that the animal control administrator or his/her designee shall be permitted to inspect the enclosure or confinement facility and the animal at any time. Inspections shall be conducted at least annually.

(4) *Permit period.* The permit period shall begin with the fiscal year (July 1) of each year and shall run for a period of one year. Renewal applications for permits shall be made 30 days prior to the start of the fiscal year. An application for a new permit may be filed at any time during the year.

(5) *Permit fee.* The permit fee shall be \$75.00. This fee may be changed by the Board of Commissioners from time to time. The fee shall be for the fiscal year or part thereof. The permit fee shall be collected by the animal control administrator.

(6) *Transfer of permits.* Permits issued under this article are not transferable.

(7) *Posting of permit.* The owner of an Exotic Animal shall display the permit in a prominent place on or near the enclosure or confinement facility.

(8) *Failure to obtain permit.* Failure to obtain a permit before possessing or owning an Exotic Animal in the county will subject the owner to the sanctions, penalties, fines or remedies set forth in section 4-304(2).

(9) *Failure to timely renew permit.* Failure to renew a permit by June 1 shall subject the owner of an Exotic Animal to the sanctions, penalties, fines or remedies set forth in section 4-304.

(10) *Denial of permit.* The animal control administrator shall have the authority to deny a permit for violation of this article pursuant to the grounds and procedures set forth in section 4-303.

(11) *Revocation of permit.* The animal control administrator shall have the authority to revoke a permit for violation of this article pursuant to the grounds and procedures set forth in section 4-303.

(12) *Reinstatement of permit, reinstatement fee.* The animal control administrator shall reinstate a revoked permit after the owner complies with this article and pays a reinstatement fee of two times the original permit fee required in subsection 5 above.

- 43) That Chapter 4, Article XI, Section 4-303 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-303. Grounds for denial or revocation of a permit.

The animal control administrator may refuse to issue, or renew and may revoke a permit to keep, harbor, or possess an Exotic Animal in this county, if an investigation reveals that one or more of the following conditions exist:

- (1) *Misstatement.* A material misstatement in the initial application or renewal application which was made to induce the animal control administrator to issue or renew a permit.
- (2) *Violation.* Violation of any provision of this article.
- (3) *Nonpayment of fees.* Failure to pay fees or penalties required by this article.
- (4) *Failure to maintain license.* Failure to obtain or maintain all federal or state licenses or permits concerning the ownership, keeping, harboring, or possession of an Exotic Animal.
- (5) *Misrepresentation.* Substantial misrepresentation or false promises to the animal control division in connection with owning, keeping, harboring or possessing an Exotic Animal.
- (6) *Inspections.* Failure or refusal to allow inspection of the enclosure or confinement facility or the Exotic Animal.
- (7) *Failure to confine or restrain.* Failure or refusal to confine or restrain an Exotic Animal.
- (8) *Failure to give notice of escape.* Failure or refusal of the owner to notify immediately the animal control division of the escape of an Exotic Animal.
- (9) *Federal or State regulations.* Federal or State regulations issued from time to time to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one State or possession into any other State or possession.

- 44) That Chapter 4, Article XI, Section 4-304 of the Durham County Code of Ordinances is hereby amended to read as follows:

Sec. 4-304. Confinement Requirements.

The secure confinement requirements for each Exotic Animal may vary depending on the species of animal. Confinement requirements for Exotic Animals shall be designated by the Animal Control Administrator taking into consideration the following:

- a) the species,
- b) its adult height and weight,
- c) the animal's natural habits and known tendencies,
- d) mode of life and natural instinct
- e) area requirements for the animal to comfortably stand, lay down and exercise,
- f) enclosure material necessary to securely confine the animal as well as prevent injury to the animal and other persons or animals that may come onto the property where the enclosure or confinement facility is located.
- g) type and amount of shelter necessary to keep the animal dry, cool or warm as may be necessary in the local climate,
- h) sanitary and care requirements,
- i) maintenance requirements,

- j) the number of animals to be contained in the enclosure, and
 - k) the needs of the animal in their natural habitat.
- 45) That Chapter 4, Article XI, Section 4-305 of the Durham County Code of Ordinances is hereby deleted in its entirety.
- 46) That Chapter 4, Article XI, Section 4-306 of the Durham County Code of Ordinances is hereby re-numbered as 4-305 and amended to read as follows:

Sec. 4-305. Sanctions, penalties, fines, remedies.

