

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

Monday, October 14, 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 called the meeting to order with the Pledge of Allegiance.

Closed Session Announcement

Chairman Black announced that the County Commissioners convened a Closed Session at 3:00 p.m. to meet with Human Resources personnel concerning a personnel matter and also to talk about the beginning process to hire a Tax Administrator.

Agenda Adjustments

Vice-Chairman Reckhow stated that she would like to add something related to bail bond policy.

Minutes

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to approve the August 29, 2002 Worksession Minutes of the Board as submitted.

The motion carried unanimously.

October Anchor Award Winner—Barry Garner, Board of Elections

Barry Garner, Durham County Deputy Director of Elections, is the winner of this month's Anchor Award. In the nomination letter, Elections Director Mike Ashe detailed his comprehensive management of Durham County's "One Stop No Excuse Voting" process. Mr. Garner was noted for his exceptional technical and people skills, and for a strong work ethic that is second to none. Because of his diligence, the 19-day voting period was problem-free.

County Manager's Recommendation: The County Manager recommended to present the October Anchor Award to Mr. Barry Garner, along with the sincere congratulations of the entire organization.

Mr. Michael Ashe, Director of Elections, introduced Mr. Barry Garner, Durham County Deputy Director of Elections, to the Board of County Commissioners.

Mr. Garner was given the mission and responsibility to set up the 2002 "One Stop No Excuse Voting" absentee voting process for Durham County.

Mr. Garner conceptualized and designed the process, hired the staff, wrote the training manuals, conducted the training, configured and set up the computers and printers, secured the satellite voting locations, coordinated all supplies, and made it all happen.

This remarkable achievement is deserving of the Anchor Award and the County's appreciation for this outstanding employee and person.

Mr. Barry Garner expressed words of appreciation and thanks for the award.

Chairman Black thanked Mr. Garner for the hard work and the accomplishments he made happen. She presented Mr. Garner the Anchor Award and a check for \$200.

Mr. Garner introduced his wife and members of his family and friends after the presentation.

Dr. Lavonia Allison commented on the improved status of the Board of Elections.

Chairman Black thanked Dr. Allison for those kind remarks.

The Chairman asked Mr. Ashe what the Board of Elections was doing to explain to the public the complexity of the ballots to be used in the General Election.

Boy Scouts Introduction

Chairman Black welcomed the Cub Scout Pack from St. Joseph's AME Church. She called on Cub Scout Master Brooks for remarks.

Commissioner Cousin made remarks about the pack. It is sponsored by the church where he serves as pastor.

Commissioner Bowser thanked Commissioner Cousin and the adults in St. Joseph's AME Church for the work they are doing with the young people in this community.

Recognition by Central North Carolina Chapter of the American Red Cross

The Central North Carolina Chapter of the American Red Cross has chosen to honor the County of Durham as being one of the top 10 Authorized Providers of Health and Safety programs for the 2002 fiscal year.

Resource Person(s): Lynn M. Sherrill, Chapter Manager and Cara Prell, Health and Safety Director, American Red Cross

County Manager's Recommendation: Receive the award and recognize Cathy Whisenhunt, Risk Manager, and Ngat Awass, Risk Management Specialist, for carrying out the Board directive to provide first aid, CPR, and AED programs for the employees.

Ms. Lynn M. Sherrill, Chapter Manager and Ms. Cara Prell, Health and Safety Director, American Red Cross, made congratulatory comments to Ms. Whisenhunt and Ms. Awass for carrying out the Board directive to provide first aid, CPR, and AED programs for the employees.

Ms. Whisenhunt and the Board of County Commissioners thanked the American Red Cross for this recognition.

County Attorney Chuck Kitchen was also recognized for his work and support of the American Red Cross.

Resolution in Recognition of Duke Street Senior Center's Certificate as "Senior Center of Excellence"

The Duke Street Senior Center has been determined to be a "Senior Center of Excellence." The North Carolina Department of Health and Human Services Division on Aging recently issued this certification, which is valid from September 1, 2002 to August 31, 2005. At the request of County Commissioner Becky Heron, a resolution has been prepared in recognition of the accomplishment. Ms. Joan Pellettier, Executive Director, will be in attendance to receive the resolution.

County Manager's Recommendation: Present the resolution to Ms. Pellettier along with congratulations of the organization for this accomplishment.

Chairman Black asked Commissioner Heron to take the lead on this presentation. Commissioner Heron read the resolution into the record and presented it to Ms. Pellettier, Executive Director of the Duke Street Senior Center.

Ms. Pellettier thanked the Board of County Commissioners for the resolution. She also thanked Durham County for constructing the new Senior Center.

The resolution follows:

RESOLUTION

WHEREAS, a two-year self examination process of the Senior Centers in Durham County has resulted in the certification of the Duke Street Center and eight satellite centers as a "Senior Center of Excellence" from the North Carolina Division of Aging; and

WHEREAS, the North Carolina Division of Aging certification program promotes formal quality control and standards for senior centers; and

WHEREAS, the Center of Excellence evaluation team commended the Council for Senior Citizens by noting "the center staff was well prepared, and all members are enthusiastic, friendly, committed to the welfare of older residents in the county, and happy to be working at the center; and

WHEREAS, staff members were also recognized as "committed to promoting the dignity, self-determination and well-being of older Durham residents"; and

WHEREAS, the Center of Excellence Certification is critical as the Council for Senior Citizens moves ahead with the construction of the Center for Senior Life, Durham's first freestanding, comprehensive senior center.

NOW THEREFORE BE IT RESOLVED THAT we, the members of the Durham County Board of Commissioners, do hereby congratulate the management and staff of the

COORDINATING COUNCIL FOR SENIOR CITIZENS

for its certification as a Senior Center of Excellence and urge all citizens to join with us in this recognition. This certification recognizes that the senior center in Durham meets the highest standards for best practices in senior center operations.

This the 14th day of October 2002

/s/ Five Commissioners
Durham County Commissioners

Resolution Honoring 20th Anniversary of Development Therapy Associates

A resolution has been prepared in observance of the 20th anniversary of Developmental Therapy Associates, Inc. The firm provides occupational therapy along with

speech/language therapy to children and adults. Ms. Sandra Newton will receive the resolution on behalf of the organization.

County Manager's Recommendation: Present the resolution to Ms. Newton, along with the sincere congratulations of the entire organization.

Ms. Newton was unable to attend the meeting to receive the resolution.

Commissioner Cousin read the resolution into the record of the meeting.

The resolution follows:

RESOLUTION

WHEREAS, Developmental Therapy Associates Inc. of Durham was created in 1982 to provide quality occupational therapy and speech/language therapy to children and adults; and

WHEREAS, Developmental Therapy Associates Inc. is one of the largest sensory integration clinics in North Carolina; and

WHEREAS, Developmental Therapy Associates Inc. provides:

- Occupational and Speech Therapy evaluations and treatment using a sensory integration approach
- Individualized programming based on the needs of the child or adult and family members
- Onsite contractual Occupational and Speech Therapy services; and
- Education and training to staff, parents, allied health and medical students, and professionals in the community; and

WHEREAS, Linda King-Thomas has served as Owner/Director for 20 years; and

WHEREAS, through her visionary leadership, Developmental Therapy Associates, Inc. has successfully implemented proactive intervention approaches which have resulted in children and adults with sensory integration dysfunction becoming more independent in their homes, schools, and communities.

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

DEVELOPMENTAL THERAPY ASSOCIATES, INC.

on the occasion of its 20th anniversary for providing exemplary professional services, and for making significant contributions to the quality of life in the Durham community. We further urge all residents of Durham County to join in saluting this outstanding agency for achieving this significant milestone.

