

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

Monday, April 8, 2002

7:00 P.M. Regular Session

**MINUTES**

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

Present: Chairman MaryAnn E. Black, Vice-Chairman Ellen W. Reckhow, and Commissioners Joe W. Bowser, Philip R. Cousin Jr., and Becky M. Heron

Absent: None

Presider: Chairman Black

**Opening of Regular Session**

Chairman Black opened the meeting with the Pledge of Allegiance.

**Agenda Adjustments**

Chairman Black said that Agenda Item No. 9 "Public Hearing—Land Use Plan Amendment #A01-18 (North Durham Plan)" would be removed from the agenda and heard at a later time.

Chairman Black said the "Closed Session" had been removed from the agenda.

County Attorney Chuck Kitchen asked to add a new resolution to item No. 12.

Commissioner Bowser asked to add an item regarding an email correspondence concerning a request for help with contaminated wells in the Kentington Heights subdivision.

**Minutes**

Commissioner Heron moved, seconded by Commissioner Bowser, to approve the January 14, 2002 Regular Session, February 11, 2002 Regular Session, and March 25, 2002 Special Session Minutes as submitted and the January 30, 2002 BOCC/Durham Public Schools Board of Education/Durham City Council Minutes as corrected.

The motion carried unanimously.

**Proclamation Recognizing “National County Government Week”**

A proclamation designating the week of April 7-13 as “National County Government Week” has been prepared for the Board’s approval. This year’s theme for the national recognition is “Counties Secure America.”

County Manager's Recommendation: Approve the requested proclamation and recognize the work that County employees perform on behalf of the citizens.

Vice-Chairman Reckhow read the proclamation into the record as follows:

PROCLAMATION

WHEREAS, counties secure America, as evidenced by the terror attacks on September 11 which focused attention on the work that dedicated county officials perform 24 hours a day, 7 days a week, 365 days a year; and

WHEREAS, counties are the first to respond to emergency situations and are chiefly responsible for planning for disasters; and

WHEREAS, county officials ensure that citizens are protected and that communities thrive; and

WHEREAS, as a result of the planning, cooperation, and dedication of counties across this nation, emergency response professionals are able to mobilize and respond quickly and effectively; and

WHEREAS, counties continue to deal with the aftermath of September 11 and the ensuing public health threats; and

WHEREAS, Durham County is one of 3,066 counties in the United States, collectively responsible for the well-being of more than 230 million residents; and

WHEREAS, counties have a long history of serving and providing for the American people, and in this new and trying time, counties are called upon even more to continue to safeguard our way of life, remaining vigilant protectors of our citizens:

NOW, THEREFORE BE IT RESOLVED that we, the members of the Durham County Board of Commissioners, do hereby proclaim the week of April 7-13, 2002 as,

“NATIONAL COUNTY GOVERNMENT WEEK”

in Durham County. We further urge all citizens to recognize the leadership, innovation, and valuable services provided by dedicated public employees.

This the 8<sup>th</sup> day of April, 2002

/s/ Five Commissioners  
Durham County Commissioners

### **Tons of Fun Celebration for 2003**

The Board of County Commissioners is being asked to endorse a ten-week campaign to increase physical activity, improve nutrition, and elevate vitality during the 2003 Calendar Year. The Durham County Commissioners' Council on Physical Fitness and Sports recently endorsed the campaign entitled "Tons of Fun." The ten-week-long event will introduce a new step each week to accomplish the campaign's goals. No funding is requested from the County to support the implementation thereof.

Resource Person(s): David Nowotny and Ellen Reckhow

County Manager's Recommendation: The Manager recommended that the Board receive the presentation and endorse the program as approved by the Commissioners' Council on Physical Fitness and Sports.

David Nowotny, 1213 Carol Street, Durham, NC, made a presentation to the Board of County Commissioners about the "Tons of Fun Celebration" program. He began his comments by stating that he is not asking for money to fund the program. The focus of the program is to unite our community through partnerships and collaboration so that our environment, media, community, and conversations completely support our health and vitality.

Despite widespread awareness that increased activity and improved nutrition reduces risk of disease, the public does not respond. In fact, national health trends are declining. The public is cynical, skeptical, and resigned about their health and fitness.

