

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

Monday, May 10, 1999

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 William V. Bell, Joe W. Bowser, and Becky M. Heron

Absent: None

Presider: Chairman Black

Opening of Regular Session

Chairman Black called the Regular Session to order with the Pledge of Allegiance.

Agenda Adjustments

Chairman Black said that regarding agenda item No. 8, additional information will be added relative to Technical Corrections to Durham Development Ordinance Amendments for Tree Protection Draft 4, dated April 26, 1999.

Chairman Black said concerning consent agenda item No. 7(e), there has been a revision to engineering detailed scope of services for the Durham County Wastewater Treatment Plant Improvements dated May 10, 1999.

Chairman Black said a letter she has written to the legislators will be added as agenda item No. 11.

Chairman Black said the Commissioners and County Manager will discuss the budget hearings (agenda item No. 12).

Commissioner Heron requested time to discuss the monthly directives report (agenda item No. 13). (The Commissioners did not discuss this item.)

Vice-Chairman Reckhow requested a proposed letter be authorized to the Raleigh-Durham Airport Authority Board in reference to the Triangle Transit Authority's regional rail project. This will be agenda item No. 14.

Chairman Black asked to put a letter on the agenda that is written to the Chair of the Board of County Commissioners in Jefferson County, Colorado.

Commissioner Bell added to the agenda four-year terms for the Board of County Commissioners.

Commissioner Bell asked to add the Needles Exchange Program to the agenda.

Minutes

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve the April 7, 1999 Worksession and the April 12, 1999 BOCC/Library Board of Trustees Minutes of the Board as submitted.

The motion carried unanimously.

Resolution Honoring the Life of Dr. Tyronza E. Richmond

Staff has prepared a resolution honoring the life of former North Carolina Central University Chancellor Dr. Tyronza R. Richmond. Dr. Richmond is remembered for numerous outstanding contributions to the Durham community.

County Manager's Recommendation: Approve the resolution and present to members of the Richmond family.

Chairman Black read the resolution into the record.

RESOLUTION

WHEREAS, Dr. Tyronza R. Richmond, a native of Memphis Tennessee, moved to Durham in 1977 to begin his stellar career at North Carolina Central University; and

WHEREAS, he graduated from Fisk University in 1962 and went on to receive a Masters degree from American University, and a Doctorate degree from Purdue University; and

WHEREAS, Dr. Richmond joined the business department and served as a professor and as dean of the university's School of Business until he was named as the Chancellor of North Carolina Central University in 1986; and

WHEREAS, he served with distinction as Chancellor of North Carolina Central University from 1986 until 1992 and was highly regarded for his compassion with students and for his work to improve and promote the university; and

WHEREAS, Dr. Richmond remained an endowed professor of business and began organizing a nationally-funded research project to study African business and economic development in Ghana, Africa; and

WHEREAS, he was active in the Durham community and beyond as demonstrated by his involvements with many organizations including the Greater Durham Chamber of Commerce, the NC Mutual Life Insurance Company, the Greater Triangle Community Foundation, the Governor's International Advisory Council Planning Committee, St. Joseph's AME Church, Durham Rotary, United Way, and more:

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Durham County Board of Commissioners do hereby resolve to pay tribute to

Dr. Tyronza R. Richmond

a compassionate, creative, and visionary leader who gave his talents to improve the lives of others. We call upon all citizens of Durham County to remember the extraordinary contributions he made in this community, particularly while serving as Chancellor of North Carolina Central University.

This the 10th day of May, 1999.

Dr. and Mrs. Isaac Robinson accepted the resolution on behalf of the Richmond family.

Proclamation Recognizing Emergency Medical Services Week

A proclamation recognizing the week of May 16-23 as "Emergency Medical Services Week" has been prepared for the Board's approval. Durham County Emergency Medical Services providers will recognize the efforts of their employees and provide a center-court display of EMS services and equipment at Northgate Mall from May 21-23. All Durham County residents are encouraged to visit with our employees during this time.

The EMS Director, Mickey Tezai, requests this proclamation.

Chairman Black read the proclamation into the record.

PROCLAMATION

WHEREAS, the Emergency Medical Services (EMS) Department serves as the primary provider of emergency service and alternative medical transportation in Durham County; and

WHEREAS, paramedic-level services are provided from four primary sites within the city limits and additional county locations in Bahama, Lebanon, Redwood, Bethesda, and Parkwood volunteer fire departments; and

WHEREAS, non-emergency ambulance and wheelchair van service is provided on a part-time basis from our primary site located on the campus of Durham Regional Hospital; and

WHEREAS, the Durham City Fire and Volunteer Fire Departments, 911 Emergency Operations Center, and the Bicycle Response Team collaborate with Durham County EMS to celebrate 25 years of Durham County's EMS service and educate the public about available services from their respective departments; and

WHEREAS, the United States Government has designated the third week of May to establish this public education effort:

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Durham County Board of Commissioners, do hereby proclaim May 16–23, 1999 as

“EMERGENCY MEDICAL SERVICES (EMS) WEEK”

in Durham County. We further urge all citizens to be involved in and more aware of issues facing our county.

This the 10th day of May, 1999.

Mickey Tezai thanked Chairman Black for the recognition. Paramedic Don Wright, who is coordinating the EMS Week activities, accepted the proclamation on behalf of all the providers.

Recognition of Maj. C. Wesley Crabtree on Graduating from the FBI National Academy

Maj. C. Wesley Crabtree, a 19-year veteran of the Durham County Sheriff's Office, graduated from the FBI National Academy on March 26. He is the first member of this agency to attend the National Academy.

Maj. Crabtree, along with 268 law enforcement officers, graduated from the FBI National Academy Program at Quantico, Virginia. The 196 session of the National Academy consisted of men and women from 49 states and the District of Columbia, Puerto Rico, U.S. Virgin Islands, 23 international countries, five military organizations, and three federal civilian organizations.

Internationally known for its academic excellence, the National Academy Program offers 11 weeks of advanced investigative, management, and fitness training for selected officers having a proven record as a professional within his or her agency. On average, the officers have 18 years of law enforcement experience and usually return to their agencies to serve in executive level positions.

Training is provided by FBI Academy instructional staff, special agents, and other staff members holding advanced degrees, many of whom are recognized internationally in their field of expertise. Since 1972, National Academy students have been able to earn undergraduate and graduate credits from the University of Virginia due to the accreditation by the University of many courses offered.

County Manager's Recommendation: Congratulate Maj. C. Wesley Crabtree for becoming the first member of the Durham County Office of the Sheriff to graduate from the FBI National Academy. Sheriff Worth Hill will be prepared to make comments on this accomplishment.

Chairman Black asked Sheriff Worth Hill to introduce Major C. Wesley Crabtree and to make remarks about Major Crabtree graduating from the FBI National Academy.

Major Crabtree made remarks of thanks for the Commissioners' support and recognition.

Chairman Black, Vice-Chairman Reckhow, and Commissioner Heron made congratulation remarks to Major Crabtree.