When it is determined by the animal control administrator that grounds for denial or revocation of a permit exist pursuant to section 4-303 or that this article has otherwise been violated the animal control administrator may impose or initiate one or more of the following:

(1) *Notice of violation.* Upon determining that there is probable cause to believe that this article has been violated, the animal control administrator shall issue a written notice of violation. The notice shall state specifically which section of this article has been violated, the date of violation, the date of issuance of the notice of violation, the name and position of the person issuing the notice of violation, what acts are necessary to correct the violation and the deadline of not more than five working days from the date of service of the notice of violation for compliance. If the owner remedies the violation within the deadline, the animal control administrator shall send or deliver written notice of rescission of the notice of violation.

(2) *Violation and civil penalty.* The animal control administrator may issue a written violation and civil penalty if the owner refuses or fails to comply with the notice of violation issued pursuant to subsection (1) above or if the owner has violated this article on more than two occasions. Each notice of violation, whether rescinded or not, shall count as a violation. The violation shall state that the owner failed or refused to comply with the written notice of violation and/or the owner has violated this article on more than two occasions. The violation shall also state that the owner shall pay a civil penalty of \$100.00 for the first day of the violation and an additional \$25.00 per day for each day the violation continues to exist. It shall be the responsibility of the owner to notify the animal control division that the violation has been corrected so that the animal control administrator can confirm the same. Confirmation may be made by inspection, investigation or any other method deemed necessary by the animal control administrator. If possible, confirmation shall be made on the same day that the animal control division is notified by the owner that the violation has been corrected. In any event, confirmation shall be made no later than the next business day. If the animal control administrator finds that the violation has been corrected, he shall send written notification of the same to the owner. This notice of confirmation shall also state the amount of any civil penalty due. If the animal control

administrator finds that the violation still exists or has not been fully corrected, he shall give written notice of the same to the owner. Any penalty assessed pursuant to this subsection shall be paid by the owner within 72 hours of receipt of the notice stating the total amount due. If the penalty is not paid within 72 hours, the animal control administrator shall initiate a civil action in the nature of the collection of a debt. All notices under this subsection shall be served and return of service made pursuant to section 4-11.

(3) *Criminal summons.* The animal control administrator, in lieu of a subsection (2) above, may cause a criminal summons or warrant to be issued and served upon the owner of an Exotic Animal for violating any provisions of this article, but only after written notice pursuant to subsection (1) above has been given and the owner has failed or refused to comply with this article.

(4) *Denial of permit.* The animal control administrator shall deny the issuance or renewal of a permit if it is determined that any of the grounds stated in section 4-303 exist. If the issuance or renewal of a permit is denied, the animal control administrator shall serve or deliver a written notice of denial to the owner pursuant to section 4-11. The notice shall state specifically why the permit is being denied and what has to be done before the permit can be issued or renewed.

(5) *Revocation of permit in emergency situation.*

a. If it is determined by the animal control administrator that the safety of any person or property is in immediate danger from the Exotic Animal, he may, in lieu of subsection (1), (2), and (3) above, revoke the permit without notice to the owner and take all necessary steps to secure the cage, pen or enclosure to prevent escape by the animal or he may immediately seize the animal for impoundment at the county's animal shelter or at some other appropriate facility. The costs of securing the cage, pen or enclosure shall be charged to the owner and if not paid the county shall initiate the filing of a civil action to collect the same.

b. If the animal control administrator revokes the permit without notice, he shall serve the owner with written notice of the revocation within 24 hours of the revocation. The notice shall state the reason for the revocation, the steps to be taken by the animal control administrator to secure the cage, pen, or enclosure and if the animal was seized and impounded, the time of seizure, location of the animal and what steps are necessary to redeem the animal.

c. If the animal is seized it may be impounded until the animal control administrator is satisfied that the animal can be securely confined on the owner's premises. The owner may redeem the animal by paying all charges, impoundment fees, by correcting the violation and by paying a permit reinstatement fee of two times the original fee. All things necessary to redeem the Exotic Animal must be accomplished by a date set by the animal control administrator. In no event shall the owner have less than five

working days to redeem the animal. If the owner wishes to request a review of the seizure of the animal or reptile, the owner must file a written request for appeal pursuant to section 4-12.