This the 14th day of October, 2002

/s/ Five Commissioners
Durham County Commissioners

Consent Agenda

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve Consent Agenda items 8(a) through 8(n) as follows:

- * (a) Budget Ordinance Amendment No. 03BCC000012— Department of Social Services (DSS)—Request to Accept Additional Revenue for Crisis Intervention Prevention Program (CIPP) (approve this budget amendment to accept the \$143,393 in additional intergovernmental revenue for the DSS CIP Program);
- * (b) Budget Ordinance Amendment No. 03BCC000013— Fire Marshal—Recognition Of Grant Revenue (approve this budget amendment to accept \$32,359 in grant funds to be added to the budget of the Office of the Fire Marshal/Emergency Management);
- * (c) Budget Ordinance Amendment No. 03BCC000014 Library Services & Technology Act Grant to Durham County Library (approve this budget amendment to accept the LSTA Infrastructure Improvement grant award in the amount of \$54,879 and that the Durham County Library's FY-03 budget be amended accordingly to reflect receipt of these additional restricted funds);
- * (d) Budget Ordinance Amendment No. 03BCC000015 Durham County Library Foundation Allocation to Durham County Library (approve this budget amendment to accept the Durham County Library Foundation allocation of \$15,000 and that the Durham County Library's FY-03 budget be amended accordingly to reflect the receipt of these additional funds);
- * (e) Budget Ordinance Amendment No. 03BCC000016 Friends of the Library Donation to Durham County Library (approve this budget amendment to accept the Friends of the Durham County Library donation of \$8,000 and that the Library's budget be amended

- accordingly to reflect receipt of these additional funds);
- * (f) Budget Amendment No. 03BCC000017—Reduction of Capital Financing Fund Revenues and Expenditures (approve this budget amendment, amending the Capital Finance Fund FY2003 budget);
 - * (g) Budget Amendment No. 03BCC000018—Transfer of Funds from Public Education Tax District Funds to the County General Fund (approve this budget amendment, to close the Public Education Tax District Funds, in the amount of \$356,468, plus any additional accrued interest which may be available on the day of fund closing to the General Fund, the write-off of tax receivables older than 10 years [N.C.G.S. 105-348(A)], and the transfer of any receivable balances 10 years or less to the General Fund);
 - * (h) Quasi-Judicial Appeal—Helen Bass v. County of Durham (adopt the Final Decision which has been prepared in accordance with the Board’s prior ruling);
 - * (i) Restructuring of Area Mental Health Board (approve the resolution to bring the Mental Health Board structure into compliance with the new statute);
 - (j) Area Mental Health Board—Appointments (appoint Mr. George Quick and Mr. Doug Wright to the Area Mental Health, Developmental Disabilities, and Substance Abuse Board);
 - * (k) Appointments—Juvenile Crime Prevention Council (JCPC) (approve appointments);
 - * (l) Appointments—Criminal Justice Partnership Advisory Board (approve appointments);
 - (m) Adoption of the 2001-2002 Consolidation Annual Performance and Evaluation Report (CAPER) (adopt the 2001-2002 CAPER for submission to HUD); and
 - * (n) Capital Project Ordinance Amendment No. 03CPA000003 Application to the Public School Building Capital Fund—Durham Public Schools—Roof Replacement at Mangum Elementary School (approve the use of Public School Building Funds for roof replacement at Mangum Elementary School).

Commissioner Cousin said he was of the opinion that the request for a salary upgrade for Elections Board Director Mike Ashe would be on the Consent Agenda tonight.

Chairman Black asked County Manager Ruffin to respond to Commissioner Cousin’s comment.

County Manager Ruffin said he received an email last week from Mike Ashe indicating that the Board of Elections had withdrawn its request for a salary increase for this fiscal year in light of the current budget situation. The request would be renewed in June for the forthcoming FY 2003-2004 Budget. That says a lot about the Board of Elections and the spirit of teamwork they are bringing to the table.

Commissioner Cousin requested that the record reflect his hope “that the Commissioners sitting in these seats next budget year will remember the fine work the Board of Elections has begun under Mike’s (Ashe) leadership. Certainly the honoring of one of the staff members tonight has to be in some part related to how the total program works and the way Mike Ashe has handled the affairs since his arrival.”

Commissioner Heron asked a question about Consent Agenda item 8(m). County Manager Ruffin and Michael Pullum, Senior Planner for the City of Durham, Department of Housing and Community Development, responded.

Vice-Chairman Reckhow requested that a footnote be added to the report on page 12 of the document for clarification purposes.

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda 8(a). Budget Ordinance Amendment No. 03BCC000012—Department of Social Services (DSS)—Request to Accept Additional Revenue for Crisis Intervention Prevention Program (CIPP) (approve this budget amendment to accept the \$143,393 in additional intergovernmental revenue for the DSS CIP Program).

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000012

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments for the Social Services Department.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Human Services	\$21,209,705	\$143,393		\$21,353,098
<u>Revenues</u>				
Intergovernmental	\$260,624,644	\$143,393		\$260,768,037

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

This the 14th day of October, 2002.

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

Consent Agenda 8(b). Budget Ordinance Amendment No. 03BCC000013—Fire Marshal—Recognition Of Grant Revenue (approve this budget amendment to accept \$32,359 in grant funds to be added to the budget of the Office of the Fire Marshal/Emergency Management).

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000013

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments for the Fire Marshal's department

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Public Safety	\$33,878,995	\$32,359		\$33,911,354
<u>Revenues</u>				
Intergovernmental	\$260,768,037	\$32,359		\$260,800,396

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

This the 14th day of October, 2002.

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

Consent Agenda 8(c). Budget Ordinance Amendment No. 03BCC000014—Library Services & Technology Act Grant to Durham County Library (approve this budget amendment to accept the LSTA Infrastructure Improvement grant award in the amount of \$54,879 and amend the Durham County Library's FY-03 budget accordingly to reflect receipt of these additional restricted funds).

DURHAM COUNTY, NORTH CAROLINA
 FY 2002-03 Budget Ordinance
 Amendment No. 03BCC000014

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments for the Durham County Library.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Cultural and Recreation	\$7,770,083	\$54,879		\$7,824,962
<u>Revenues</u>				
Intergovernmental	\$260,768,037	\$54,879		\$260,822,916

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

This the 14th day of October, 2002.

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

Consent Agenda 8(d). Budget Ordinance Amendment No. 03BCC000015—Durham County Library Foundation Allocation to Durham County Library (approve this budget amendment to accept the Durham County Library Foundation allocation of \$15,000 and amend the Durham County Library’s FY-03 budget accordingly to reflect the receipt of these additional funds).

DURHAM COUNTY, NORTH CAROLINA
 FY 2002-03 Budget Ordinance
 Amendment No. 03BCC000015

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments for the Durham County Library.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Cultural and Recreation	\$7,824,962	\$15,000		\$7,839,962
<u>Revenues</u>				
Intergovernmental	\$260,822,916	\$15,000		\$260,837,916

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

This the 14th day of October, 2002.

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

Consent Agenda 8(e). Budget Ordinance Amendment No. 03BCC000016—Friends of the Library Donation to Durham County Library (approve this budget amendment to accept the Friends of the Durham County Library donation of \$8,000 and amend the Library's budget accordingly to reflect receipt of these additional funds).

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000016

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments for the Durham County Library.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Cultural and Recreation	\$7,839,962	\$8,000		\$7,847,962
<u>Revenues</u>				
Intergovernmental	\$260,837,916	\$8,000		\$260,845,916

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

This the 14th day of October, 2002.

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

Consent Agenda 8(f). Budget Amendment No. 03BCC000017—Reduction of Capital Financing Fund Revenues and Expenditures (approve this budget amendment, amending the Capital Finance Fund FY 2003 budget).

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000017

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments for the Capital Financing Fund.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Nondepartmental	\$30,213,595		\$1,400,000	\$28,813,595
<u>Revenues</u>				
Property Taxes	\$12,590,345		\$1,400,000	\$11,190,345

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

This the 14th day of October, 2002.