Consent Agenda

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

- (a) Juvenile Crime Prevention (appoint James Hardin Jr., District Attorney, to the District Attorney's position on the Juvenile Crime Prevention Council);
- * (b) Increase the operating budget of General Services to cover unanticipated maintenance and repair needs in various County buildings (approve transfer of \$42,488 across functional level and \$28,603 transfer from the contingency fund to the General Services Department);
- * (c) Budget amendment to reduce special revenue fund budget (approve budget amendment to make a \$291,990 budget reduction in the special revenue fund. The amendment is needed to adjust expenses and

- revenues for fire districts and emergency telephone fund);
- (d) Funding of communications strategy for City/County merger process (approve the expenditure of \$9,700 representing one half of the total budget of the Awareness-Communications Campaign. Upon approval, this amount will be covered with funds currently in my operations budget with the balance to be included in my Manager's recommended budget for FY 1999-2000);
 - (e) Wastewater Treatment Plant design contract—Phase I (authorize the County Manager to enter into a contract [with addendum] with McKim and Creed for the Phase I improvements at a cost not to exceed \$780,000); and
 - * (f) Automation project for Register of Deeds Office (following the Register of Deeds automation strategy endorsed by the Board of County Commissioners at the April 7, 1999 Worksession, authorize the County Manager to enter into a contract with Office Furniture Innovations in an amount of \$48,177 to provide Office Modular Workstations as per IFB #99-036. I would like to commend the staff for their hard work and success in bringing the entire project cost under the approved funding amount, thus providing the citizens of Durham County with substantial savings of \$114,323.60).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda 7(b). Increase the operating budget of General Services to cover unanticipated maintenance and repair needs in various County buildings (approve transfer of \$42,488 across functional level and \$28,603 transfer from the contingency fund to the General Services Department).

The budget ordinance follows:

DURHAM COUNTY, NORTH CAROLINA
1998-99 Budget Ordinance
Amendment Number 99BCC000053

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the 1998-99 budget ordinance is hereby amended to reflect budget adjustments for the General Services Department, leaving a balance in Contingency of \$300,590.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	Revised Budget
<u>Expenditures</u>				
General Government	\$18,217,786	\$71,091		\$18,288,877
Public Safety	\$28,523,613		(\$10,351)	\$28,513,262
Human Services	\$213,643,762		(\$22,037)	\$213,621,725
Culture-Recreation	\$6,995,610		(\$10,100)	\$6,985,510
Nondepartmental	\$15,380,609		(\$28,603)	\$15,352,006

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

This the 10th day of May, 1999.

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

Consent Agenda 7(c). Budget amendment to reduce special revenue fund budget (approve budget amendment to make a \$291,990 budget reduction in the special revenue fund. The amendment is needed to adjust expenses and revenues for fire districts and emergency telephone fund).

The budget ordinance follows:

DURHAM COUNTY, NORTH CAROLINA
1998-99 Budget Ordinance
Amendment Number 99BCC000054

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the 1998-99 budget ordinance is hereby amended to reflect budget adjustments for the Special Revenue Fund.

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Bethesda Fire District Fund	\$854,650		(\$3,650)	\$851,000
Lebanon Fire District Fund	\$712,190		(\$283,590)	\$428,600
Redwood Fire District Fund	\$385,000		(\$4,750)	\$380,250
<u>Revenues</u>				
Emergency Telephone Services Fund	\$1,725,328		(\$291,990)	\$1,433,338

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

This the 10th day of May, 1999.

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

Consent Agenda 7(f). Automation project for Register of Deeds Office (following the Register of Deeds automation strategy endorsed by the Board of County Commissioners at the April 7, 1999 Worksession, authorize the County Manager to enter into a contract with Office Furniture Innovations in an amount of \$48,177 to provide Office Modular Workstations as per IFB #99-036. I would like to commend the staff for their hard work and success in bringing the entire project cost under the approved funding amount, thus providing the citizens of Durham County with substantial savings of \$114,323.60).

The bid tabulation follows:

	Office Furniture Inovations 2200 Westingouse Blvd. Raleigh, NC	Network Business Furniture 9012 Glenwood Ave. Raleigh, NC	MacThrift Office Furniture 1418 Avondale Dr. Durham, NC	Storr Office Environments 1732 Capital Blvd. Raleigh, NC	Alfred Williams & Co. 3412 Westgate Dr. Durham, NC
COMMODITY	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE
Sixteen (16) Office Modular Workstations	\$ 48,177.00	\$ 39,947.78	\$ 33,200.00	\$ 55,469.00	\$ 36,858.20
Manufacturer	KI	HON	HON	Steel Case	Herman Miller
Delivery & Installation	6 Weeks ARO	3 Weeks ARO	3 Weeks ARO	6 Weeks ARO	2 Weeks ARO

	TROSA 1820 James St. Durham, NC	RCWS, Inc. 107 S. Driver St. Durham, NC	Triangle Office P.O. Box 2372 Chapel Hill, NC
COMMODITY	TOTAL PRICE	TOTAL PRICE	TOTAL PRICE
Sixteen (16) Office Modular Workstations	\$ 74,148.13	\$ 38,732.00	\$ 48,650.13
Manufacturer	KI	Syspace Technologies	Trendway
Delivery & Installation	6 Weeks ARO	4 Weeks ARO	4 Weeks ARO

Public Hearing--Development Ordinance Amendments for Tree Protection and Disturbance

Durham's elected officials have recently become concerned about the amount of tree cover that is lost to new development, the threat to water quality, and the amount of sedimentation and erosion associated with mass grading activities. The Joint City-County Planning Committee worked for several months to identify appropriate public policies to address these issues. The committee reviewed regulatory approaches to achieving those policies and directed the Planning Staff to prepare necessary amendments to City and County development ordinances. This past fall, the Committee convened a citizens advisory group to review the proposed amendments and to offer comments. In March, the Zoning Committee of the Durham Planning Commission recommended adoption of a slightly modified version. The two proposed ordinance amendments are now before the City Council and Board of County Commissioners for their consideration and action.

The proposed amendments revise the Durham Zoning Ordinance and the Durham Merged Subdivision Ordinance. They set new standards for trees as an integral component of new development. They require for the first time street trees in new residential developments. The proposed amendments require that a portion of all new development sites be tree covered and that developers survey the location of significant trees as part of the development design process. They require protection of tree root zones to ensure long-term survival. The proposed amendments also establish stronger penalties for destroying valuable trees. They also require a buffer of trees around sites subjected to extensive grading.

Jane Korest and Keith Luck from the Planning Department will make a presentation before the public hearing and respond to questions.

County Manager's Recommendation: Conduct a public hearing and adopt the ordinances related to Tree Protection and Land Disturbance, referred to as Public Review Draft 4 and dated April 26, 1999.

Dick Hails, Interim Planning Director, made opening remarks about the Development Ordinance Amendments for tree protection and land disturbance.

Jane Korest gave the Commissioners an overview of the Durham Development Ordinance Amendments for Tree Protection and the Durham Development Ordinance Amendments Related to Land Disturbance.

Dick Hails presented the Commissioners an overview on the application of street tree requirements. He presented in detail options A and B. He gave the Commissioners the staff recommendation as follows:

Planning staff recognizes that Option B provides more incentive to preserve existing vegetation and more flexibility for the developer in complying with the new requirements. This would achieve the some of the desires of elected officials most directly. However, significant new tasks would fall to home builders and exiting staff assigned to implement current and proposed regulations. Several additional new staff positions have already been suggested and are under consideration in the City and County budget processes to implement resource conservation ordinances. The staff would recommend that Option A be adopted by the Board of County Commissioners and City Council in order to not further complicate the implementation of these proposed amendments for home builders and staff.

The Commissioners asked questions and made comments about the Development Ordinance Amendments for Tree Protection and Land Disturbance.

The Planning staff responded to the questions and comments.

Chairman Black opened the public hearing that was properly advertised.

The following citizens spoke at the public hearing:

Thad Howard, 1422 Vanguard Place, 27713, representing the Sierra Club, said they support passage of Draft 3 of the resource protection amendment. He urged the Commissioners to pass these ordinances and asked the Zoning Commission to move the other resources along in the process. Please protect these resources.