(6) *Revocation of permit in nonemergency situations.* The animal control administrator, in lieu of subsections (2) and (3) above, may revoke a permit in a nonemergency situation if it is determined that any of the grounds stated in section 4-303 exist. He must first serve the owner with a written notice of intent to revoke the permit. The owner will then have five working days from receipt of the notice to comply with this article. If the owner fails to comply, the animal control administrator shall serve the owner with a written notice of revocation. The notice of revocation shall inform the owner of the reason for the revocation and inform the owner that if the violation is not corrected within three working days from receipt of the notice of revocation, the animal control administrator may take all necessary steps to correct the violation which may include seizing and impounding the animal. If the animal is seized and impounded, the owner may redeem the animal or reptile by paying all charges, impoundment fees, by correcting the violation and by paying a permit reinstatement fee of two times the original fee. All things necessary to redeem the Exotic Animal must be accomplished by a date set by the animal control administrator. In no event shall the owner have less than five working days to redeem the animal or reptile. If the owner wishes to request a review of the seizure of the animal or reptile, the owner must file a written request for appeal pursuant to section 4-12. If an owner fails to redeem the animal by the date set by the animal control administrator, or fails to timely appeal the seizure, the animal or reptile shall become the property of the county.

(7) *Order of abatement and injunctive relief.* The county, in lieu of or in addition to subsections (1), (2), (3), (4), (5), and (6) may initiate the filing of a civil action for abatement and injunctive relief to restrain the violation or threatened violation of the article. An action instituted under this subsection shall not relieve an owner from any civil or criminal liability proscribed hereinabove, for violating this article.

(8) *Escape of an Exotic Animal.*

a. If an Exotic Animal escapes from its cage, pen or enclosure it may be tranquilized by an animal control officer with or without prior notice to the owner, but only after unsuccessful attempts to catch it and after authorization from the animal control administrator. If an animal control officer does tranquilize such an animal, he shall make a good faith attempt to notify the owner as soon as possible.

b. If an Exotic Animal escapes and is determined by an animal control officer to pose an immediate danger to the health and safety of any person or property, the animal may be humanely destroyed at the animal control officer's discretion, with or without prior notice to the owner. If the animal control officer does

destroy such an animal, he shall make a good faith attempt to notify the owner of the incident.

c. If an Exotic Animal is seized and impounded by the animal control administrator after an escape, the owner shall be subject to the same sanction and penalties described in subsection (5) above.

d. If the Exotic Animal has caused injury to a person or another animal while at large, the animal control administrator shall, in addition to seizing the animal, issue to the owner a notice of intent to destroy the animal. The owner may appeal this intended action by filing a written request for appeal pursuant to section 4-12. If an owner fails to timely appeal, the notice of intent to destroy the animal control administrator shall humanely destroy the animal.

(9) *Seizure of unpermitted Exotic Animals.* Animal control may seize any Exotic Animal if the owner does not have a required federal, state, or county permit. Animal control may confine the animal until all requirements of this article have been met. The costs of confinement shall be charged to the owner.

(10) *Cost of recapturing.* The owner of any Exotic Animal shall reimburse the county for any overtime hours or special costs or expenses incurred by county employees while in the course of or as a result of attempts to recapture an escaped animal.

(11) Nothing herein shall have the effect of permitting any activity or condition with respect to an animal that is prohibited or more severely restricted by regulations of the North Carolina Wildlife Resources Commission.