Mr. Nowotny explained to the Commissioners how the program could work. He suggested the Board declare a ten-week "Tons of Fun Celebration," distributing 10 steps to increase activity, improve nutrition, and elevate vitality. He suggested creating a nationwide model for bringing together the public and private sector, businesses, civic organization, churches, the media, and schools. Upon registration, everyone receives a discount card good for promotional rates on health club memberships, healthy menu items, and merchandise. Registration can occur at any of Durham's health clubs, the mall, or your physician's office.

Mr. Nowotny asked the Commissioners for their endorsement of the program. A design team of eight people is already working on the campaign.

Chairman Black suggested that the Duke University Medical Center, Durham Regional Hospital, and Lincoln Community Health Center be added to the narrative in the backup material. She also recommended that under "Fund challenges could be made to target each community" that the volunteer firefighters and the Sheriff's Department be listed. Chairman Black requested that in the last two bullets in the section, that "county" should be used in lieu of "city." The county includes the city.

Vice-Chairman Reckhow commented that the Fitness Leadership Council was very pleased with the proposed program. The program will be held in the spring of 2003. The kickoff date will be March 1, 2003. A timeline has been prepared. The various walks and runs that are held each spring will be incorporated within the 10-week period starting March 1, 2003. A calendar will be prepared so the public will know when each event will be scheduled. This will be a great event for the community.

Vice-Chairman Reckhow said if the Board of County Commissioners would endorse the plan, that endorsement would help the fund-raising effort.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to endorse the "Tons of Fun Celebration" for 2003 to run from March 1 for 10 weeks.

The motion carried unanimously.

### **Durham City-County Appearance Commission Annual Report.**

In June of 2001, the Appearance Commission was established and comprised 15 members with design backgrounds. The Interlocal agreement governs the activity of the commission and requires that the Board of Commissioners be provided with annual updates on the commission's work, as well as its goals for the upcoming year. The Board will receive the first Annual Report from the Appearance Commission.

Resource Person(s): George Stanziale Jr., Cochair, Durham Appearance Commission, and Sara Young, Urban Designer, City-County Planning Department

County Manager's Recommendation: The Manager's recommendation is that the Board receive the report from the Appearance Commission.

George Stanziale Jr., Cochair, Durham City-County Appearance Commission, presented the annual report of the Durham City-County Appearance Commission to the Board of County Commissioners. Michael Waldroup, commission member, assisted with the power point presentation.

The annual report included the activities of the Appearance Commission during the first year and the plans it made for the upcoming year. Mr. Stanziale talked about the accomplishments of the Commission and the committees that were established. He discussed the activities the Commission wants to accomplish.

The Commissioners asked questions and made comments about the Appearance Commission to which Mr. Stanziale responded.

The Commissioners had a lengthy discussion about the report and the commission's future plans.

Commissioner Bowser commented the commission should be known as the Durham Appearance Commission.

The Commissioners thanked Mr. Stanziale for his extensive report.

No official action was taken on this agenda item.

### **Consent Agenda**

#### **Offer to Purchase County Property (1015 Carolina Avenue-rear)**

Offer to Purchase County Property (1015 Carolina Ave.-rear). Pursue the upset bid process at this time. The Board has the authority to accept or reject any offer at the conclusion of the upset bid process.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve the Consent Agenda item.

The motion carried unanimously.

### **Fy 2002-2003 Consolidated Action Plan Draft Public Hearing**

The adopted Citizen Participation Plan requires that two public hearings be held prior to the submission of the Consolidated Action Plan to the Department of Housing and Urban Development (HUD). The purpose of the first public hearing is to receive comments pertaining to HOME program needs in Durham. The Board of County Commissioners' needs public hearing was held on February 25, 2002. No citizen comments were received. The purpose of the second public hearing is to receive comments on the use of FY 2002-2003 HOME funds as proposed in the Consolidated Action Plan Draft. The FY 2002-2003 Consolidated Action Plan Draft was made available for public review beginning March 8, 2002 through April 7, 2002.

The Durham City-County HOME Consortium anticipates receiving total HOME Investment Partnership (HOME) program funds in the amount of \$1,351,000. This amount includes an annual HOME allocation of \$1,051,000 and program income in the amount of \$300,000. The proposed use of FY 2002-2003 HOME funds includes substantial homeowner rehabilitation activities for low-income city and county residents, tenant-based rental assistance (HOPE VI Revitalization Area), and acquisition and/or substantial project rehabilitation by a developer. A Request for Proposal (RFP) for

acquisition and/or substantial project rehabilitation will be issued to interested developers during the program year. The Durham City-County HOME Consortium will be required to provide a 25-percent match (non-federal funds) to the total amount of HOME funds used directly for affordable housing activities during FY 2002-2003. The required match would be approximately \$287,088 and would be funded with City Housing Bonds and available County funds as outlined in the current Consortium Agreement.