Patrick Byker, 2614 Stuart Drive, representing the Durham Chamber of Commerce, encouraged the Commissioners to support the ordinances presented by the Planning Department. This is a beneficial process for Durham. These ordinances are reasonable.

Mitch Barren, President, Home Builders Association of Durham and Orange Counties, urged the Commissioners to adopt these ordinances.

Edward Harrison, 58 Newton Drive, Chairman of the Durham Soil and Water Conservation District Board, said he supported the Development Ordinance Amendments for Tree Protection and Land Disturbance.

John Kent, 394 Cub Creek Road, Chapel Hill, NC 27514, Conservation Chair, New Hope Audubon Chapter, urged the Commissioners to pass these two ordinances.

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

The Commissioners made comments and asked additional questions about the proposed ordinances.

Vice-Chairman Reckhow said there are two outstanding issues that need to be put on the to-do list and work program for next year. The first item is the parking standards. The next issue related to the street standards and trying to make our streets and roads more livable. Street trees need to be allowed in grass strips between sidewalks and roadways.

Commissioner Bell moved, seconded by Commissioner Bowser, to move the ordinance as written including the five technical amendments under "Draft Four, dated April 26, 1999" with the exception of the amended Section 10.5.5 subject to the approval on the recommendations from the County Attorney.

County Manager David F. Thompson said this particular section goes back to Joint City-County Planning for discussion not only on the legalities, but also for the staffing profile. If the staffing profile can be done by June, we can incorporate it in the operational budget.

The motion carried unanimously.

The Development Ordinance Amendments for Tree Protection and Land Disturbance follow:

Durham Development Ordinances Amendments for Tree Protection

Be It Ordained by the [Durham City Council] [Durham County Board of Commissioners]
That:

Section 1. The Durham City-County Zoning Ordinance, Section 2.2, Definitions is hereby amended by adding in alphabetical order the following definitions:

"Root Zone Protection Areas. The land area around the base of a tree in which disturbances are prohibited in order to protect the roots of the tree and aid the tree's survival. Root zone protection areas shall be the greater of a) a six (6) foot radius around the tree or b) one (1) foot for every inch of tree diameter measured at a point four and one half (4½) feet above the ground. Root zone protection area measurements shall be rounded off to the nearest foot."

"Floor Area Ratio (FAR). The ratio of building area to parcel area. Floor area ratio is a measure of non-residential land use intensity."

Section 2. The Durham Zoning Ordinance, Section 10.5, Street Trees is hereby amended by deleting the present wording in its entirety and replacing it with the following:

“10.5 Street Tree Standards

The primary objective of street tree standards is to create a built environment that benefits from the aesthetic and environmental qualities of an extensive tree canopy along streets and highways. Trees along streets are attractive amenities that improve the appearance of the community, providing shade and visual interest. Trees along streets improve air quality, reduce stormwater runoff, provide wildlife habitat and moderate the micro-climate impacts of heat absorbed by paved surfaces. Street tree standards promote an appropriate balance between the built environment and the preservation of natural vegetation.

10.5.1 Street Trees for Non-Residential Development

In all non-residential developments which do not have street yard plantings, the developer shall either retain or plant trees along any frontage with adjacent public rights-of-way such that there is an average at least one (1) street tree for every thirty (30) feet of street frontage. The location of trees may be varied, as long as there is a minimum of one (1) tree every one hundred (100) feet of street frontage. Driveway widths may be subtracted from the frontage linear feet.

10.5.2 Street Trees for Residential Development

In all residential developments, along both sides of all existing and proposed rights-of-way, the developer shall either retain or plant trees such that there is an average of at least one (1) street tree for every thirty (30) feet of street frontage. The location of trees may be varied, as long as there is a minimum of one (1) tree every one hundred (100) feet of street frontage. Property owners and developers shall be responsible for making a good faith effort to protect existing or installed street trees in accordance with standard horticultural practice and Section 10.10, Protection of Existing Vegetation. Such good faith efforts over twelve (12) months from the issuance of a Certificate of Compliance shall be deemed to meet the requirements of Section 10.5.2, Street Trees for Residential Development.

10.5.3 Existing Trees

Developers are encouraged to use existing trees to meet the requirements of Section 10.5, Street Tree Standards, as long as existing trees are protected in accordance with the standards of Section 10.10, Protection of Existing Vegetation. Existing trees

preserved to meet other requirements of the Zoning Ordinance may be used to meet the requirements of Section 10.5, Street Tree Standards as well. Street tree credit shall be granted to a development for preserving existing trees in public rights-of-way adjacent to the development provided that the root zone outside of the public right-of-way is protected.

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 two and one half inch (2½) inch caliper measured four and one half (4½) feet 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 twenty-five (25) feet of the street right-of-way and shall not be located within or within four (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 two hundred fifty (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 that for developments other than single-family residential developments, 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.

10.5.5 Application of Street Tree Standards

After *[the effective date of these amendments]*, all development and land disturbing activity shall be conducted in accordance with Section 10.5, Street Tree Standards, except as follows. New construction on single-family residential lots of record recorded prior to *[the effective date of these amendments]* shall be exempt from the provisions of Section 10.5, Street Tree Standards. Additions to existing residential buildings on single-family residential lots of record recorded prior to *[the effective date of these amendments]* shall be exempt from the provisions of Section 10.5, Street Tree Standards. Development and land disturbing activity shown on approved and continuously valid site plans, preliminary plats, final plats, minor special use permits and major special use permits may be constructed in accordance with those approved plans.”

Section 3. The Durham Zoning Ordinance, Section 10.9, Existing Vegetation Credits is hereby amended by deleting the present wording in its entirety and replacing it with the following Section 10.9 and new Section 10.10, as indicated below:

“10.9 Existing Vegetation Credits for Required Landscaping

Existing healthy vegetation shall be retained when possible and may be credited toward landscape requirements. Vegetation to be saved shall be located and identified on site plans. Credit given for existing, healthy, protected trees shall be a number equal to the value of the diameter in inches of each protected tree divided by 2 inches, but no fraction thereof, as measured at 4½ feet above grade. Trees so credited must be at least two (2) inch caliper and be uniformly encircled by a root zone protection area, shown on the grading, erosion control and landscape plans. The size, type and location of each tree shall be designated on the plan, with the root zone protection area shown graphically.

Protection of natural groups of trees is encouraged, with each tree within the grouping being credited as if standing alone. Root zone protection areas shall encompass all trees within the grouping. Large groupings of trees to be saved shall be identified and the tree save areas shall be credited towards landscaping if the tree save areas are sufficient. In addition, all small trees/large shrubs, evergreen trees and smaller shrubs shall also be identified, with size, species and quantities. The descriptions shall be shown clearly on the plans. Such trees whose root zone protection areas fall outside the

protected area but are within larger groups of trees, shall not count toward any landscaping requirements but shall be left in place unless they are diseased or otherwise hazardous to the integrity of the buffer or the development. Removal of such diseased or hazardous materials otherwise shown to meet requirements of this section shall require approval by the Planning Director or the Director's designee.

10.10 Protection of Existing Vegetation

Any trees preserved on a development tract in order to meet ordinance requirements or otherwise indicated to be preserved shall meet the following protection standards. Protection measures to be used during grading and construction shall also be specified on all grading, erosion control, and landscape plans. Root zone protection areas shall be established around all trees to be preserved. Root zone protection areas are the greater of a six (6) foot radius around the tree or one (1) foot for every inch of tree diameter measured at a point four and one half (4½) feet above the ground. Root zone protection areas shall also be clearly shown on all site plans.