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

Consent Agenda 8(g). Budget Amendment No. 03BCC000018—Transfer of Funds from Public Education Tax District Funds to the County General Fund (approve this budget amendment to close the Public Education Tax District Funds in the amount of \$356,468, plus any additional accrued interest which may be available on the day of fund closing to the General Fund, the write-off of tax receivables older than 10 years [N.C.G.S. 105-348(A)], and the transfer of any receivable balances 10 years or less to the General Fund).

DURHAM COUNTY, NORTH CAROLINA
 FY 2002-03 Budget Ordinance
 Amendment No. 03BCC000018

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments for the City School District Tax Fund, County School District Tax Fund, and General Fund.

CITY SCHOOL DISTRICT TAX FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Nondepartmental	\$0	\$249,679		\$249,679
<u>Revenues</u>				
Miscellaneous Income	\$0	\$2,982		\$2,982
Other Financing Sources	\$0	\$246,697		\$246,697

COUNTY SCHOOL DISTRICT TAX FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Nondepartmental	\$0	\$106,789		\$106,789
<u>Revenues</u>				
Miscellaneous Income	\$0	\$833		\$833
Other Financing Sources	\$0	\$105,956		\$105,956

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Revenues</u>				
Other Financing Sources	\$11,964,592	\$356,468		\$12,321,060
<u>Revenues</u>				
Property Taxes	\$139,807,244		\$356,468	\$139,450,776

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

This the 14th day of October, 2002.

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

Consent Agenda 8(h). Quasi-Judicial Appeal–Helen Bass v. County of Durham (adopt the Final Decision which has been prepared in accordance with the Board’s prior ruling).

The Final Decision follows:

STATE OF NORTH CAROLINA	BEFORE THE BOARD OF COUNTY
	COMMISSIONERS FOR DURHAM COUNTY
COUNTY OF DURHAM	02 EHR 0191

HELEN R. BASS,)	
Petitioner)	
v.)	FINAL DECISION
COUNTY OF DURHAM,)	
Respondent.)	

This matter came before the Board of County Commissioners for Durham County (Board) at its regular meeting held on October 7, 2002. The official record in this matter

was received by the Clerk to the Board from the Office of Administrative Hearings on August 1, 2002. Exceptions to the Decision of the administrative law judge were submitted by both parties to this matter. The exception of the Petitioner was in the form of a motion to dismiss the exceptions filed by Durham County.

In conducting its review of this matter, the Board only considered the official record of this matter, including the filed deposition of the Petitioner, and the written exceptions and objections made by both parties. Consistent with its responsibilities under the Durham County Sedimentation and Erosion Control Ordinance, and the North Carolina General Statutes, the Board makes the following:

FINDINGS OF FACT

The Findings of Fact made by the administrative law judge are approved with the following exceptions and modifications:

Finding of Fact Number 7 is revised to read:

7. That the Petitioner, Helen R. Bass, empowered her husband, Steven D. Bass, to act as her agent, with complete discretion, in all matters concerning development of land jointly owned by them, including signing for certified mail addressed to her concerning land development issues such as regulatory enforcement actions, and resolving any such enforcement actions.

The original finding of fact was clearly contrary to the preponderance of admissible evidence in the record of this matter. In her deposition testimony Mrs. Bass admitted that she has made her husband her agent in fact for administration of development issues, including dealing with regulatory entities. Additionally, the evidence of the record established there was a customary practice whereby Steven D. Bass signs for certified mail addressed to Helen R. Bass. As noted in her deposition testimony, there was a Notice of Civil Penalty Assessment and a Notice of Violation sent

to Petitioner via certified mail which her husband signed for and which action she accepted as being consistent with his role in their relationship concerning land development issues. (Dep. p. 13, line 15 through p.14, line 21; p. 16, lines 7-20; p. 21 lines 16-22; and p. 24, line 10 through p. 25, line 14; Dep. Ex 1 and 2)

Finding of Fact Number 10 is revised to read:

10. That the Respondent, County of Durham, made a timely Motion to Dismiss pursuant to Rules 12(b)(1) and 12(2) of the North Carolina Rules of Civil Procedure on the basis that the Petitioner, Helen R. Bass, had failed to file a Petition for a Contested Case Hearing within thirty days of the delivery of the Notice of Civil Penalty Assessment on February 12, 2001, said Notice of Civil Penalty Assessment sent by Certified Mail addressed to Petitioner at her dwelling house at 4457 Murphy School Road, Durham, NC 27705 with the Certified Mail return receipt signed by Steven D. Bass on February 12, 2001 and the Petitioner's Petition for a contested case hearing was not filed within thirty days of February 12, 2001.

As originally made this finding of fact included a legal conclusion concerning service of process. The making of a conclusion of law as a finding of fact is contrary to both N.C.G.S. § 150B-34 and 26 N.C.A.C. 3.0127 which require these decision contain separate findings of fact and conclusions of law, with those conclusions of law being "based on the findings of fact, and applicable constitutional principles, statutes, rules or regulations." (26 N.C.A.C. 3.0127(c)(6)) Additionally, as noted above, the original finding of fact was contrary to the preponderance of the evidence of the record in its determination regarding the authority of Mr. Bass to receive mail for his wife in these matters.

Findings of Fact 11 is revised to read:

11. That the Petitioner, Helen R. Bass, filed a Motion to Dismiss the Notice of Civil Penalty Assessment, hence, the action of the County

of Durham for a penalty assessed against her for violation of the Durham County/City Sedimentation and Erosion Control Ordinance pursuant to Rule 12(b)(5) of the North Carolina Rules of Civil Procedure for failure to serve the Notice of Civil Penalty Assessment on her pursuant to Rule 4 of the North Carolina Rules of Civil Procedure as is required by § 14-69(b) of the Durham County/City Sedimentation and Erosion Control Ordinance.

The original Finding of Fact made an improper conclusion of law regarding the timeliness of the filing of Petitioner's motion. As noted above, conclusions of law may not be mixed in with findings of fact. The timeliness, and legal effect, of Petitioner's actions in pursuing her appeal with the OAH was the specific issue raised by Respondent in its motions and is clearly at issue in this matter. Similarly, the ultimate question of the timeliness of any dispositive motion filed in this action is also in dispute, and is an issue of law, not fact.

Finding of Fact 13 is revised to read:

13. That the Petitioner, Helen R. Bass, filed Affidavits that establish that the Notice of civil Penalty Assessment was signed for by her husband, Steven D. Bass, and the return receipt was signed by Steven D. Bass. The Affidavits further establish that Steven D. Bass did not deliver the Notice of Civil Penalty Assessment to Helen R. Bass and that Helen R. Bass did not learn of the Notice of Civil Penalty Assessment against her until January 23, 2002 in her attorney's office.

The original Finding of Fact made, in part, findings which were clearly contrary to the preponderance of the evidence of the record, as detailed regarding Finding of Fact number 7 above, concerning the authority Mrs. Bass had delegated to her husband in these matters.

Finding of Fact Number 14 is revised to read:

14. The Petition for a Contested Case hearing was filed within thirty days of January 23, 2002, but it was not filed within thirty days of February 12, 2001.

The original Finding of Fact made an improper conclusion of law, both as to being imbedded in a finding of fact, and which was contrary to the preponderance of evidence on this matter. Those deficiencies being more fully explained concerning Findings of Fact 10 and 11.

The following additional findings of fact, which are numbered for integration in the existing decision are made:

- 6.a. Steven Bass is the husband of the Petitioner, he resides with her at her dwelling house, that Steven Bass is an adult of 40 years of age, and he has no known mental impairments.