47) That Chapter 4 of the Durham County Code of Ordinances is hereby amended by adding an Article XII, to be numbered Sec. 4-321 through 4-325, which sections reads as follows:

ARTICLE XII. INHERENTLY DANGEROUS ANIMALS

Sec. 4-321 Definition.

The term Inherently Dangerous Animals shall apply to the following animals: (1) any member of the order Felidae (other than domestic house cats), (2) non-human primates, (3) bears, (4) wolves, (5) coyotes, (6) any member of the order Crocodilia (crocodiles, alligators, and caiman), (7) any member of the order Helodermidea (gila monsters and beaded lizards), and (8) any crossbreed or hybrid of the animals specified in (1) through (7).

Sec. 4-322. Exemptions.

The following persons, organizations, and institutions shall be exempt from the provisions of this Article:

(1) Any nonprofit institution that owns or harbors an Inherently Dangerous Animal for research or educational purposes, provided

that such institution is licensed by the U.S. Department of Agriculture and maintain any necessary permits from state and federal agencies.

- (2) Any owner who possesses an Inherently Dangerous Animal, pursuant to the American with Disabilities Act (ADA) as a service animal trained to assist people with disabilities.
- (3) A Wildlife Rehabilitator under the provisions of the NC Wildlife Resource Commission.

Sec. 4-323. Possession or Harboring of Dangerous Animals.

It shall be unlawful for any person, organization or institution to own, keep, maintain, or have under their control any Inherently Dangerous Animal within the territorial boundaries of the county unless exempt under Sec. 4-322.

Sec. 4-324. Compliance with State and federal regulations and safe confinement.

The confinement of Inherently Dangerous Animals that are exempt under Sec. 4-322, must meet the regulations promulgated by the NC Wildlife Commission, the minimum standards under the Animal Welfare Act and all applicable rules promulgated by the United States Department of Agriculture. In addition, all exempt animals shall be confined, restrained, and controlled in such a manner so the physical safety of person or property shall not be endangered.

Sec. 4-325. Sanctions, penalties, fines, remedies.

Civil Penalty. Any person who violates any provision of this Article XII shall be subject to a civil penalty of Five Hundred Dollars (\$500.00) per animal. No penalty shall be assessed until the person alleged to be in violation has been notified of the existence and nature of the violation by letter. The Animal Control Administrator shall make or cause to be made a written demand for payment to be served upon the owner, which shall set forth in detail a description of the violation for which the penalty has been imposed. A civil penalty is due and owing upon assessment. Surrender or removal of an animal shall not relieve the owner of responsibility for payment of any outstanding civil penalty that was assessed prior to the animal being surrendered or removed from the county. If payment of a civil penalty is not received within five (5) working days of issuance, animal control may initiate legal proceedings to recover the amount of the penalty.

2. The Chapter, as amended, is effective upon enactment, this the 10th day of May, 2004.

Chairman Reckhow praised staff for their impressive work on the ordinance amendments.

Approve Offer to Purchase and Contract for 2.23 acres of Land Located at 3600 Shannon Road for Expanding the Southwest Library

The Board was requested to approve an offer to purchase approximately 2.23 acres of land adjacent to the Southwest Library located at 3600 Shannon Road for \$585,000. Property acquisition is for the express purpose of expanding the Southwest Library from 10,000 to 20,000 square feet. This expansion was approved by the voters in the 2001 Bond referendum.

Resource Person(s): Wendell M. Davis, Deputy County Manager, and Philip Cherry, Library Director

County Manager's Recommendation: Authorize the County Manager to approve the Offer to Purchase and Contract for 2.23 acres of land from the Watsons, located at 3600 Shannon Road, for expanding the Southwest Library. The purchase price for the property is \$585,000 and is subject to the conditions of the contract. Staff should be further directed (as requested by Mrs. Watson) to forward the contract to the appointed legal counsel for execution.

Chairman Reckhow recognized Mr. Davis to present this item.

Vice-Chairman Bowser inquired about the cost per acre.

Mr. Davis responded that the cost is \$262,333 per acre.