At the start of grading involving the lowering of the existing grade around a tree or stripping of topsoil, a clean, sharp, vertical cut shall be made at the edge of the tree save area at the same time as other erosion control measures are installed. The tree protection fencing shall be installed on the side of this cut farthest away from the tree trunk. This procedure shall be incorporated as a note on the grading and erosion control plans.

No storage of materials, dumping of waste materials, fill, or parking of equipment shall be allowed within the root zone protection area, and no trespassing shall be allowed within the boundary of the root zone protection area, and shall be so noted on the grading and erosion control plans and posted on the protection fence. A protection fence constructed of a material resistant to degradation by sun, wind, and moisture for the duration of the construction, shall be installed at the same time as the erosion control measures, and shall remain in place until all construction is complete. This procedure shall be incorporated as a note on the grading and erosion control plans. Site plans and erosion control plans shall include a detail of the proposed tree protection fence and its location.

Additionally, all utility lines and drainage channels shall be minimized within the root zone protection areas of trees to be saved and preferably located adjacent to driveways and in groupings as allowed by good engineering practices. Shrubs shall also not be planted within the root zone protection areas of trees saved. When the provisions of Section 10.9, Existing Vegetation Credits are not fulfilled, existing trees will be considered

unprotected and may not be used to satisfy landscape requirements of Section 10, Buffer and Landscaping Requirements or the tree coverage requirements of Section 10.11, Tree Coverage and Protection Standards.”

Section 4. The Durham Zoning Ordinance, Section 10, Buffer and Landscaping Requirements is hereby amended by adding the following at the end:

“10.11 Tree Coverage and Protection Standards

The primary objectives of tree coverage and protection standards are the preservation and maintenance of undisturbed tree cover and the provision of replacement tree cover on development sites in urban and suburban areas. Tree coverage serves to reduce glare, noise, air pollution, and soil erosion; to moderate temperatures; to reduce stormwater runoff; to preserve remnants of Durham’s native ecology; to provide habitat for native plants and wildlife; to provide a healthy living environment; and to make Durham County a more attractive place to live.

10.11.1 Tree Coverage

After *[the effective date of these amendments]*, new development inside the Urban Growth Area shall include tree coverage areas on a portion of the development tract. The percentage of a tract which shall have tree coverage is as indicated in the following table, except as indicated in Section 10.10.4, Reduction of Tree Coverage Requirements. Tree coverage standards may be met either by preserving existing trees on the site or by planting replacement trees. Preserving existing trees on the site is preferable to a combination of preservation and planting and is reflected in the lower requirements. For the purposes of calculating tree coverage requirements, the water surface area of ponds, lakes and other water bodies (excluding stormwater control structures) shall be excluded from the total land area of the development tract.

Tree Coverage Standard					
Residential Development					
Preserved Tree Coverage Area			Replacement Tree Coverage Area		Total Tree Coverage Area Required
20 %	plus		0 %	equals	20 %
15 %	plus		6 %	equals	21 %
10 %	plus		12 %	equals	22 %
5 %	plus		18 %	equals	23 %
0 %	plus		24 %	equals	24 %

Non-Residential Development				
Preserved Tree Coverage Area		Replacement Tree Coverage Area		Total Tree Coverage Area Required
10 %	plus	0 %	equals	10 %
8 %	plus	3 %	equals	11 %
6 %	plus	6 %	equals	12 %
4 %	plus	9 %	equals	13 %
0 %	plus	14 %	equals	14 %

- a. Any portion of a development tract which is required to be left undisturbed by some other requirement of the Durham Zoning Ordinance shall be presumed to meet the requirements of Section 10.11.1, Tree Coverage, so long as the area meets the minimum size threshold. This may include land in the floodway, floodway fringe (unless filled or developed in accordance with Section 11.2.2.c.), preserved wetlands and wetland buffers, steep slope areas, stream buffers and Major Transportation Corridor (MTC) buffers and any portion of the tract left undisturbed in order to create required perimeter buffers.
- b. Tree preservation and tree replacement areas shall be shown on all preliminary plats, final plats, site plans, landscaping plans, development plans, major special use permits and minor special use permits in order to clearly assign tree replacement responsibility to future owners. Tree preservation and tree replacement areas on any individual lot shall be clearly shown on all plot plans for the lot.
- c. Property owners in developments other than single-family and duplex residential developments shall be responsible for protecting tree preservation and tree replacement areas in accordance with standard horticultural practice and Section 10.10, Protection of Existing Vegetation. Tree preservation areas located on single-family and duplex lots shall not be deemed to create an easement or enforceable obligation on owners who occupy a dwelling subsequent to issuance of a Certificate of Compliance.
- d. Where practicable, tree coverage areas in new subdivisions shall be located in common open space or buffers required by other provisions of the Durham Zoning Ordinance. Where this is not practicable, tree coverage areas may be located on individual lots in the subdivision, provided that the root zone protection areas can be adequately protected

and that the trees can be reasonably expected to survive the construction process.

10.11.2 Preserved Tree Coverage

Tree preservation to meet the tree coverage standard in 10.11.1, Tree Coverage shall meet the following requirements.

- a. The tree coverage area for a group of trees is determined by the exterior boundary of the total root zone protection areas for all of the trees in the group. For parcels greater than one (1) acre, no tree preservation area for a group of trees may be counted toward meeting the tree coverage standard unless it includes a minimum of one thousand (1,000) square feet and has no individual dimension of less than twenty-five (25) feet. For parcels one (1) acre or less, no single tree preservation area for a group of trees may be counted toward meeting the tree coverage standard unless it includes a minimum of five hundred (500) square feet and has no individual dimension less than twenty (20) feet.
- b. The tree coverage area for an individual tree is determined by the tree's root zone protection area. Individual trees may be counted toward tree coverage credit provided that the tree's diameter is at least ten (10) inches or greater measured at a point four and one half (4½) inches above the ground. Where specimen trees of eighteen (18) inches or greater in diameter are preserved outside of other required buffers, tree coverage credit shall be granted at one and one half (1½) times the size of the root zone protection area.
- c. Tree preservation areas shall be located in floodway areas, floodway fringe areas, stream buffers, steep slope areas, wetlands and Durham Natural Inventory sites. Additional tree preservation areas may be located outside of these areas, in which case they should be located in order to preserve areas of predominantly hardwood forest, to preserve specimen trees and to preserve groupings of trees that add to the aesthetic quality of the development as viewed from the public right-of-way.
- d. At least seventy-five (75) percent of the tree coverage included within any tree preservation area must be created by trees of greater than two and one half (2½) inch caliper.

10.11.3 Replacement Tree Coverage

Tree replacement to meet the tree coverage standard in 10.11.1, Tree Coverage shall meet the following requirements.

- a. For parcels greater than one (1) acre, no tree replacement area may be counted toward meeting the tree coverage standard unless it includes a minimum of one thousand (1,000) square feet and has no individual dimension of less than twenty-five (25) feet. For parcels one (1) acre or less, no tree replacement area may be counted toward meeting the tree coverage standard unless it includes a minimum of five hundred (500) square feet and has no individual dimension less than twenty (20) feet.
- b. When replacement trees are provided in order to satisfy the requirements of Section 10.11.1, Tree Coverage, coverage credit shall be accrued in accordance with the following table. In meeting this standard, at least fifty (50) percent of replacement trees shall be two and one half (2½) inches or greater. A minimum of fifty (50) percent of replacement trees shall be large maturing hardwood species native to this region.