This finding of fact is supported by the sworn deposition testimony of the Petitioner on May 8, 2002. In that deposition the Petitioner testified that she was married to Steven Bass for 14 years, that they live together at their residence of 4457 Murphy School Road, Durham, North Carolina and had lived there together for the last eleven years, and that her husband is 40 years old. She also testified that Mr. Bass does not have any mental impairments or psychological disorders. (Dep. p. 5, lines 14-17; and p. 8, line 19 through p. 9, line 23)

- 6.b. Steven Bass is a person in whom Petitioner placed, and continues to place, absolute trust confidence to administer their business affairs and Petitioner has conceded to Steven Bass complete authority and autonomy in the conduct of developing property owned by them jointly, including complete authority and discretion in dealing with regulatory authorities such as Sedimentation and Erosion Control, including resolving violations and civil penalties.

This finding of fact is also supported by the sworn deposition testimony of the Petitioner that she has not made any inquiries about the substance of this case, nor asked her husband about why he did not tell her about the Assessment when he signed for same. When asked to explain this lack of knowledge, or interest, in the current matter,

Petitioner repeatedly asserted that she leaves the management of such affairs, including the handling of the subject violations, to her husband to deal with. This deference was true even when she found the Notice of Violation addressed to her in this matter, and upon determining that it concerned a land disturbing activity, did not finish reading it, but left it for her husband to deal with. Additionally, Petitioner testified that this deference continues as she has not yet asked him to explain what the actual condition and occurrences were at the job site which led to the civil penalty which she has appealed. (Dep. p. 13, line 15 through p. 14, line 21; p. 16, lines 7-20; p. 21, lines 16-22; and p. 24, line 10 through p. 25, line 14)

The following additional findings of fact are matters of which the Board takes judicial notice such as the provisions of the Ordinance, General Statutes, and session laws, or matters clear on their face, such as the dates of filings, locations, or their general intent and purpose.

16. Section 14-69(b)(2) of the Ordinance provides, in pertinent part:
The notice of civil penalty shall be served by any means authorized under G.S. § 1A-1, Rule 4, and shall direct the violator to either pay the civil penalty or contest the civil penalty, within 30 days after receipt of the notice of civil penalty, by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The Administrative Law Judge hearing the matter shall make a recommended decision to the Board of County Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board and serve on the other parties, and the office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within thirty (30) days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional exceptions and objections of their own.

17. N.C.G.S. § 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure, provides, in pertinent parts, as follows:

Rule 4 (1) Process—Manner of service to exercise personal jurisdiction. -- In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

- (1) Natural Person—Except as provided in subsection (2) below, upon a natural person by one of the following:
 - a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
 - b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.
 - c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

Rule 4 (j2) Proof of service. - Proof of service of process shall be as follows:

- (1) Personal Service—Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).
- (2) Registered or Certified Mail or Designated Delivery Service—Before Judgment by default may be had on service by registered or certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. S 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of 0.5. 1-75.10(4) or 0.5. 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of

process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

18. Prior to 1981, Rule 4(j)(1)c required that service of a summons sent via certified mail was only served by “delivering to the addressee only.” However, this obligation was removed by 1981 N.C. Sess. Law 540, which both deleted the word “only” from 4(j)(1)c, and added section 4(j2)(2) to N.C.G.S. §1A-1, Rule 4.
19. The administrative law judge filed his recommended decision on June 26, 2002.
20. On July 26, 2002, Respondent filed and served its exceptions and objections to the recommended decision.
21. On August 21, 2002, Petitioner filed two documents; one was a response to the Petitioner’s filing entitled “Helen Bass Response and Plea for Justice.” The other was entitled “Motion to Dismiss.”
22. Petitioner’s Motion to Dismiss, asserted that the recommended decision of the administrative law judge was legally in error when it stated that this Board was to review it and enter a final decision in this matter. Petitioner contended that under the General Statutes, the administrative law judge had actually rendered a final decision which could only be reviewed in Superior Court and not by the Board.

Based upon the foregoing Findings of Fact, the Board enters the following:

CONCLUSIONS OF LAW

The original Conclusion of Law Numbers 1 through 3 are struck as they are not supported by the Findings of Fact, are contrary to the preponderance of evidence of the whole record, and also is contrary to the Ordinance and North Carolina law as reflected in the General Statutes and case law.

In light of the revised Findings of Fact and applicable law, the Board makes the following Conclusions of Law:

1. Petitioner’s motion to dismiss per Rule 12(b)(5) for insufficiency of service of the Assessment is legally insufficient as the Assessment is not a Complaint, or similar filed pleading such as would be subject to

a Rule 12(b)(5) motion.

2. Per N.C.G.S. § 150B-23, any challenge Petitioner wished to make concerning the service of the Assessment should have been brought as part of an actual, regular contested case, not as a pre-trial procedural motion.
3. Receipt of the Assessment by Petitioner's husband on February 12, 2001, satisfied the requirements of both Rule 4 and Section 14-69(b)(2) of the Ordinance, for service on Petitioner.
4. Any challenge Petitioner wished to make against the Assessment had to be the subject of a petition for a contested case filed with the OAH within 30 days of February 12, 2001.
5. Petitioner's petition for a contested case, filed on February 4, 2002, was untimely, as are any motions, or other challenges, pursued by Petitioner therein attacking the service of the Assessment.
6. Where a Petitioner has failed to comply with the statutory requirements to perfect an administrative appeal, there is no subject matter jurisdiction for the OAH, or the deciding agency, to consider the matter
7. Petitioner's Motion to Dismiss, filed on August 21, 2002, was actually an exception to the recommended decision of the administrative law judge, and as such, untimely under the Ordinance.
8. Even if the Petitioner's Motion to Dismiss had been timely filed, it was erroneous as the Ordinance specifically requires that the recommended decision of the administrative law judge must be forwarded to the Board for review and rendering of a final decision.

Based on the preceding Findings of Fact and Conclusions of Law, the Board enters the following:

FINAL DECISION

Decisions Numbered 1 and 2 are struck as they are based on improper procedure, and contrary to the preponderance of the evidence in the record, as reflected in the findings of fact and conclusions of law.

The administrative law judge erred in rendering these two decisions, both of which concern Respondent's motion to dismiss based on the untimely filing of her petition for a contested case hearing. As shown by Findings of Fact 1, 5, 6a, 6b, 7, 10, 11, 12, 13, 14, 16, 17 & 18, and Conclusions of Law 3, 4, 5, & 6, the Assessment was properly served upon Petitioner on February 12, 2001, in accordance with the requirements of Rule 4, and Section 14-69(b)(2) of the Ordinance and the Respondent presented sufficient affidavits, and the deposition testimony of Petitioner, to the administrative law judge proving same. Accordingly the ALJ erred in deciding to deny the Respondent's motions to dismiss based on untimely filing of the instant petition and these decisions should be stricken.

Decision Number 3 is struck as it was based on improper procedure, and contrary to the preponderance of the evidence in the record, as reflected in the findings of fact and conclusions of law.

The administrative law judge erred in rendering this decision granting Petitioner's Rule 12(b)(5) motion. There are two errors in this decision. The first is Petitioner's use of Rule 12(b)(5) to terminate a proceeding she initiated. (Findings of Fact 1, 10 & 11 and Conclusions of Law 1 & 2) The second is that this motion, like her entire case, is untimely since it was not commenced within 30 days of February 12, 2001. (Findings of Fact 1, 5, 6a, 6b, 7, 10, 11, 12, 13, 14, 16, 17 & 18, and Conclusions of Law 3, 4, 5, & 6)

The following new decisions, based on the record and the current Findings of Fact and Conclusions of Law, are made:

1. Petitioner's motion to dismiss the Assessment per Rule 12(b)(5) is denied. (Findings of Fact 1, 5, 6a, 6b, 7, 10, 11, 12, 13, 14, 16, 17 &

18 and Conclusions of Law 1-6)

2. Respondent's motion to dismiss the petition for a contested case for lack of subject matter jurisdiction is granted. (Findings of Fact 1, 5, 6a, 6b, 7, 10, 11, 12, 13, 14, 16, 17 & 18, and Conclusions of Law 3, 5, & 6)

Approved and enacted by the Board of County Commissioners sitting in regular session on the 7th day of October, 2002 and signed on this the 14th day of October, 2002.