Charlene Montford, Director of the City of Durham Department of Housing and Community Development, has reviewed this request and recommends that the Board of County Commissioners hold the 2002-2003 Consolidated Action Plan Draft public hearing to receive citizen comments. Michael Pullum, Senior Planner, will attend the meeting to answer questions.

Resource Person(s): Michael Pullum, Senior Planner, City of Durham Department of Housing and Community Development

County Manager's Recommendation: The Manager's recommendation is that the Board hold the FY 2002-2003 Consolidated Action Plan Draft public hearing to receive citizen comments.

Michael Pullum, Senior Planner, City of Durham Department of Housing and Community Development, presented the Board of County Commissioners a report on the FY 2002-2003 Consolidated Action Plan.

Mr. Pullum said the purpose of tonight's public hearing is to receive comments on the use of FY 2002-2003 HOME funds as proposed in the Consolidated Action Plan draft.

Following tonight's hearing, comments will be incorporated into the actual Consolidated Action Plan that will be brought back before the Board for approval on April 22, 2002 and then forwarded to HUD prior to the May 15, 2002 deadline.

Chairman Black asked if there were any questions from the Commissioners.

The Commissioners asked questions and made comments to which Mr. Pullum responded.

In response to Commissioner Bowser's question of whether HOME funds could be used to repair septic tanks, Mr. Pullum said he would research the question to determine if the HOME funds could be used for that purpose.

Commissioner Heron asked if HOME funds could be used for transitional housing for adjudicated youth.

Michael Pullum said he would research the question and get back in touch with Commissioner Heron.

Vice-Chairman Reckhow asked if Durham County had representation on the Citizen Advisory Committee.

Mr. Pullum said he thought that the County did have representation but he was not sure.

Vice-Chairman Reckhow requested a letter to this Board within a week stating whether or not the County has representation on the Citizens Advisory Committee. She said that Durham County should have proportional representation on the Citizens Advisory Committee that relates to the amount of dollars that the County helps to draw down. She requested this as a priority. If the County doesn't have representation, it should obtain it as soon as possible. She asked for the list of names of the people sitting on the Committee representing Durham County and the number of slots as it compares to the total slots. She requested to know how much money is being drawn down due to the involvement of Durham County.

Vice-Chairman Reckhow also wanted to know how much funding the NAMI group had received from the City for housing for the mentally ill.

Commissioner Bowser requested a letter this week from the City of Durham Department of Housing and Community Development to let him know whether the department can provide funding for septic tank repairs.

Chairman Black opened the public hearing that was properly advertised.

One person signed to speak at the public hearing.

Dr. Lavonia I. Allison, representing The Durham Committee on the Affairs of Black People, PO Box 428, asked how interested groups could access the Draft and have involvement in the Plan.

Michael Pullum advised that it is advertised in four newspapers that copies of the draft plan are placed in five locations around the county for a one-month review.

Chairman Black asked County Manager Ruffin to obtain Dr. Allison's questions and submit them to Mr. Pullum. The Commissioners requested copies of the correspondence.

Mr. Pullum was directed to submit two separate letters to Vice-Chairman Reckhow and Commissioner Bowser to address their extensive directions.

As no else asked to speak at the public hearing, Chairman Black closed the public hearing and referred the item to the Commissioners for discussion and consideration.

This item will be placed before the Board for its second public hearing and approval at the April 22, 2003 Regular Session.

Commissioner Bowser requested to use some of the funds from the Lead Based Paint Abatement Program to hire a nurse to check the children at Whitted School (Operation Breakthrough) for lead poisoning.

### **Ambulance Franchise Renewals**

All public and private providers of ambulance service wishing to operate in Durham County must be franchised by the Durham County Board of Commissioners to assure adherence to local and state regulations, insurance requirements, and to monitor their ability to provide quality service to the citizens of Durham County. After the initial franchise is awarded, they must reapply for that franchise every three years. Currently, nine providers are franchised to operate within the County. This request is for initial approval of renewals for Bahama VFD, Bethesda VFD, Lebanon VFD, Parkwood VFD, Redwood VFD, and Duke Life Flight. All requesting agencies with the exception of Duke Life Flight operate under contractual agreements with Durham County.