Replacement Tree Credit	
Caliper of Tree	Amount of Credit (Square Feet)
2½ inch	200
2 inch	175
1½ inch	150
1 inch	100
Less than 1 inch	No credit

- c. The Development Review Board shall have the authority to approve replacement trees of different sizes or species in order to address unique site conditions, allow design flexibility and to better meet the objectives of Section 10.11 Tree Coverage and Protection Standards.
- d. Where a development tract is entirely in pasture use and has been continuously maintained in such use since January 1, 1980, the tree coverage standard indicated in Section 10.11.1, Tree Coverage may be reduced by thirty-three (33) percent and the replacement tree requirement may be entirely met with trees of any size greater than one (1) inch in caliper with tree coverage credit granted in accordance with the table in Section 10.11.3, Replacement Tree Coverage. Such tree coverage requirement reduction shall not apply to non-residential development and shall not be used in conjunction with any reduction indicated in

Section 10.11.4, Reductions in Tree Coverage Requirement.

- e. Replacement trees shall be planted before any Certificate of Compliance is issued. However, for any lot other than an individual single-family or duplex residential lot, 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.

10.11.4 Reduction of Tree Coverage Requirements

Durham is actively seeking more compact development in certain locations in order to support a more compact and efficient urban form, to support infill development, to take advantage of transit and to promote affordable housing. For these purposes, tree coverage requirements established in 10.11.1, Tree Coverage Requirements may be reduced, as follows.

- a. New developments shall be entitled to a reduction in the tree coverage requirement indicated in Section 11.5.1, Tree Coverage based on the development intensity, as indicated in the following tables. The tree coverage reductions indicated in the tables may be utilized only to the extent that the tree coverage requirement cannot be satisfied by tree preservation in the floodway, floodway fringe, preserved wetlands and wetland buffers, steep slope areas, stream buffers, Major Transportation Corridor buffers.

Tree Coverage Reduction for Non-Residential Development	
Development Floor Area Ratio (FAR)	Tree Coverage Standard
FAR 0.29 or Less	No Reduction
FAR 0.30 to 0.49	33 % Reduction
FAR 0.50 to 0.99	66 % Reduction
FAR 1.0 and Greater	No Tree Coverage Requirement

Tree Coverage Reduction For Multi-Family Residential Development	
Development Density (Dwelling Units per Acre)	Tree Coverage Standard
12.00 Du/Acre or Less	No Reduction
12.01 to 16.00 Du/Acre	33 % Reduction
16.01 to 22.00 Du/Acre	66 % Reduction
22.01 Du/Acre and Greater	No Tree Coverage Requirement

Tree Coverage Reductions For Single Family Detached Residential Development	
Development Density (Dwelling Units per Acre)	Tree Coverage Standard
4.4 Du/Acre or Less	No Reduction
4.41 to 5.5 Du/Acre	33 % Reduction
5.51 Du/Acre and Greater	66 % Reduction

- b. Single family detached residential developments that qualify for the tree coverage reductions as indicated in the above table may satisfy the tree coverage requirement with trees of any size greater than one (1) inch in caliper, with tree coverage credit granted in accordance with the table in Section 10.11.3, Replacement Tree Coverage.

10.11.5 Application of Tree Coverage Standards

After *[the effective date of these amendments]*, all development and land disturbing activity shall be conducted in accordance with Section 10.11, Tree Coverage and Protections, except as follows. Additions to existing residential buildings on single-family residential lots of record recorded prior to *[the effective date of these amendments]* shall be exempt from the provisions of Section 10.11, Tree Coverage and Protection Standards. Development and land disturbing activity shown on approved and continuously valid site plans, preliminary plats, final plats, development plans, minor special use permits and major special use permits may be constructed in accordance with those approved plans. Development for which a building permit has been issued and remains continuously valid may be constructed in accordance with the standards in effect at the time of issuance.”

Section 5. The Durham Zoning Ordinance, Section 10, Buffer and Landscaping Requirements is hereby amended by adding the following at the end of the section:

“10.12 Penalties for Destruction of Existing Vegetation

Any trees preserved on a development tract in order to meet ordinance requirements or otherwise indicated to be preserved shall meet the standards of Section 10.10, Protection of Existing Vegetation. Damaging or destroying any tree preservation area which is indicated on any site plan, development plan, preliminary plat, final plat, major special use permit or minor special use permit shall constitute a violation of the Durham Zoning Ordinance. However, damage or destruction of trees by an act of God shall not be subject to the provisions of Section 10.12, Penalties for Destruction of Existing Vegetation.

1. Where any tree with a diameter greater than ten (10) inches measured at a point four and one half (4½) feet above the ground in an area indicated on approved plans to be preserved is damaged, destroyed or removed, such violation shall be penalized as follows:
 - a. A fine in an amount equal to one and one-half (1½) times the monetary value of the trees damaged, destroyed or removed. For purposes of such determination the Planning Director or Director’s designee shall apply the most current standards of the Council of Tree and Landscape Appraisers or a similar method in common use; and
 - b. Trees shall be replaced by new trees of a similar species with at least a two and one half (2½) inch caliper and a cumulative total caliper at least greater than the original tree.
2. Where tree preservation areas are damaged, destroyed or removed and no documentation exists about previous tree cover, such violation shall be penalized as follows:
 - a. A fine of two (2) dollars per square foot of disturbed area, not to exceed \$40,000 per violation; and
 - b. Replacement vegetation shall be provided in accordance with the buffer landscaping standards of Section 10.2.5.2, Planted Vegetation.

Any fine must be paid and required replacement trees planted before a Certificate of Compliance is issued. Enumeration of these penalties shall not be construed to prohibit the use of any other remedy authorized by ordinance or law.

10.13 Tree Survey

The primary objective of tree survey requirements is to provide better information about the presence and location of significant trees on sites

proposed for development. This information is needed before plans for development are so far advanced that it is unreasonable and impractical to modify the plans to protect the trees identified on the tree survey. Tree survey requirements do not obligate a property owner or developer to save trees by modifying a plan for development. However, knowing the location and size of specimen trees helps the staff and governing bodies evaluate possible modifications to the proposed plans to preserve significant trees and improve the appearance of proposed development.

10.13.1 Specimen Tree Survey

- a. A specimen tree survey shall be required for any site plan, preliminary plat, development plan, major special use permit or minor special use permit. The specimen tree survey shall show the general location, species and size of any tree (except those in the *Pinus* genus) greater than eighteen (18) inches in diameter measured four and one half (4½) feet above the ground. However, a specimen tree survey shall not be required for land in the floodway, floodway fringe (unless filled or developed in accordance with Section 11.2.2.c.), preserved wetlands and wetland buffers, steep slope areas, stream buffers and Major Transportation Corridor (MTC) buffers.
- b. For development plans where specific building locations are not shown, a more generalized survey of vegetation may be provided in lieu of a specimen tree survey. This survey shall describe existing forest stands, indicating the average species and size of trees on the tract.
- c. Having better information about the location of specimen trees is not especially useful where plans call for the preservation of large areas in undisturbed vegetation. An example is the pervious portions of developments in watershed protection districts. Producing such information adds to the project's cost without providing information that could result in project redesign. Where unique site conditions or a proposed development arrangement indicate that the required specimen tree survey would produce little useful information, the Planning Director or the Director's designee shall have the authority to waive the requirements of Section 10.13.1, Specimen Tree Survey for all or a portion of the tract.