/s/ MaryAnn E. Black, Chair
Durham County Board of Commissioners

ATTEST

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

Consent Agenda 8(i). Restructuring of Area Mental Health Board (approve the resolution to bring the Mental Health Board structure into compliance with the new statute)

The resolution follows:

RESOLUTION PROVIDING FOR STRUCTURE
OF AREA MENTAL HEALTH BOARD

WHEREAS, N.C.G.S. § 122C-118.1 provides that a new structure for the Area Mental Health, Developmental Disabilities, and Substance Abuse Board (hereinafter "Mental Health Board") is required as a part of the reorganization of Mental Health services in North Carolina; and

WHEREAS, said statute provides that the number of appointments shall be between 11 and 25 members; and

WHEREAS, the statute provides that an individual with financial expertise or a county finance officer, an individual with expertise in management or business, and an individual representing the interests of children shall be appointed as members of the board; and

WHEREAS, at least 50% of the board's membership must consist of individuals listed in N.C.G.S. § 122C-118.1(b), which are commonly referred to as "stakeholders"; and

WHEREAS, said statute provides that any county commissioner appointed to the Mental Health Board serves *ex officio*; and

WHEREAS, said statute further provides that the members of the Mental Health Board may be removed at any time, with or without cause:

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

1. The Area Mental Health, Developmental Disabilities, and Substance Abuse Board shall consist of thirteen members.
2. Of the thirteen members, three members shall consist of an individual with financial expertise or a county finance officer, an individual with expertise in management or business, and an individual representing the interests of children.
3. One of the members shall be a county commissioner.
4. At least half of the board shall consist of the individuals listed in N.C.G.S. § 122C-118.1(b).
5. The current members of the Mental Health Board, whose terms have not expired, shall continue on the Board without necessity for reappointment until their terms expire.
6. The terms of all members shall expire no later than July 1, 2004.

This resolution shall be effective upon ratification.

This the 14th day of October, 2002.

Consent Agenda 8(k). Appointments—Juvenile Crime Prevention Council (JCPC) (approve appointments). All applicants are eligible for an appointment.

The following applicants were appointed to the Juvenile Crime Prevention Council (JCPC):

- School Superintendent or designee—Dr. Betsy Fiefs
- Police Chief—Steven W. Chalmers
- Sheriff or designee—Lt. Gregory Brown
- District Attorney—Rachael Botts
- Director, AMH/DD/SA or designee—Ellen Holliman
- Director, DSS or designee—Arnold Dennis
- County Manager or designee—Gudrun Parmer
- Substance Abuse Professional—Paul Savery
- Member of Faith Community—Peggy Kernodle
- County Commissioner—Becky M. Heron
- Chief District Court Judge or designee—Judge Marcia Morey
- Health Director or designee—Gayle B. Harris

- Representative of United Way or other Non Profit Organization—Karen K. Thompson
- Representative of Parks & Recreation—David Anderson
- Member of the Public—Angela Nunn
- Member of the Public—Dr. Paulette Brown Bracy
- Member of the Public—Terrance R. Taylor
- Member of the Public—Mickey Brown

Consent Agenda 8(l). Appointments—Criminal Justice Partnership Advisory Board (approve appointments). All applicants are eligible for an appointment.

The following applicants were appointed to the Criminal Justice Partnership Advisory Board:

- County Commissioner—Reverend Philip R. Cousin Jr.
- County Manager or designee—Carolyn P. Titus
- District Court Judge—Judge Elaine O’Neal
- District Attorney or designee—James E. Hardin Jr.
- Public Defender—Antoinette Hilliard
- Sheriff or designee—Carlton “Wes” Crabtree
- Police Chief or designee—Steven W. Chalmers
- Probation Officer—James Ellis Jr.
- Service areas:
 - a) Mental Health—Evester Bailey
 - b) Public Health—Gayle B. Harris
- Substance Abuse—Kevin McDonald
- Community-Based Corrections Programs—Riley Butler
- Members At-Large—Judge Craig B. Brown, Gary Barnell Harrison, Terry Bryson Hill, Leo Rubert, and Jesse James Hunt

Consent Agenda 8(n). Capital Project Ordinance Amendment No. 03CPA000003 Application to the Public School Building Capital Fund—Durham Public Schools—Roof Replacement at Mangum Elementary School (approve the use of Public School Building Funds for roof replacement at Mangum Elementary School).

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Capital Projects Ordinance
Amendment No. 03CPA000003

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Capital Projects Budget Ordinance is hereby amended to reflect budget adjustments for the Mangum Elementary School Roof Replacement.

MANGUM ELEMENTARY SCHOOL ROOF REPLACEMENT

	<u>Current</u> <u>Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised</u> <u>Budget</u>
<u>Expenditures</u>				
Mangum Elementary School Roof Replacement	\$0	\$75,000		\$75,000

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

This the 14th day of October, 2002.

(Capital Projects Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Public Hearing—Draft of Work First Block Grant Plan for 2003-2005

Work First is the primary program in North Carolina for administering the Temporary Assistance for Needy Families (TANF) Program. Since Work First is administered locally in each county, North Carolina law (N.C.G.S. § 108A-27) requires each county to submit a County Work First Block Grant (WFBG) Plan every two years. This fall, each county began the development of a new Work First Block Grant Plan to become effective October 1, 2003.

The first stages of plan development include the appointment of a committee of local leaders (a Work First Planning Committee) to assist in the development of its WFBG plan, and a recommendation to the Department of Health & Human Services (DHHS) for a county to be an electing or standard county.

On August 12, 2002 the Board of County Commissioners approved the list of members for Durham's Work First Planning Committee and also voted to have Durham remain a standard county.

By November 1, 2002, the BOCC must submit its new Work First plan to the DHHS. The Work First Planning Committee has completed its first draft of the plan and received input and comments from Durham's Department of Social Services Board on September 25, 2002. A draft of the plan was presented to the Board of County Commissioners at its Worksession on October 7, 2002, and the Board's suggestions and recommendations were incorporated into the plan.

The plan has been distributed for public comments during the period of October 8-13 and is now before the County Commissioners for the advertised public hearing. The plan will then be submitted to the Board of Commissioners at the October 28 meeting for final approval.

Resource Person(s): Jim Polk, Chair of the Work First Planning Committee; Dan Hudgins, DSS Director

County Manager's Recommendation: The Manager recommended that the Board hold the public hearing and receive public comment.

Mr. Jim Polk, Chair of the Work First Planning Committee, was asked by Chairman Black to present the plan.

Chairman Black asked the Commissioners if they had any questions about the plan.

Ms. Cheryl Lloyd, Cooperative Extension Director, responded to a transportation question that Commissioner Bowser raised at an earlier meeting.

Chairman Black opened the Public Hearing that was properly advertised.

Dr. Lavonia I Allison, Durham Committee on the Affairs of Black People, asked how Work First funds are being spent and how effective that spending has been. She asked for the extent of the successes and the program's weaknesses.

Chairman Black advised she had asked for an evaluation of the success rate of persons now released from the program.

Department of Social Services Director Dan Hudgins responded to the questions posed by Dr. Allison and Chairman Black.

Commissioner Bowser responded to questions raised by Dr. Allison and Chairman Black.

Vice-Chairman Reckhow also responded to the questions raised.

Commissioner Heron spoke about child support and "dead beat" dads. She stated she hoped to see a big improvement in child support enforcement.

As no one else signed to speak, Chairman Black closed the Public Hearing and referred the matter back to the Commissioners.

No formal action was taken on this agenda item.