The applications have been reviewed by J. M. Tezai, EMS Director, and have been found to meet all legal and operational requirements as stipulated by the Franchise Ordinance. The applications have been reviewed and recommended by the Durham County EMS Council. As a result, it is recommended that all requests be approved.

This will be the first of two required approvals by the Board of County Commissioners. (A public hearing is not required for a franchise renewal.) The Board of County Commissioners will be asked to consider the second approval at the April 22, 2002 meeting.

Resource Person(s): J. M. Tezai, EMS Director, and representatives of the six requesting agencies.

County Manager's Recommendation: The Manager's recommendation is that the Board approve the franchise renewals as requested.

Chairman Black removed herself from presiding over this item due to her involvement with Duke University Medical Center.

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to approve the Chairman's request to remove herself from this item and for the Vice-Chairman to preside over the item.

The motion carried unanimously.

Mr. Mickey Tezai, Director, Emergency Medical Services, made a presentation to the Board of County Commissioners concerning the ambulance franchise renewals.



Commissioner Heron, seconded by Commissioner Bowser, moved the first required approval of the ambulance franchise renewals.

The motion carried unanimously.

This item will be placed before the Board for second approval at the April 22, 2002 Regular Session.

### **Recommendations for the Southwest Durham Drive and Fixed Guideway Transit Routes**

The Durham Area Designers held a design charette on March 2 to explore and consider alternatives to the alignment of the Southwest Durham Drive and Fixed Guideway routes in southwest Durham. Interestingly, three separate design teams arrived at the same conclusion, one that would enable the region to be planned appropriately and developed for the maximum community benefit.

The parcel of land recently purchased by the Durham Public Schools served as the catalyst for forethought and planning. The school system needs to proceed with the design of its site in order to open a new elementary school in the fall of 2004. While any final regional alignment of the transit routes may require thorough consideration, local governing bodies and committees need the current authority to provide flexibility in determining routes and rights of way through the school site.

Resource Person(s): Dan Jewell, member, Durham Area Designers; Hugh Osteen, Assistant Superintendent for Operations, Durham Public Schools

County Manager's Recommendation: The Manager recommended that the Board receive the presentation and determine if any recommendation regarding the proposed alignment should be forwarded to the Transportation Advisory Committee (TAC), which meets on April 10, 2002.

Mike Waldroup, 4201 University Drive, and Dan Jewell, representing Durham Area Designers (the organizing entity for a charette), brought forward these recommendations tonight.

Mr. Waldroup made the presentation to the Board of County Commissioners relative to the Southwest Durham Transit Route. He began his remarks by describing the location of the 700 acres in Southwest Durham. He also gave a short history of the planning in the area.

On March 2, 2002 a charette was held to answer one question. The question was, "What else do you need if in fact you are going to put 2,000 new households in an area that is under-populated or lightly-populated?"

As a result of the charette, the group came up with the following four recommendations:

- Establish TWO TODs
- Realign transit corridor & SW Durham Drive onto school site
- Protect transitway from cross-traffic
- Allow school development—NW corner of site

Mike Waldroup said that tonight's principle objective was to obtain support for your Transportation Advisory Committee member to request that these adjustments in alignment be considered by the staff and brought back to the TAC.

Chairman Black opened the meeting for public comment. Two persons requested to speak.

Dr. Lavonia I Allison, representing the Durham Committee on the Affairs of Black People, PO Box 428, stated she was disturbed that this item had come up for approval before the item could be addressed by the citizens.

Mr. George Smart, 2439 W Lake Drive, Raleigh, NC, represented 65% of the landowners in the lower section of the area. He stated he had a petition to do a land use plan. He asked the Board to let him present his plan at a later date.

Chairman Black said she must ask the County Manager to arrange with Mr. Smart to set up a time when he could make his PowerPoint presentation.

Commissioner Bowser said he had not had enough time to go over this plan. He wanted the Commissioners to have more time to study the plan. He suggested that the Board not vote on the plan tonight.