10.13.2 Land Disturbance Tree Survey

A land disturbance tree survey shall be required for any site plan or preliminary plat. The land disturbance tree survey shall show the

location, species, size and root zone protection area of any tree greater than ten (10) inches in diameter measured four and one half (4½) feet above the ground that is within a tree protection area and within thirty (30) feet of any land disturbing area.”

Section 6. The Durham Zoning Ordinance, Section 17.6.1.B, Existing Conditions [for Contents for Simplified Site Plans] is hereby amended by adding the following:

- “3. Calculations of the amount of tree coverage required by Section 11.5, Tree Coverage and Protection Standards and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees required by Section 10.5, Street Tree Standards and the amount provided by tree preservation and tree installation; a tree survey in accordance with the requirements of Sections 10.13.1, Specimen Tree Survey; and the location and a description of all proposed and required tree protection measures.”

Section 7. The Durham Zoning Ordinance, Section 17.6.2.3, Proposed Conditions [for Major and Minor Site Plans], paragraph entitled “Landscaping” is hereby amended as follows (additions indicated by underline, deletions by ~~strikeout~~):

“Landscaping: location of all plant materials and other landscaping features, including calculations of amount required and the amount provided; the number, size, and description of plant materials, fences, walls and berms; provisions for screening specialized features, such as storage areas; calculations of the amount of tree coverage required by Section 11.5, Tree Coverage and Protection Standards and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees required by Section 10.5, Street Tree Standards and the amount provided by tree preservation and tree installation; a tree survey in accordance with the requirements of Section 10.13.2, Land Disturbance Tree Survey; and the location and a description of all proposed and required tree protection measures.”

Section 8. The Durham Merged Subdivision Ordinance, Section 4C.3, Proposed Conditions [for Preliminary Plats (and Site Plans Subject to this Ordinance)] is hereby amended by adding the following paragraph to the end of the section and numbering such paragraph “g.”; and the Durham Merged Zoning Ordinance, Section 4D, Final Plats is hereby amended by adding the same wording at the end of the section and numbering such paragraph “7.”:

“Calculations of the amount of tree coverage required by Section 11.5, Tree Coverage and Protection Standards and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees required by Section 10.5, Street Tree Standards and the

amount provided by tree preservation and tree installation; a tree survey in accordance with the requirements of Section 10.13.2, Land Disturbance Tree Survey; and the location and a description of all proposed and required tree protection measures.”

Section 9. That this ordinance become effective upon adoption.

This 10th day of May, 1999.

Durham Development Ordinances Amendments Related to Land Disturbance

Be It Ordained by the [Durham City Council] [Durham County Board of Commissioners]
That:

Section 1. The Durham City-County Zoning Ordinance is hereby amended deleting the definition of Land Disturbing Activity from Section 5.5.3, Definitions [in Section 5.5, Watershed Protection Districts Overlays] and by adding in alphabetical order to Section 2.2, Definitions the following definitions:

“**Mass Grading.** The grading of five (5) acres or more at one time to prepare multiple lots for construction, rather than lot-by-lot grading at the time of building construction. This definition does not include grading necessary to install required infrastructure such as roads and utilities.”

“**Land Disturbing Activity.** Any use of land by any person in residential, industrial, educational, institutional or commercial development and in highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This includes borrow and waste disposal activity not regulated by the provisions of the Mining Act of 1971 or the Department of Human Resources, Division of Health Services. Land Disturbing Activity shall not include forestry activities conducted in conformance with Section 8.1.3, Forestry.”

Section 2. The Durham City-County Zoning Ordinance, Section 8, Performance Standards for All Districts is hereby amended by changing of Subsection 8.1.3, Forestry, as follows (underline indicates additions):

“**8.1.3 Forestry.**

Forestry activities shall be permitted in all districts. Forestry activities shall be conducted in conformance with a Forest Management Plan which uses the current best management practices set out in “Forest Practice Guidelines Related to Water

Quality,” as adopted by the North Carolina Department of Environment and Natural Resources.”

Section 3. The Durham City-County Zoning Ordinance, Section 8, Performance Standards for All Districts is hereby amended by adding the following at the end of the section:

“8.1.30 Land Disturbance.

The objective of land disturbance standards is to protect land from unnecessary erosion and watercourses from sedimentation, and to minimize the off site visual impact of extensive land disturbance. Land disturbing activity is defined as any use of land by any person in residential, industrial, educational, institutional or commercial development and in highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This includes borrow and waste disposal activity not regulated by the provisions of the Mining Act of 1971 or the Department of Human Resources, Division of Health Services. Forestry activities shall be conducted in conformance with Section 8.1.3, Forestry.

Land disturbing activity of one (1) acre or more where no other site improvements are proposed shall require perimeter buffers and re-vegetation as indicated below. Buffers required by Section 8.1.30, Land Disturbance shall not be required upon approval of a site plan for structural improvements on the tract, although buffers may be required by other provisions of the Durham Zoning Ordinance. The requirements of Section 8.1.30, Land Disturbance shall not apply to land disturbing activity associated with construction in street and utility rights-of-way or easements.

- 1. Perimeter Buffers.** The intent of perimeter buffers is to visually screen views of graded tracts from surrounding properties and from adjacent streets. Perimeter buffers shall be provided on the development tract at all exterior property lines. However, perimeter buffers shall not be required along common internal boundaries of multiple parcels that make up a development project. Perimeter buffers shall be provided that achieve the standards of Buffer Intensity Class 4 through landscaping or preserving existing vegetation in accordance with the requirements of Section 10.2.5, Landscaping Requirements for Buffer Areas. Perimeter buffers shall be in place before other site improvements begin. The preservation of existing vegetation to achieve the intent of this section is strongly encouraged. The perimeter buffers required by Section 8.1.30.1, Perimeter Buffers shall no longer be required when a site plan for other structural improvements is approved, although buffers may be required by other provisions of the Durham Zoning Ordinance.

Buffers shall also be provided along all public rights-of-way and shall be achieved by any of the following:

- a. A thirty (30) foot strip of preserved vegetation provided along the public right-of-way frontage; or
- b. A six (6) foot high berm which achieves the standards of Buffer Intensity Class 3 through landscaping or preserving existing vegetation in accordance with the requirements of Section 10.4.5, Landscaping Requirements for Buffer Areas; or
- c. Larger groupings of preserved vegetation comparable in total square feet to that which would have been provided by the thirty (30) foot strip of preserved right-of-way vegetation, provided that a minimum of fifty (50) percent of the public right-of-way frontage is screened; or
- d. Alternate designs proposed by the owner or developer, provided that such designs are determined by the Development Review Board to be comparable in screening effect.

2. Re-vegetation Plan.

- a. From the date that a site plan is approved for land disturbing activity of one (1) acre or more where no other tract improvements are proposed, the owner shall within two (2) years either to secure site plan approval for development of the tract or to re-vegetate the site. Failure to secure site plan approval for structural improvements on the tract or to re-vegetate the tract shall constitute a violation of the Durham Zoning Ordinance.
- b. Re-vegetation of a tract shall create a biological community composed of a mixed and variable assemblage of native vegetation which is appropriate for the existing site conditions, including canopy trees, understory trees, tall and low shrubs and herbaceous plants. The re-vegetation shall result in a tree density of at least two hundred (200) living trees per acre, with at least fifty (50) percent of those trees having the potential of attaining a two and one half (2½) inch or greater diameter measured at a point four and one half (4½) feet above the ground within seven (7) years. At least three (3) different species of trees native to the region shall be represented in the re-vegetation.
- c. A performance bond shall be required in order to ensure that such re-vegetation is accomplished in a timely manner. The performance bond shall be posted prior to site plan approval and shall be in an amount determined by the Director of Planning or his designee.”