Public Hearing—Proposed Text Amendment TC 132—Related to Falls Lake Critical Area Definition

The proposed zoning ordinance text amendment modifies the language of Section 5.5.4, Establishment of the District. The amendment acknowledges that the Falls/Jordan Critical Area (F/J-A) boundary is determined by the survey conducted by the County and approved in August 2000, rather than by the location established by the State. The

Falls/Jordan Protected Area (F/J-B) boundary is determined by the State's standard. A zoning map amendment will subsequently be submitted for consideration.

The Zoning Committee unanimously recommended approval of the proposed zoning ordinance text amendment after a public hearing on September 12, 2002. The Planning Department recommended adoption of this proposed text amendment by the Board of County Commissioners.

Resource Person(s): Keith Luck, Planning Supervisor, Durham City-County Planning Department

County Manager's Recommendation: The County Manager recommended that the Board adopt this proposed text amendment.

Mr. Frank M. Duke, AICP, Durham City-County Planning Director, presented the proposed text amendment TC 132 to the Board of County Commissioners. This text amendment was initiated by the Board in August 2000.

Mr. Duke, in his presentation, reviewed the background information for the Commissioners.

Chairman Black opened the public hearing that was properly advertised.

As no one signed to speak at the public hearing, Chairman Black closed the public hearing and referred the matter back to the Board of County Commissioners for its consideration.

Vice-Chairman Ellen Reckhow moved, seconded by Commissioner Heron, to adopt Zoning Text Amendment TC 132.

The motion carried unanimously.

Text Amendment TC 132 related to Falls Lake Critical Area Definition follows:

TC 132
AN ORDINANCE AMENDING THE DURHAM ZONING ORDINANCE
SECTION 5.5.4, ESTABLISHMENT OF THE DISTRICTS

WHEREAS, the Durham Zoning Ordinance regulates development of land near water supply reservoirs for the purpose of water quality protection; and

WHEREAS, Durham County has produced more accurate information about the physical location of the Falls of the Neuse Reservoir normal pool along Ellerbee Creek; and

WHEREAS, the Durham County Board of Commissioners and Durham City Council wish to amend the Durham Zoning Ordinance to reflect this more accurate information:

NOW, THEREFORE, BE IT ORDAINED BY THE DURHAM COUNTY BOARD OF COMMISSIONERS AND DURHAM CITY COUNCIL THAT

Section 1. The Durham Zoning Ordinance, Section 5.5.4 Establishment of the Districts, is hereby amended by deleting the present wording in the table rows for F/J-A and F/J-B in its entirety and replacing it with the following (underline indicates additions):

<u>F/J-A</u>	Falls District A Jordan District A	<i>County Jurisdiction:</i> One mile from the 251.5 foot MSL normal pool of Falls Reservoir and from the 216 foot MSL normal pool of the Jordan Reservoir, or to the ridge lines defining their drainage basins, whichever is less. <u>The location of the Falls Reservoir normal pool on the Ellerbee Creek tributary shall be established by the survey approved by Durham County on August 14, 2000.</u>
		<i>City Jurisdiction:</i> One mile from the normal pool of Falls Reservoir and Jordan Reservoir, or to the ridgelines defining their drainage basins, whichever is less. <u>The location of the Falls Reservoir normal pool on the Ellerbee Creek tributary shall be established by the survey approved by Durham County on August 14, 2000.</u>
<u>F/J-B</u>	Falls District B Jordan District B	From the edge of F/J-A District to five miles from the normal pool of the Falls Reservoir and the Jordan Reservoir, or to the ridgelines that define their drainage basins, whichever is less. <u>The location of the Falls Reservoir normal pool shall be as defined by the NC Environmental Management Commission.</u>

Section 2. All ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall become effective upon adoption.

Adopted by BOCC on October 14, 2002 (and Durham City Council on November 4, 2002).

The Zoning Ordinance Text Amendment recorded in Ordinance Book _____, page _____.)

Public Hearing—Proposed Zoning Text Amendment TC 133—Related To Modification for Water Use Reduction

Currently, the Durham Zoning Ordinance (Section 10) requires landscaping for all new development. Newly-planted landscape materials are under stress and may require more frequent watering than is typical; this stress is aggravated during drought conditions due to lack of water. The Zoning Ordinance could be modified to give the County the ability to grant extensions for single-family development that match current provisions for

nonresidential and multi-family projects and permit an unlimited number of extensions for all development with no additional fees, so long as Durham remains in Stage 3 or higher drought conditions. The proposal also provides a technical change in Section 10 concerning the measurement of nursery stock so that the Section corresponds with American Nurserymen Association standards used elsewhere in the ordinance.

The Zoning Committee unanimously recommended approval of the proposal after conducting a public hearing on September 12, 2002.

The Planning Department recommended adoption of this proposed text amendment by the Board of County Commissioners.

Resource Person(s): Frank M. Duke, AICP, Durham City-County Planning Director

County Manager's Recommendation: The County Manager recommended that the Board adopt this proposed text amendment.

Mr. Frank M. Duke, AICP, Durham City-County Planning Director, presented this agenda item to the Board of County Commissioners. He began the presentation by saying that timing is everything on this issue.

Mr. Duke, in his presentation, reviewed in detail the zoning ordinance modifications for water use reduction.

The Commissioners asked questions and made comments about the agenda item. Mr. Duke responded to the questions and comments.

Chairman Black opened the public hearing that was properly advertised. As no one signed to speak, Chairman Black closed the public hearing and referred the matter back to the County Commissioners for their consideration.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to adopt the Zoning Text Amendment TC 133—
Related to Modifications for Water Use Reduction.

The motion carried unanimously.

The Zoning Ordinance Text Amendment TC 133 follows:

TC 133-02
AN ORDINANCE TO AMEND THE DURHAM ZONING ORDINANCE TO
PROVIDE FOR LANDSCAPING DEADLINE EXTENSIONS IN TIMES OF
DROUGHT

WHEREAS, the Durham County Board of Commissioners wishes to amend the Zoning Ordinance; and

WHEREAS, the Zoning Ordinance requires that landscape materials be installed in all new development prior to the issuance of a Certificate of Compliance; and

WHEREAS, extensions to time periods for the installation of landscaping for single-family development is not permitted in the County; and

WHEREAS, extensions to time periods for the installation of landscaping may be permitted for multifamily and nonresidential development but these extensions may not be of sufficient length to suspend plantings through periods of extended drought; and

WHEREAS, newly-planted landscape materials require frequent watering to survive, and

WHEREAS, modifications to the zoning requirements to allow extensions for single-family development and to allow additional deadline extensions for all development in time of Stage 3 drought conditions or higher would reduce water consumption and enhance the viability of the plants by delaying their installation until a more suitable time:

NOW, THEREFORE, BE IT ORDAINED BY THE DURHAM COUNTY BOARD OF COMMISSIONERS THAT

SECTION 1

Section 10.5.4 be rewritten as follows:

10.5.4 Street Tree Installation

Street trees to be provided in accordance with Section 10.5, Street Tree Standards, shall be clearly noted on any site plan, development plan, preliminary plat, final plat, major special use permit or minor special use permit. Street trees shall be of a species included on the list of acceptable street tree species adopted by the Planning Director or the Director's designee. Street trees shall be planted in accordance with Section 10.5, Street Tree Standards and shall be at least 2 1/2 inch caliper, measured 6 1/2 inches [*American National Standard for Nursery Stock*] above the ground. The Planning Director or the Director's designee shall have the authority to vary on a case-by-case basis the amount and size of required street trees where an alternative requirement would address unique site conditions and allow design flexibility while still serving the objectives for street tree standards.

Street trees shall be located within the front setback area and within 25 feet of the street right-of-way, and shall not be located within 4 feet of any street right-of-way or within any right-of-way easement. However, the Director of Public Works or the Director's appointee shall have the authority to approve street tree planting in the street right-of-way

in situations where street trees will not conflict with public utilities or the provision of other public services.