The Commissioners asked questions and made comments about the proposal to which Hugh Osteen, Assistant Superintendent for Operations, Durham Public Schools and Dan Jewell, member, Durham Area Designers responded

A lengthy discussion followed relative to the location of the school, road, and the transportation rail line. All the Commissioners participated in the discussion and stated their concerns and opinions. The Commissioners requested additional review time.

Chairman Black called for the item to be brought before the Board again at the May 6, 2002 Worksession. Board members wanted time to schedule appointments to discuss their transportation concerns. The Chairman asked that the Commissioners compile a list of questions.

Commissioner Heron, Chairman of the Transportation Advisory Committee, commented she would bring up this subject tomorrow at the TAC meeting if the Commissioners wished.

Chairman Black responded to Commissioner Heron by saying that she could speak at the TAC meeting on the subject as an individual, but not on behalf of the Board of County Commissioners.

Chairman Black suggested the Board of County Commissioners arrive at 4:30 p.m. on April 22, 2002 to have a thorough discussion about the Southwest Durham Drive and the Fixed Guideway Transit Routes. The Closed Session would be held after the 4:30 p.m. meeting, and the Regular Session would begin at 7:00 p.m.

The County Commissioners concurred to start the meeting at 4:30 p.m.

Commissioner Bowser asked Hugh Osteen, Assistant Superintendent, Durham Public Schools, to obtain an estimate on the cost to upgrade George King Road to state standards.

Chairman Black asked the Commissioners to submit any additional questions to the County Manager before the April 22, 2002 meeting so that answers could be prepared before the meeting.

It was suggested that Mr. George Smart's presentation could be made at that meeting.

### **Inducement Resolution for Affordable Housing Bonds**

The NRP Group, LLC is requesting that the County approve a resolution giving preliminary approval for the issuance of revenue bonds for the financing of a proposed apartment development, Eno Pointe. These bonds would be solely payable by the NRP Group, and the County would not be liable for the repayment of the bonds. By having the County as the nominal issuer of the bonds, the bonds are tax-exempt. This also allows NRP Group to receive tax credits for the project. In return, 80 percent of the units will be rent restricted for moderate-income individuals.

This would be the second such issue for the NRP Group by the County. The first issue was completed in December 2000. That project is now called Falls Pointe at the Park and is located off Highway 55 near RTP.

Rezoning of the property will be required. The rezoning will be brought before the Board at a subsequent meeting.

An additional issue with these projects is the taxability of the apartments due to the Court of Appeals decision in *In Re Greens at Pine Glen*. While the Supreme Court recently agreed to review this decision, NRP Group has agreed to make a payment in lieu of taxes to make up the difference if the units are not fully taxable.

Resource Person(s): Chuck Kitchen, County Attorney; Brad Parker, Vice-President, NRP Group; and Mary Nash Rusher, Bond Counsel

County Manager's Recommendation: Approve the inducement resolution so that NRP Group can proceed with getting approvals from the North Carolina Housing Finance Authority.

Chairman Black asked County Attorney Chuck Kitchen to take the lead role in the presentation of this agenda item.

County Attorney Kitchen said this inducement resolution is the very beginning of the process. Before the bonds can actually be issued no less than three public hearings are required between now and that point before it happens. There is ample opportunity for community and public input. The first public hearing will be scheduled for the next Commissioner meeting scheduled for April 22, 2002 on the rezoning of the property.

Mr. Kitchen suggested that the required public hearing to close two paper streets inside the project be held on May 13, 2002. If the project gets approval by the Housing Finance Corporation there will have to be another public hearing on the bonds themselves. These bonds are not the obligation of the County. The developer, not the County, must pay these bonds back. The Federal Government backed the bonds on the first project in year 2000. The developer wants the Federal Government to back these bonds for this project. If the developer defaults, the Federal Government steps in, not Durham County. What the developer gets out of this is the ability to issue tax exempt financing. Mr. Kitchen said that Jack Markham, Esquire, was representing the developer. Developer Brad Parker was present.

Attorney Kitchen said that Mary Nash Rusher, Bond Counsel, was also present.

Chairman Black asked if there were any questions from the County Commissioners on this item.

Mr. Jack Markham, Esquire, representing the NRP Group, presented the proposal for the Village of Eno Pointe, consisting of 224 apartment homes in 17 apartment buildings on 31.29 acres. The development is on the south side of the proposed Carver Street extension.