Section 4. The Durham City-County Zoning Ordinance, Section 17, Site Plans is hereby amended by adding the following to the end of Section 17.2, Applicability:

“6. Any land disturbing activity.”

Section 5. The Durham City-County Zoning Ordinance, Section 17, Site Plans is hereby amended by changing Section 17.3.B, Qualifications for Categories, Subsection 1, Simplified Site Plans as follows (underline indicated additions, ~~strikeout~~ indicated deletions):

- a. Involves ~~site grading approval only~~ land disturbing activity of less than one (1) acre;
- b. Involves ~~site grading~~ land disturbing activity of less than one (1) acre and alterations to water courses or water bodies; or”

Section 6. The Durham City-County Zoning Ordinance, Section 17, Site Plans is hereby amended by adding the following to the end of Section 17.3.B, Qualifications for Categories, Subsection 2, Minor Site Plans (underline indicated additions, ~~strikeout~~ indicated deletions):

“f. Includes ~~site grading~~ land disturbing activity of one (1) acre or more.”

Section 7. The Durham Zoning Ordinance, Section 17.6.2.3, Proposed Conditions is hereby amended by adding the following after the paragraph on Grading:

Phased Grading Plan: A phased grading plan shall be submitted that demonstrates:

- a) How grading and other site disturbances shall be phased in such a manner to minimize the amount of site disturbance at any one time; and
- b) How disturbed land will be stabilized as soon as the majority of the work in individual phases is completed.”

Section 8. The Durham Zoning Ordinance, Section 15.3.6, Required Information [for Rezoning with a Development Plan] is hereby amended by adding the following:

“s. A statement that indicates whether grading for the tract will occur for multiple lots at one time (i.e., mass grading) or on a lot-by-lot basis. Projects proposing to use mass grading shall provide justification for why mass grading of the tract is required in order to produce the project.”

Section 9. The Durham Merged Subdivision Ordinance, Section 2, Application of Regulations is hereby amended by adding the following new paragraph at the end:

2F. Conformance with the Durham Zoning Ordinance

All major and minor subdivisions shall conform with any applicable requirements of the most recently amended version Durham Zoning Ordinance.”

Section 10. The Durham Merged Subdivision Ordinance, Section 5, Minimum Design Standards for Preliminary and Final Plats is hereby amended by adding the following new paragraphs at the end:

“5.R Grading Plan and Mass Grading Buffers

Preliminary plats shall include a grading plan using two (2) foot contour intervals. The preliminary plat plan shall note whether grading for the tract will occur for multiple lots at one time (i.e., mass grading) or on a lot-by-lot basis.

Preliminary plats that propose mass grading shall provide perimeter buffers on the tract at all exterior property lines. The intent of these buffers is to visually screen views of mass graded tracts from surrounding properties. Perimeter buffers shall be twenty-five (25) feet and shall achieve the standards of Buffer Intensity Class 2 in accordance with Section 10.2.4, Buffer Width. However, perimeter buffers shall not be required along common internal boundaries of multiple parcels that make up a development project. If the perimeter buffer contains vegetation insufficient to achieve that standard, the preliminary plat shall include a vegetation plan showing landscaping materials to be installed in order to achieve that standard. No grading shall be allowed within perimeter buffer, with the exception of grading required for utility installation. Perimeter buffers shall be in place before other site improvements begin. The perimeter buffers required by Section 5.R, Grading Plan and Mass Grading Buffers that are associated with any lot shall no longer be required when a building permit is issued for residential construction on that lot.

5S. Phased Grading Plan

Preliminary plats for major subdivisions shall include a phased grading plan for the grading and stabilization of the tract. The phased grading plan shall demonstrate to the satisfaction of the approving body a) how grading and other site disturbances will be phased in such a manner to minimize the amount of site disturbance at any one time; and b) how disturbed land will be stabilized as soon as the majority of work in individual phases is completed.

5T. Tree Coverage

Tree coverage for new subdivisions shall be provided in accordance with the Durham Zoning Ordinance, Section 10.11, Tree Coverage and Protection Standards.”

Section 11. That this ordinance become effective upon adoption.

This 10th day of May, 1999.

(The Ordinance Amendments recorded in Ordinance Book _____, pages _____.)

Discussion of Borden Bocook Commercial Real Estate (Rezoning Case P98-33)

Borden Bocook Commercial Real Estate will present to the Board of County Commissioners a request to rezone 42.146 acres at Leigh Farm Road, northeast corner of NC Hwy. 54 and I-40. (TM 485-1-10,10A,11,12,13,23, 23A; 487-1-1,2,3,4A; 488-1-7) Request: R-20 (Residential 20) to OI-1(D) (Transitional Office and Institutional District and OI-2(D) (General Office and Institutional District); F/J-B and MTC. The 2020 Plan supports Suburban Neighborhood uses. The Southwest Durham Plan Future Land Use Map shows office use for the southern two-thirds of this site and low density residential for the remaining northern third of this site. Staff recommends denial. The Zoning Committee of the Durham Planning Commission conducted a public hearing on February 9, 1999, and voted 6-1 to recommend approval.

This request was continued from the April 26, 1999 Board of County Commissioners’ meeting.

Sheila Stains-Ramp, Senior Planner, Durham City-County Planning Department, will be present to answer any questions of staff regarding the request.

Sheila Stains-Ramp was available to answer questions.

Jack Markham Jr., Attorney for Borden Bocook, reviewed for the Commissioners the actions the applicants have taken, or are in the process of taking as a follow-up to the public hearing conducted on Monday, April 26, 1999.

Adjustments were made in the following areas:

- (a) Density
- (b) Use of U.S. Army Corps of Engineers’ Property
- (c) NC Rails to Trails, Bicycle Route Between Durham and Chapel Hill
- (d) Upchurch Tract
- (e) Traffic and Traffic Mitigation

Jack Markham urged the Commissioners to approve Rezoning Case P98-33.

The following citizens spoke about the Rezoning Case P98-33:

Thad Howard, 1422 Vanguard Place, 27713, asked the developer to reduce the parking area to encourage the use of public transportation. There should be a second access to the property since the Highway 54 intersection could be dangerous.

Steve Bocckino, 7340 Abron Drive, 27713, asked the Commissioners to turn the project down tonight or take the time to get it right. The 15 percent reduction in density is insufficient. The developer should acquire land from the Corps of Engineers to move the access road a safe distance (800 feet) from the I-40 intersection.

Michael Shiflett, 1111 Oakland Avenue, President, Interneighborhood Council, said he had the members' support. He encouraged the Commissioners to support their Planning staff and vote against the request.

Edward Harrison, 25 Newton Drive, 27707, representing Cross County Communities and the INC, spoke about concerns of the development.

Chairman Black asked County Attorney Chuck Kitchen to speak about the items that Edward Harrison proposed.

The Commissioners asked questions and made comments about the rezoning request.

Planning staff and developer representatives responded.

Vice-Chairman Reckhow suggested the Planning staff bring back a proposal for Board consideration which would involve putting a moratorium on developments that require a transportation impact analysis in southwest Durham in proximity to the 54 and 40 corridors until the corridor plan is completed and a transportation demand management plan for the corridor is also completed.

Mr. Jack Markham said the developers would accept the following traffic improvements as conditions on the development plan at 54 and 751 intersection.