At least 250 square feet of contiguous, un-encroached, growing area shall be provided for each tree. The Director of Public Works or the Director's appointee shall have the authority to approve a street tree growing area of smaller size where special features are utilized in the site design to provide for adequate growth of street trees. Planting location shall take into consideration any roadway widening identified on approved thoroughfare plans but not provided by the development. Street trees required by Section 10.5, Street Tree Standards, on any lot shall be planted before a Certificate of Compliance is issued, except where the planting may be postponed to the appropriate season in accordance with the requirements of Section 10.8, Request for Extension of Compliance with Landscaping Requirements.

SECTION 2

Section 10.8 be rewritten as follows:

10.8 Request for Extension of Compliance

It is recognized that land development occurs continuously and that vegetation used in landscaping or screening should be planted at certain times to ensure the best chance of survival.

Section 10.8.1 Extensions for All Development Except for Single-Family Residential

To ensure compliance and to reduce the potential expense of replacing landscaping or screening materials, which were installed at an inappropriate time or under unfavorable conditions, a letter of request for extension of compliance with landscaping requirements may be filed with the Director of Inspections, which states the reasons why the request is being made. If the Director of Inspections finds that there are unfavorable conditions for planting, an extension of compliance with landscaping requirements may be allowed.

In addition, this letter shall acknowledge that the applicant for the Building Permit is aware of all landscaping and screening requirements, and will comply with those requirements within 90 days or discontinue use of the property.

If the initial letter of request for extension of compliance with landscaping requirements has expired and conditions are still deemed unsuitable for planting, the applicant may request one additional extension of up to 90 days. During periods of extreme drought as evidenced by the official declaration of Stage 3 or greater mandatory water conservation requirements, the Planning or Inspections Director may authorize additional 90-day extensions beyond the one extension typically allowed. These extensions may be continued through the period in which the extreme drought conditions remain. Failure to comply with the provisions of this Section within the time noted in the letter of request

for extension of compliance with landscaping requirements shall be deemed a violation of this ordinance.

The applicant shall also acknowledge that, while a Conditional Certificate of Compliance may be issued, no Final Certificate of Compliance will be issued while there is an active (pending) letter of request for extension of compliance with landscaping requirements, unless a performance guarantee (such as a letter of credit or performance bond) sufficient to cover 120 percent of the installed landscaping costs has been posted with the Inspections or Planning Department.

10.8.2 Extensions for Single-Family Residential Development:

A homebuilder who wishes to delay planting of required street trees at a new single-family home and to receive a Certificate of Compliance on such home may file an extension request with the designated Planning or Inspections staff. Except when sustained, unfavorable planting conditions have existed in other months, such requests shall generally be received only during the period from May 15 to September 15 of each year. During periods of extreme drought as evidenced by the official declaration of Stage 3 or greater mandatory water conservation requirements, the Planning or Inspections Director may authorize requests for extensions beyond these dates so long as the extreme drought conditions remain. Separate extension requests must be filed for each lot and shall include: a) specific details identifying the property involved; b) the location, number, size, species, and estimated installed cost of the street trees to be planted; c) a specific extension deadline date by which the trees shall be planted; d) an administrative fee handled by the Planning or Inspections Department for each lot for which an extension is granted; e) a homeowner affidavit (as appropriate); and f) the posting of a performance guarantee. If all conditions of the extension request are properly met, and if the homebuilder does not have outstanding violations or compliance issues, then the planting extension will be granted. The Planning or Inspections Department shall adopt and maintain appropriate administrative guidelines to administer this program.

SECTION 3

The Zoning Ordinance may be renumbered if necessary to accommodate this change.

SECTION 4

This Ordinance becomes effective upon adoption.

(Zoning Ordinance Text Amendment recorded in Ordinance Book_____, page_____.)

Durham-Chapel Hill Joint Planning Review Agreement

To consider adoption of a resolution establishing the intent of Durham County, Durham City, and the Town of Chapel Hill to cooperate with regard to planning decisions in certain defined areas. This agreement was reviewed by legal and planning staffs from the

three jurisdictions and was recommended by the Joint City-County Planning Committee. The Chapel Hill Town Council adopted the resolution recently and it is under consideration by the Durham City Council. The resolution supports the sharing of planning information among the three jurisdictions within an area near the joint planning boundaries of the entities.

Resource Person (s): Frank M. Duke, AICP, City-County Planning Director

County Manager's Recommendation: The County Manager recommended that the Board adopt the resolution.

Mr. Frank Duke, AICP, City-County Planning Director, reviewed the joint planning review agreement for the County Commissioners.

The Commissioners had no comments on this item.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to adopt the resolution concerning the joint planning review agreement.

The motion carried unanimously.

The resolution follows:

RESOLUTION ESTABLISHING THE INTENT OF DURHAM COUNTY,
DURHAM CITY, AND THE TOWN OF CHAPEL HILL TO COOPERATE WITH
REGARD TO PLANNING DECISIONS IN CERTAIN DEFINED AREAS

WHEREAS, the governing bodies of Durham County, NC; the City of Durham, NC; and the Town of Chapel Hill, NC desire to foster good relations; and

WHEREAS, all three governing bodies and their staffs wish to engage in a process of mutual dialogue to obtain a better understanding of the needs and goals of each community; and

WHEREAS, all three governing bodies seek to have appropriately planned development for their respective areas; and

WHEREAS, all three governing bodies currently carry out established public review processes on planning activities that provide an opportunity for public review and comment from citizens as well as from other jurisdictions; and

WHEREAS, all three governing bodies acknowledge the urbanization potential of properties near the Orange/Durham County line in the vicinity of Chapel Hill and consequently the need to coordinate land use and transportation, development, and service delivery issues that arise in this general vicinity; and

WHEREAS, cooperation amongst neighboring jurisdictions will foster and maintain a system of sound land use planning and regulation which can be relied upon by the public and private owners of land as a basis for investment decisions, the protection of the environment, and a climate conducive to the healthy economic and social growth and development of the three jurisdictions:

NOW, THEREFORE, BE IT RESOLVED THAT

1. The administrative staffs of each jurisdiction shall coordinate with each other on a timely basis within the current framework and schedule of the local development review process in order to provide an opportunity for review and comment on rezoning requests, special use permits, subdivisions, site plans, and annexations proposed for land within the Joint Review Area, near the Orange/Durham County line, as shown in Attachment A.
2. The administrative staffs of each jurisdiction shall pursue cooperative efforts to coordinate long-range plans and development regulations and provide an opportunity for review and comment on a timely basis and within the established project schedules for land within the Joint Review Area, near the Orange/Durham County line, as shown in Attachment A. The objectives of this cooperation are to:
 - a. Seek compatible uses of land and natural resources;
 - b. Achieve a smooth transition between areas of development within each jurisdiction;
 - c. Provide an appropriate entryway into each jurisdiction from the other; and
 - d. Encourage orderly development and the efficient delivery of urban services, which will maintain and enhance property values in each jurisdiction.
3. This resolution shall be effective upon its adoption by all of the above jurisdictions;
4. Any signatory jurisdiction may rescind its agreement with this resolution by subsequent resolution of its governing Board.

Adopted by the County of Durham October 14, 2002.

Social Services Position Transfer for Day Care

The Department of Social Services (DSS) requests that the current position of Executive Director of Durham's Alliance for Child Care Access (DACCA) be transferred from the Durham Partnership for Children to DSS. DACCA is a collaborative project of DSS, the Durham Partnership for Children, Child Care Resource and Referral, and Operation Breakthrough (which administers the child day care subsidy program for Durham County). The Executive Director position for DACCA has been an employee of the Partnership for Children, but the majority of DACCA's staff are DSS employees, and the program funding is part of the DSS budget. Therefore, the DACCA Leadership Team, representing all four partner agencies, is requesting that the position be moved from the

Durham Partnership for Children to DSS and be changed to the title of Program Manager to assure that this position has clear authority with the staff to make hiring and firing decisions and for budget accountability.