Ms. Mary Nash Rusher, Hutton and Williams, Bond Counsel, said these bonds were issued under a provision of the Tax Code in which the County serves as the issuer of the bonds but has no liability to pay them back. There is no pledge of County credit. The bonds will be credit enhanced with something. The last time it was mortgage insurance provided by HUD. It could be a Letter of Credit but it will be some sort of credit enhancement so the bonds will have a strong credit rating and will carry a strong credit rating in the investment community.

Chairman Black stated that a resolution was being requested giving preliminary approval for the issuance of the bonds. She asked the County Attorney to assure before the bonds are issued that it made be very clear who would pay the bonds if there were a default. It

is very clear that the County is in no way liable. I want to make sure that is on the public record.

County Attorney Kitchen said this deal is very document intense. In all of these approvals it is very clear that the County has no liability for the payment of these bonds.

County Attorney Kitchen answered the Commissioners' questions about this agenda item.

Commissioner Bowser moved, second by Commissioner Cousin, to approve the "Resolution of Intent to Close Portions of Armfield Street and Copley Street".

The motion carried unanimously.

The resolution follows:

RESOLUTION OF INTENT TO CLOSE PORTIONS OF  
ARMFIELD STREET AND COPLEY STREET

WHEREAS, the NRP Group, LLC has proposed an affordable housing project in Durham County which requires a rezoning of property; and

WHEREAS, the proposed development plan submitted by the NRP Group, LLC requires the closing of portions of Armfield Street and Copley Street; and

WHEREAS, the portions of Armfield Street and Copley Street proposed to be closed have never been opened, and are "paper" streets; and

WHEREAS, the NRP Group, LLC has proposed viable options to provide reasonable ingress and egress to properties not being developed as part of the proposed rezoning:

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

1. It is hereby declared to be the intent of the Board of Commissioners to permanently close that part of Armfield Street located between Alva Street and Copley Street and that part of Copley Street located between Alva Street and Old Fish Dam Road, all as shown by plat recorded in Plat Book 49, page 73, Durham County Registry.
2. A public hearing shall be held on the permanent closing of the two streets aforesaid on May 13, 2002 at 7:00 p.m. at the regular meeting of the Board of Commissioners.
3. The Planning Department shall give notice of the public hearing as required by G.S. § 153A-241.

This the 8<sup>th</sup> day of April, 2002.

/s/ Garry E. Umstead, CMC  
Clerk to the Board

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to approved the inducement resolution so that NPR Group, LLC can proceed with getting approvals from the North Carolina Housing Finance Authority.

The motion carried unanimously.

The Inducement Resolution follows:

RESOLUTION GIVING PRELIMINARY APPROVAL TO ISSUANCE OF  
MULTI-FAMILY HOUSING REVENUE BONDS

WHEREAS, the Board of Commissioners of the County of Durham (the "County") met in the Commissioners Meeting Room, Durham, North Carolina at 7:00 p.m. on the 8<sup>th</sup> day of April, 2002; and

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

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

WHEREAS, NRP Eno Pointe, LLC or a related or affiliated entity (the "Company"), intends to provide affordable housing in the County; and

WHEREAS, the Company has requested that the County assist it in financing the acquisition, construction and equipping of a multi-family residential rental development, consisting of a total of 224 units to be known as The Village of Eno Pointe located at Carver Street Extension and Danube, Durham County, North Carolina (the "Development"); and

WHEREAS, the Company has described to the County the benefits of the Development to the County and the State of North Carolina and has requested the County to agree to issue its multi-family housing revenue bonds in such amounts as may be necessary to finance the costs of acquiring, constructing and equipping the Development; and

WHEREAS, the County is of the opinion that the Development is a facility that can be financed under the Act and that the financing of the same will be in furtherance of the purposes of the Act; and

BE IT RESOLVED BY THE BOARD OF COMMISINERS OF THE COUNTY OF DURHAM:

1. It is hereby found and determined that the Development will involve the acquisition, construction and equipping of multi-family housing facilities, and that therefore, pursuant to the terms and subject to the conditions hereinafter stated and the Act, the County agrees to assist the Company in every reasonable way to issue bonds to finance the acquisition, construction and equipping of the Development, and, in particular, to undertake the issuance of the County's multi-family housing revenue bonds (the "Bonds") in an amount now estimated not to exceed Fifteen Million (\$15,000,000) to provide all or part of the cost of the Development.
2. The County intends that the adoption of this resolution be considered as "official action" toward the issuance of the Bonds within the meaning of the regulations issued by the Internal Revenue Service pursuant to Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").
3. The Bonds shall be issued in such series and amounts and upon such terms and conditions as are mutually agreed upon among the County and the Company. The County and the Company shall enter into a "financing agreement" pursuant to the Act for a term and upon payments sufficient to pay the principal of, premium if any, and interest on the Bonds and to pay all of the expenses of the County in connection with the Bonds and the Development. The Bonds will be issued pursuant to an indenture or security agreement between the County and a trustee (the "Trustee") or the bondholder which will set forth the form and terms of the Bonds and will assign to the Trustee for the benefit of the holders of the Bonds, or directly to the bondholder, the County's rights to payments under the financing agreement, except the County's right to payment of fees and expenses and indemnification. The Bonds shall not be deemed to constitute a debt or a pledge of the faith and credit of the State of North Carolina or any political subdivision or agency thereof, including, the County, but shall be payable solely from the revenues and other funds provided under the proposed agreements with the Company.
4. The County hereby authorizes the Company to proceed, upon the prior advice, consent and approval of bond counsel and the County's counsel, to obtain approvals in connection with the issuance and sale of the Bonds and to obtain an allocation of a sufficient amount of the State of North Carolina's "private activity bond limit", as required by Section 141 of the Code and as defined in Section 146 of the Code, for the Bonds.
5. It having been represented to the County that it is desirable to proceed with the acquisition, construction and equipping of the Development, the County agrees that the Company may proceed with plans for such acquisition, construction and equipping, enter into contracts for the same, and take such other steps as it may deem appropriate in connection therewith, provided that nothing herein shall be deemed to authorize the Company to obligate the County without its written consent in each

instance to the payment of any monies or the performance of any act in connection with the Development and no such consent shall be implied from the County's adoption of this resolution. The County agrees that the Company may be reimbursed from the proceeds of the Bonds, if and when issued, for all qualifying costs so incurred by it.

6. All obligations hereunder of the County are subject to the further agreement of the County and the Company to terms for the issuance, sale and delivery of the Bonds and the execution of a financing agreement, indenture or security agreement and other documents and agreements necessary or desirable for the issuance of the Bonds, and the approval of the Development and the Bonds by the North Carolina Volume Cap Allocation Committee and the North Carolina Local Government Commission, as required by North Carolina law. The County has not authorized and does not authorize the expenditure of any funds or monies of the County from any source other than the proceeds of the Bonds. All costs and expenses in connection with the financing and the acquisition, construction and equipping of the Development, including the reasonable fees and expenses of the County's counsel, bond counsel and the agent or underwriter for the sale of the Bonds, shall be paid from the proceeds of the Bonds or by the Company, but if for any reason the Bonds are not issued, all such expenses shall be paid by the Company and the County shall have no responsibility therefor. It is understood and agreed by the County and the Company that nothing contained in this resolution shall be construed or interpreted to create any personal liability of the officers or commissioners from time to time of the County.
7. The officers of the County are hereby authorized and directed to take all actions in furtherance of the resolution and the issuance of the Bonds.
8. The County hereby approves Hunton & Williams, Raleigh, North Carolina, to act as bond counsel for the Bonds.
9. This resolution shall take effect immediately.

This the 8<sup>th</sup> day of April, 2002.

/s/ Garry E. Umstead, CMC  
Clerk to the Board of Commissioners

This item will be on the April 22, 2002 Regular Session Agenda.

### **Board and Commission Appointments**

Garry E. Umstead, CMC, Clerk to the Board, distributed ballots to make appointments to the following boards and commissions.

- Adult Care Home Community Advisory Committee



- Animal Control Review Board
- City-County Appearance Commission
- Nursing Home Community Advisory Committee
- Women's Commission
- Wrestling and Boxing Commission

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

(Asterisk indicates appointees)

Adult Care Home Community Advisory Committee

Three expired terms and two unexpired terms (expire September 2002).  
Subsequent terms are for two or three years.

\*Robert Dobbins—Black, Bowser, Cousin, Heron, and Reckhow

Animal Control Review Board

One expired term (expires October 31, 2004).