- (a) Addition of an east bound right turn lane on 54;
- (b) Addition of an east bound left turn lane on 54; and
- (c) An additional north bound through lane on 751.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve the rezoning request subject to the transportation improvements that have been agreed to and the ones added this evening at Intersection 54 and 751, including the commitments made to transportation

demand management those that we can regulate and those that will be in restrictive covenants. Incorporates a reduction in Phase I of 16% of the construction until 54 is widened. My hope is that the combination of the 15% reduction and a 15% reduction with transportation demand management. Then the traffic would be reduced by 30%.

The motion carried by a 4 to 1 vote with Commissioner Bell voting no.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, that the Commissioners request the Planning staff bring back to us by the first Regular Session in June (approximately 30 days) a proposal which would provide for our consideration a moratorium on development that requires a transportation impact assessment in southwest Durham near the 54 and 40 highways until a corridor plan for 54 and 40 is completed as called for in the work program of the Planning Department, and also a transportation demand management plan for that corridor is completed.

Commissioner Bowser amended the motion by asking staff to meet with our new NCDOT Board member Eric Michaux to let him know this is a critical area for the Commissioners and something needs to be done in the 54 and 40 corridor.

Vice-Chairman Reckhow suggested the staff develop this enough that we can discuss it at the joint City-County Planning Committee on Wednesday, June 2, 1999. The Commissioners should request City Council to join us in this action.

The motion carried unanimously.

Legislative Action Request Letter—Senator Wib Gulley

Chairman Black distributed a letter signed by the Chair to Senator Gulley requesting him to introduce legislation relative to state-mandated fee for service of process and the special Medicaid Match Reserve.

Chairman Black will send this letter to all the legislators requesting their support on these two items.

The Commissioners concurred to send the letter to the legislatures.

Budget Worksession Calendar

The County Commissioners agreed on the following budget worksession calendar.

Monday, May 24, 1999 @ 5:00 p.m. –	Discussion of Continuum of Care for At-Risk Children
Monday, May 24, 1999 @ 5:45 p.m.—	Discussion on Y2K Preparedness Plan
Tuesday, June 1, 1999 @ 5:00 p.m.-6:30 p.m.—	Budget
Tuesday, June 1, 1999 @ 7:30 p.m.—	Merger Steering Committee at City Hall
Tuesday, June 7, 1999 @ 9:00 a.m.—	Worksession

The Clerk was asked to call each Commissioner to get dates for the budget worksessions.

Raleigh-Durham Airport Letter

Vice-Chairman Reckhow distributed a letter that will be signed by the chair of this Board to the Airport Authority. The letter is asking the Airport Authority to cooperate with Triangle Transit Authority in working towards a connection of the rail transit system to the airport.

Vice-Chairman Reckhow moved, seconded by Commissioner Bell, we send the letter to the Airport Authority Board.

The motion carried unanimously.

Letter—Chair of the Board of County Commissioners in Jefferson County, Colorado

Chairman Black is sending a letter to the chair of the Board of County Commissioners in Jefferson County, Colorado expressing our sympathy and best wishes for what happened in their community.

Four-Year Terms

Commissioner Bell requested time on the agenda to revisit the four-year term issue for the Commissioners.

Commissioner Bell said he still supports that effort and the referendum should be held in 1999.

Commissioner Bell asked the Commissioners to discuss the four-year term issue again. He stated he would like to make a motion at the end of the discussion.

Chairman Black said she would not want to vote on this matter tonight since it was not on the agenda, but would not oppose to it being placed on the next Regular Session agenda.

Commissioner Bell did not object to placing this item on the May 24, 1999 Regular Session agenda.

Vice-Chairman Reckhow said she is of the opinion it would be best to have the referendum in 1999. There would be less confusion for the voters not to vote on the four-year term and merger at the same time. The four-year term issue should be put on the May 24, 1999 agenda.

Commissioner Heron stated she is still opposed to a 1999 referendum on the four-year terms. 1999 is an off-year election and I will not support an election that affects as many people in an off-year election.

House Bill 1398—Needle Exchange Program

Commissioner Bell introduced the Needle Exchange Program for Commissioner discussion. He said he would like to see a process in place to evaluate its merit and establish guidelines before initiating a program in the County. He referenced increasing HIV numbers in Durham. Chairman Black brought up the point that this would appear to sanction illegal drug use. She has many questions regarding the needle exchange program and suggested that the HIV numbers may be increasing in part due to outsiders coming to Durham for treatment at the various health facilities. Vice-Chairman Reckhow agreed with Commissioner Bell as to researching the issue. She wants more information before reaching a decision for supporting a needle exchange program. Commissioner Bowser agreed with Commissioner Bell. He said he does not support drug use. He was concerned whether this would be illegal in that the County would be distributing drug paraphernalia. The County Attorney addressed legal questions.

A lengthy discussion followed about the Needle Exchange Program by the Commissioners, County Attorney, and County Manager.

Commissioner Bell moved, seconded by Vice-Chairman Reckhow, to authorize the County Manager to draft a letter to the appropriate persons, specially the members of the General Assembly and the state health director outlining Durham's support of the program on the following conditions: The Board of County Commissioners is concurring that the legislators can pass the bill, develop a plan, and then we can make decisions about do we support it.

The motion carried with the following vote:

Ayes: Bell, Bowser, Heron, and Reckhow

Noes: Black

Board Appointments—Durham County Hospital Corporation Board of Trustees

Garry E. Umstead, Clerk to the Board, will distribute ballots to make appointments to the Durham County Hospital Corporation Board of Trustees.

The following votes were cast to make appointments to the Durham County Hospital Corporation Board of Trustees. The asterisks indicate the appointees.

Durham County Hospital Corporation
Board of Trustees

Five terms will expire at the end of August 1999. The new terms will begin on September 1, 1999, and expire at the end of August 2002.

*Caroline H. Dixon: Bell, Black, Bowser, Heron, and Reckhow

*Gary S. Wilson: Bell, Black, Bowser, Heron, and Reckhow

Robert W. Andrews, MD: no votes

Franc A. Barada Jr., MD: no votes

Roy Beamer: no votes

J. Parker Chesson Jr.: no votes

Arnett Coleman, MD: no votes

Kent H. Fletcher: no votes

Virginia E. Fox: no votes

Robert C. Montgomery: no votes

Joyce C. Nichols: no votes

Diana Voorhees O'Neal, MD: no votes

Evelyn D. Schmidt, MD: no votes

David Curtis Smith: no votes

Appointment of individual from the Lincoln Community Health Center to serve on the DCHC Board of Trustees.

*Joyce C. Nichols: Bell, Black, Bowser, Heron, and Reckhow

Dr. Evelyn D. Schmidt: no votes

Appointment of two physicians recommended for appointment by the Durham Regional Hospital Medical Staff to serve on the DCHC Board of Trustees.

*Arnett Coleman, MD: Bell, Black, Bowser, Heron, and Reckhow

*Diana Voorhees O'Neal, MD: Bell, Black, Bowser, Heron, and Reckhow

Dr. Robert W. Andrews: no votes

Dr. Fanc A. Barada Jr.: no votes

Economic Conditions—Downtown Durham

Commissioner Bowser expressed concern about the economic conditions in downtown Durham. He asked the County Manager to direct David Powell, Economic Development Director, to ask the businesses why they are leaving the downtown area to see if we can find out the problems. We need to do something about the situation.

County Manager David F. Thompson said the first step is to get the City and County Economic Development Directors to look at last year relative to job growth in the downtown area.

Adjournment

Chairman Black adjourned the meeting at approximately 10:30 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board