The funding budgeted for this position will not change, as the Durham Partnership for Children will continue to contract with DSS to provide the funding for the salary and benefits. The current contract DSS has with the Partnership for \$75,190 to pay the Executive Director's salary and benefits is sufficient to cover this position. The position will be a Social Work Program Manager, at a salary grade 35, \$40,659—\$63,413. No County funding is required.

Durham County Human Resources is aware of this request and has approved the transfer, subject to the Board of Commissioners' authorization.

Resource Person(s): Dan Hudgins, Director, Durham County DSS

County Manager's Recommendation: The County Manager recommended approval of the transfer of the DACCA Executive Director position to DSS as a Social Work Program Manager at a salary grade 35.

Mr. Dan Hudgins, Director, Durham County Department of Social Services, reviewed the agenda item for the Board of County Commissioners.

The Commissioners asked questions and made comments about the agenda item to which Mr. Hudgins responded.

Commissioner Bowser moved, seconded by Commissioner Cousin, to approve the transfer of the DACCA Executive Director position to the Department of Social Services as a Social Work Program Manager at a salary grade 35.

The motion carried unanimously.

Report on ABC Police

At the direction of the Board, the County Attorney has researched the question of transfer of authority of the ABC police. The statute governing the enforcement of ABC laws is N.C.G.S. § 18B-501. The statute provides that it is at the option of the local ABC board to determine whether or not it will hire ABC police or contract with another law enforcement agency to enforce the ABC laws.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: Send a letter to the local ABC Board and request that it begin the process of contracting with the Sheriff's Department to enforce the ABC laws.

Chairman Black asked County Attorney Chuck Kitchen to take the lead on this agenda item.

Attorney Kitchen said the Board had asked him at the Worksession to research the laws and statutes regarding the possibility of the ABC Police function being transferred to the Office of Sheriff. He provided the Board a copy of the Statute 18B-501. This statute provides that the local ABC Board has the option of either providing ABC Police directly to enforce ABC laws or contracting with another agency. That is at the option of the local ABC Board.

Mr. Eric Michaux, ABC Board Chairman, was asked to make comments about the ABC Police enforcement division.

Mr. Michaux said that he was called to this meeting on extremely short notice and did not know this item would be on the agenda tonight. He thought there might be some preliminary discussion with the ABC Board from the County Manager with regard to this issue. The ABC Board did not hear from him as to what precipitated this movement on the part of the County Commissioners. He thought he might be a resource person to answer any questions the Commissioners might have.

Chairman Michaux spoke briefly about the ABC Police and the function it serves.

Chairman Black said that she would like for County staff and the ABC staff to work together. This matter came from the BOCC worksession. The County Attorney has done what the Commissioners asked him to do. The County Manager and the ABC Manager will be talking about the issues raised at the worksession. Then a report will be prepared for the Commissioners by staff.

County Manager Ruffin said that, pending disposition of the issue tonight, he would write a letter to the ABC Board Manager about those concerns that were raised at the worksession.

Vice-Chairman Reckhow commented that the Commissioners heard about an incident at the Worksession that raised concerns about the training of the ABC Police. The Commissioners were of an opinion that the option of moving the ABC Enforcement Division to the Sheriff's Department should be considered. The Commissioners thought that a cost/benefit analysis should be prepared. She said she would be interested if any efficiencies could be achieved through a contract approach.

ABC Board Chairman Michaux said that the ABC system has made comparisons to other cities and other ABC systems. The Commissioners and the ABC Board members should sit down and think together about the security concern. There is interest in having dialogue with the two boards.

Chairman Black requested that County Manager Ruffin write a letter to Randolph Mills, Jr., ABC Board General Manager, about the concerns. A meeting with the two Boards would be held at a later date.

Durham Public Schools: Surplus of Real Property—Lowe’s Grove Elementary

On July 12, 2001, the Durham Public Schools Board of Education declared the former Lowe’s Grove Elementary School property to be surplus. The site has been closed since 1989 and is comprised of 16 acres and several buildings that are closed and no longer acceptable for public use. The School System’s Long-Range Facilities Plan identifies the need to surplus this property and seek new school sites elsewhere. The County has reviewed its Capital Improvement Program and has no project(s) planned for which the site would be acceptable.

North Carolina General Statute 115C-518 requires that the Board of Education first offer the Board of County Commissioners the opportunity to acquire the property. If the Board of County Commissioners declines that offer, the decision regarding the disposition thereof is subsequently vested with the Board of Education.

Resource Person(s): Hugh Osteen, Assistant Superintendent of Operational Services, Durham Public Schools

County Manager's Recommendation: Authorize the County Manager to notify the school system that it does not intend to acquire the property.

Chairman Black asked Mr. Hugh Osteen, Assistant Superintendent of Operational Services for Durham Public Schools, to come forward for his remarks.

Mr. Osteen said that the Durham Public Schools Board of Education declared the former Lowe’s Grove Elementary School property to be surplus on July 2, 2001.

North Carolina General Statute 115C-518 requires that the Board of Education first offer the Board of County Commissioners the opportunity to acquire the property. If the Board of County Commissioners declines the offer, the decision regarding the disposition thereof is subsequently vested with the Board of Education.

County Manager Ruffin said the County has reviewed its Capital Improvement Program and has no project(s) planned for which the site would be acceptable.

Vice-Chairman Reckhow recognized the following citizens who had signed to speak in support of the school property remaining as public property. Five speakers were representing “Save Lowe’s Grove Association”.

Ms. Allison Donnelly, 2308 University Drive, Durham, NC 27707

Ms. Audrey Evans, 1501 Cole Mill Road, Durham, NC 27705

Mr. Gus T. Godwin, 6606 Barbee Road, Durham, NC 27713

Ms. Charlotte Maynor, 102 Lakeshore Drive, Durham, NC 27713

Ms. Jean R. Sears, 2638 S. Alston Avenue, Durham, NC 27713

Mr. Phillip W. Evans, 1501 Cole Mill Road, Durham, NC 27705

The Board of Commissioners and Mr. Osteen held a lengthy discussion on the issue of this surplus property.

Vice-Chairman Reckhow moved, seconded by Commissioner Cousin, to forward a letter raising this question, along with this Petition, and seek a response from the school system in the next 30 to 45 days.

The motion carried unanimously.

Bail Bond Policy

Vice-Chairman Reckhow related discussion by the Crime Cabinet regarding the policies and practices of local magistrates. Based on the appointment process by Durham judges, it is not an easy process for appointment and supervision of magistrates.

She suggested that the Board send a letter to the judges involved and Mayor Bell and indicate this Board's concern. She also asked the County Attorney to bring back a proposal for a change in legislation.

Commissioner Bowser agreed that this was a very good suggestion. He said he had watched this process with the Mayor. One or two components have been left out of the process in this community. The District Attorney has been left out of the process and should be involved. The Sheriff and Police Chief should also be involved in the cases where evidence must be collected. Commissioner Bowser was of the opinion that the District Attorney, Sheriff, and the Police Chief should be involved.

Chairman Black commented she concurred with Vice-Chairman Reckhow that the letter should be sent to the Sheriff, Mayor Bell, Police Chief, and the judges.

Chairman Black instructed staff to send the letters. She said the County should be talking to people and having meetings to correct the situation.

Visit from Delegation from County Durham, England

Ms. Heidi Duer, Assistant to the County Manager, gave the schedule of events for the delegation to the Board of County Commissioners. The delegation would arrive on Wednesday, October 15, 2002.

Adjournment

Chairman Black adjourned the meeting at 9:30 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board