\*Teresa Marie Oakley—Black, Bowser, Cousin, Heron, and Reckhow

City-County Appearance Commission

Two expired terms (expire April 1, 2005).

\*J. Michael Waldroup—Black, Bowser, Cousin, Heron, and Reckhow

Nursing Home Community Advisory Committee

Seven expired terms (expires February 2003). Subsequent terms are for three years.

\*Robert Dobbins—Black, Bowser, Cousin, and Heron

\*Douglas J. Register—Black, Bowser, Cousin, Heron, and Reckhow

\*Mary Lou Fogleman—Black, Bowser, Cousin, Heron, and Reckhow

Women's Commission

Three terms (expire June 2004 and 2005).

\*Annette A Bailey Black, Bowser Cousin, Heron, and Reckhow

\*Linda L. Roarty Bowser, Cousin, Heron, and Reckhow

Wrestling and Boxing Commission

One term (expires January 2004).

\*Robert Louis Page Black, Bowser, Cousin, Heron, and Reckhow

### **Kentington Heights—Well Pollution**

Commissioner Bowser requested that this matter be added to the agenda.

Commissioner Bowser addressed correspondence received concerning a home in Kentington Hights that has a polluted well. The Durham County Public Health Department has given the owner a thirty-day notice to correct the well situation. The owner does not have the money to correct the well. Winter Mountain Water Company has donated drinking water to the family.

The letter from Jim Jervis, who is representing the family that lives in the house, is asking if the County of Durham or someone could provide the funding to repair the well.

Commissioner Bowser wanted to know what the Board could do as a governmental body to help this family with the well situation. It is obvious this family does not have the money to fix the well.

Chairman Black said she did not have an answer to the problem. She asked the County Manager to investigate the situation and bring back a report to the Commissioners for their consideration.

Chairman Black said she understood that the Streets at Southpointe gave money to some Kentington Heights residents to help with water, sewer issues, and street lights. She asked if the residents could seek that money to obtain help to repair the well.

Commissioner Bowser said he did not know what happen to that money. We have talked about that money for a long time. Probably that money does not exist anymore.

Commissioner Heron said there should be an accounting of that money.

Vice-Chairman Reckhow said an interim solution to the well situation should be found since the person representing the homeowners is looking for someone to buy the property as commercial property. The developer has the responsibility to provide the area with water and sewer.

Commissioner Bowser said he hoped to find help for the family with the well contamination problem.

County Attorney Kitchen explained that the County cannot give tax money to citizens to repair their well or sewer system. Durham County could implement an established program to provide water and sewer for residents of Durham County. The program would have to be set up to install water and sewer lines. Tax dollars cannot be used to fund this kind of program. Grant funding or other dollars would have to be used. A program would have to establish where water and sewer lines would be built. You cannot pick and choose where water and sewer lines will be built or repaired.

County Manager Ruffin said an adopted policy would have to be approved as to how a program would be administrated. This letter will be discussed at the staff level, and the Board will be advised at either the April 22 Regular Session or the May 6 Worksession.

Commissioner Bowser said someone should check with the people referred to in the letter to learn whether they are going to market their house in the short term. Another problem is the fact that our Public Health Department mandated that the well be closed. Since our Public Health Department demanded the closing of the well, the County should help the family to correct the problem.

County Manager Ruffin said this would be addressed tomorrow. Short-term solutions would be discussed. The staff will be in touch with the Health Department to begin generating information for the Commissioners.

Commissioner Heron said she wanted to hear something from Brian Letourneau, Public Health Director, about the well pollution. The \$84,000 the residents of Kentington Heights received from Ervin Properties for water and sewer improvements on that property should be accounted for. Somebody needs to account for that money. Where is that \$84,000? The Manager said they would look into that.

### **Announcements**

Chairman Black said she received an email from Deputy Sheriff Ricky Padgett commending the County Manager for meeting with the employees on behalf of the County Commissioners during these tough budget times.

Vice-Chairman Reckhow announced the Center of the Region planning effort underway at the airport this week. The study is a plan for the area around the Research Triangle Park and the airport. If persons are interested, the final results of the planning process will be Thursday evening from 7:00 p.m. to 9:00 p.m. in the Airport Authority meeting room.

### **Adjournment**

Chairman Black adjourned the meeting at 9:33 p.m.

Respectfully submitted,

Garry E. Umstead, CMC  
Clerk to the Board