Commissioner Jacobs moved, seconded by Commissioner Heron, to authorize the County Manager to approve the Offer to Purchase and Contract for 2.23 acres of land from the Watsons, located at 3600 Shannon Road, for expanding the Southwest Library.

Vice-Chairman Bowser stated that he would vote against the motion because \$262,333 for one acre of land in southwest Durham is too expensive; a lesser price could have been negotiated. He clarified that he is in favor of the library expansion but is opposed to the cost.

Mr. Davis reminded the Commissioners that the capital project ordinance amendment would be placed on the May 24, 2004 Regular Session agenda.

Chairman Reckhow agreed with Vice-Chairman Bowser's concern about the cost but explained that adequate research was carried out to compare costs of property in the area. Southwest Durham is popular for commercial business, which increases property value.

Commissioner Jacobs commented that although the Board desires to negotiate a lesser cost, the cost of relocating would offset any savings. She explained that her vote is based upon the location as the most appropriate place for expansion.

Commissioner Heron reiterated Commissioner Jacob's comments.

Commissioner Cousin complimented staff on the commitment to expanding the library.

The motion carried with the following vote:

Ayes: Cousin, Heron, Jacobs, and Reckhow
Noes: Bowser

Consulting Firms for Departmental Personnel Audits

On April 26, 2004, the County Manager was directed "to bring this board a list of professional personnel consultants who will be able to do a complete audit of our personnel activity in our human services departments and any other department that we deem necessary."

Resource Person(s): Mike Ruffin, County Manager

County Manager's Recommendation: The Manager recommended that a Request for Proposal (RFP) be prepared and distributed to qualified consulting firms that have no previous business relationship with Durham County Government.

Chairman Reckhow recognized County Manager Ruffin to introduce this item.

County Manager Ruffin stated he had researched and identified consultants with the following criteria:

1. Must have credit records of experience and requisite skills that the Board seeks to undertake the work; and
2. Must have no previous work relationship (no contracts have been issued for any type of work) with the County.

During research, County Manager Ruffin viewed the International Personnel Management Association (IPMA) website which maintains a list of qualified consulting organizations for various needs. According to the aforementioned criteria, he identified the following four firms:

- The Segal Company, New York, NY (www.segalco.com)
- Public Sector Personnel Consultants, Scottsdale, AZ (www.compensationconsulting.com)
- Fox Lawson and Associates, LLC, St. Paul, MN (www.foxlawson.com)
- Baker, Thomsen Associates, Newport Beach, CA (www.btabta.com)

County Manager Ruffin suggested that a decision to issue an RFP be deferred until his review of the Human Resources audit is complete, at which time he would provide a report to the Board and make recommendations for "next steps".

Commissioner Heron concurred with the County Manager's suggestion.

Commissioner Jacobs commented that her understanding of the motion made at the April 26 meeting involved only researching and compiling a list of consultants to conduct an audit on Human Services departments, independent upon completion of the Human Resources audit.

Vice-Chairman Bowser affirmed Commissioner Jacob's comment. He wished to proceed with a Human Services audit, expressing an interest in future audits of Tax Administration, General Services, Animal Control, and other agencies.

Chairman Reckhow was in favor of County Manager Ruffin's suggestion.

Vice-Chairman Bowser asked County Manager Ruffin to explain why issuing an RFP should wait until the Human Resources audit review is complete.

County Manager Ruffin explained that a three-week deferment may be beneficial for future audits, to ensure the correct scope of service the Board desires.

Vice-Chairman Bowser stated two reasons for requesting the Human Services audit: (1) the increase in turnover rates and (2) relationships between management and personnel.

Chairman Reckhow remarked that she could not support an issue until it is adequately defined. She expressed concern about the costs of performing audits on several departments. County Manager Ruffin conducted a climate survey to be presented at the June Worksession, which may address Vice Chairman's concerns. Once the survey results are presented, Vice-Chairman Bowser could work with the County Manager to identify the scope of the audit.

Vice-Chairman Bowser explained that distributing an RFP merely prepares the County for hiring a consultant once an audit has been approved.

Chairman Reckhow emphasized that she neither knows the purpose of the RFP nor the type of audit to be performed.

Vice-Chairman Bowser responded that the audit would involve personnel. He restated his reasons for requesting the audit.

Chairman Reckhow asked County Manager Ruffin to explain the climate survey.

Commissioner Jacobs recommended that the Board proceed with preparing an RFP and discuss distribution later.

Commissioner Jacobs moved, seconded by Vice-Chairman Bowser, to direct staff to prepare a Request for Proposal to bring back to the Board and distribute at a later time.

The motion carried with the following vote:

Ayes: Bowser, Cousin, and Jacobs
Noes: Heron and Reckhow

City-County Planning Commission Appointment—Triangle Township Position

Commissioner Jacobs added this item to ask County Attorney Kitchen if the Board's appointment to the City-County Planning Commission (Triangle Township Position) on February 23, 2004 complied with the Interlocal Cooperation Agreement.

County Attorney briefed the Board and public on the issue.

On December 8 and 15, 2003, the Clerk to the Board's office advertised for the Triangle Township position on the City-County Planning Commission. Due to responses from ineligible applicants, the position was readvertised on January 26 and February 2, 2004. By the February 9 deadline, office staff had received applications from Ms. Sandra Battle, Mr. Steve Matherly, and Mr. Mohammad Rashdi. All three were recorded as being ineligible because their applications did not state that they reside in Triangle Township. After receiving this information, the Commissioners' understanding was that according to the Interlocal Cooperation Agreement, a position advertised twice with no eligible applicants allows the Board to appoint a representative who lives outside the township. Consequently, at the February 23 Regular Session, the Board of County Commissioners appointed Mr. Steve Matherly, Durham Township, to the City-County Planning Commission.

A week prior to the February 23 appointment, Ms. Battle informed Garry Umstead, Clerk to the Board, that she lives in Triangle Township, making her eligible for the appointment. At the 23rd meeting, Mr. Umstead distributed ballots indicating Ms. Battle's eligibility by noting "ineligible – does not live in Triangle Township" by the names of the other two applicants; yet, the Commissioners based their votes upon the information provided to them by Mr. Umstead in the agenda packets.

County Attorney Kitchen reviewed details of the Interlocal Cooperation Agreement, explaining that the agreement requires districts outside City limits to appoint the representatives. Only three appointees may live inside the City limits. Currently, three appointees live inside and four outside the City limits. The agreement also states that a map will be available to reflect the districts. According to Mr. Umstead, no such map exists. Accordingly, several years ago, in lieu of districts, the Board began appointing citizens from townships: Triangle, Oak Grove/Carr, Lebanon, and Mangum. Triangle, Oak Grove/Carr, and Lebanon Townships have a majority of land mass within City limits, leaving very small land mass outside City limits from which to select representatives. Township boundaries remain constant unless changed by the Board. County Attorney Kitchen recommended that the Board consider revising the townships at a future worksession.

Chairman Reckhow asked County Attorney Kitchen to submit a proposal for the revisions.

In response to Commissioner Jacobs's concern, County Attorney Kitchen informed the Board that despite the misinformation, the Board's vote was not in compliance with the Interlocal Cooperation Agreement.

Commissioner Jacobs stated for the record, that according to her interpretation of the Interlocal Cooperation Agreement, her vote was in compliance.

Chairman Reckhow explained that her vote was based upon the understanding that the position had been advertised twice.

The Commissioners held a discussion to explicate the appointment issue.

County Attorney Kitchen informed the Board that (1) since Mr. Matherly had been appointed and sworn in, his appointment is secure; and (2) the Interlocal Agreement states that if the appointment was made outside the district, the next available appointment is to be made from that district.

Chairman Reckhow stated that the next available appointment to the Durham Planning Commission will be in three years.

Call Monitoring in Tax Administration

Vice-Chairman Bowser brought to the Board's attention an issue in Tax Administration involving a professional system that allows personnel to eaves drop on personal phone calls. In an earlier discussion, Tax Administrator Kenneth Joyner explained to Vice-Chairman Bowser that the system's purpose is to ensure professional and courteous customer service. Vice-Chairman Bowser had received two complaints within the past year and decided to inform the Board.

Chairman Reckhow recognized Mr. Joyner to address the issue.

Mr. Joyner responded that the system has not been active since his initial employment as Tax Administrator. He commented that Tax Administration would operate the system if complaints were received about poor customer service or the need for improvement. He discussed the office's procedure when receiving a personal phone call and assured his staff in a February 14, 2003 memo that "as to someone listening to your calls, no one in this office will listen in on personal calls outside of the context of County business". If such an issue were raised, the matter would be handled through the disciplinary process.

Vice-Chairman Bowser recapped his reason for raising the issue.

Mr. Joyner related that appropriate action for staff is to inform him first of departmental concerns, as he is the Department Head.

Commissioner Heron emphasized that Mr. Joyner's comment is a message for all employees.

Discussion of Initiation of the Human Resources Audit

At Vice-Chairman Bowser's request, Chairman Reckhow elucidated for the record that the Human Resources Audit was not initiated exclusively by Vice-Chairman Bowser but by the Board collectively during a conversation with the County Manager relating to his upcoming work plan.

State Delegation Meeting Report

Chairman Reckhow reported on the May 6 State Delegation meeting in which court needs, childcare subsidies, and immigrant health were discussed. The Delegation indicated that resources would be minimal this year, encouraging the County to write a letter to the Governor, the State, House of Representatives, and the Senate to relay needs. Chairman Reckhow inquired about the Board's position on relaying its needs and supporting the Delegation's effort to raise cigarette tax as a source of revenue for new initiatives.

Commissioner Cousin suggested restating the Board's support for a cigarette tax increase.

Chairman Reckhow accepted Commissioner Cousin's suggestion and would relay the Board's support in follow-up communications with the State Delegation.

Commissioner Heron mentioned the State's proposal to divert half of the funds scheduled to go into the Public School Capital (ADM) Fund to the General Fund to balance the budget, which should be included in the correspondence.

Vice-Chairman Bowser requested that the County Manager summon the Fire Marshall to attend the May 24 Regular Session or June 7 Worksession to address questions concerning a letter that was submitted to the Commissioners.

Board Appointments—Durham Convention and Visitors Bureau and the Durham County Hospital Corporation Board of Trustees

Garry E. Umstead, CMC, Clerk to the Board, distributed ballots to make appointments to the Durham Convention and Visitors Bureau and the Durham County Hospital Corporation Board of Trustees.

Resource Person(s): Garry E. Umstead, CMC, Clerk to the Board

County Manager's Recommendation: The Manager recommended that the Board vote to appoint members to the above-mentioned boards.

The Commissioners voted to make the following appointments:

Durham Convention and Visitors Bureau
Dharmendra Patel (Lodging – Limited Service)

Durham County Hospital Corporation Board of Trustees

MaryAnn E. Black – Representative of the DUHS

Mary D. Jacobs – The ex officio member of BOCC

Eugene F. Dauchert Jr.

Penelope A. Keadey

Robert A. Buchanan, Jr., MD – Durham Regional Hospital Medical Staff Representative

Mary T. Champagne, Ph D. – DUHS representative

Kenneth Q. Hammond

Closed Session

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to adjourn to closed session to consider the competence, performance, or fitness of a public officer or employee pursuant to G.S. § 143-318.11(a)(6) and to consult with an attorney regarding *Brannon v. DSS 02-0SP769* pursuant to G.S. § 143-318.11(a)(3) and (6).

The motion carried unanimously.

Reconvene to Open Session

The Board of County Commissioners returned to Open Session. Chairman Reckhow declared that directives were given to staff, but no action was taken by the Board in the Closed Session.

Adjournment

There being no further business, the meeting was adjourned at 10:29 p.m.

Respectfully submitted,

Vonda C. Sessoms
Deputy Clerk to the Board