

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

Monday, September 8, 2003

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 Ellen W. Reckhow, Vice-Chairman Joe W. Bowser, and Commissioners Philip R. Cousin Jr., Becky M. Heron, and Mary D. Jacobs

Absent: None

Presider: Chairman Reckhow

**Opening of Regular Session**

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

**Agenda Adjustments**

- Item #10, "Summer Meadows Additions—Rezoning Case P03-12," was deferred until the September 22, 2003 Regular Session.

Vice-Chairman Bowser moved, seconded by Commissioner Cousin, to defer Agenda Item # 10 until the September 22, 2003 Regular Session.

The motion carried unanimously.

- Item #9, "Public Hearing—FY 2002-2003 Draft Consolidated Annual Performance and Evaluation Report (CAPER)" was postponed until the September 22, 2003 Regular Session due to inaccuracies in the report.

At Commissioner Heron's request, Chairman Reckhow asked that the County Manager contact the City Manager to request that Ms. Charlene Montford, Director of the City of Durham Department of Housing and Community Development, attend the September 22 Regular Session during the presentation of this item.

Chairman Reckhow opened the Public Hearing for the FY 2002-2003 Draft Consolidated Annual Performance and Evaluation Report (CAPER) and continued it to the September 22, 2003 Regular Session.

- Item #11, “Closed Session,” was added to the agenda.
- Vice-Chairman Bowser announced a street rally to encourage an end to gun violence in Durham, scheduled for Thursday, September 11, at the corner of Elizabeth and Main Streets, from 3:30 p.m. to 7:00 p.m.

### **Minutes**

Commissioner Jacobs moved, seconded by Commissioner Cousin, to approve the Minutes of the June 2, 2003 Worksession and the August 25, 2003 Closed Session as submitted, and the August 11, 2003 Regular Session with a one-word correction.

The motion carried unanimously.

### **Proclamation for National Family Day—A Day to Eat Dinner with Your Children**

Chairman Reckhow has been asked to proclaim Monday, September 22 as “National Family Day—A Day to Eat Dinner with your Children”. Communities around the country are observing this day as a way to reaffirm the importance of the family in reducing the likelihood of young people becoming involved in illegal drug use, underage drinking, and smoking. A local committee is planning several activities. Mr. Paul Savery will give brief highlights.

Resource Person(s): Paul Savery, The Durham Center

County Manager’s Recommendation: The County Manager recommends that the Board approve the proclamation and present it to Mr. Savery.

Chairman Reckhow read the proclamation into the public record and recognized Mr. Paul Savery for comments. She commended him for initiation of the campaign and presented him with the signed proclamation.

Mr. Savery commented that the observance was a national campaign sponsored by the Center for Addiction and Substance Abuse at Columbia University. This is the second year that Durham has organized a local campaign. He commented that research indicates that eating regularly with one’s family helps to combat negative habits and promotes a stronger, healthier family with reduced instances of substance abuse.

The proclamation follows:

PROCLAMATION  
DURHAM COUNTY BOARD OF COMMISSIONERS  
DURHAM COUNTY, NORTH CAROLINA

WHEREAS, "Family Day—A Day to Eat Dinner With Your Children" is a national effort which annually promotes parental engagement as a highly effective way to reduce youth substance abuse risk and raise healthier children; and

WHEREAS, "Family Day" highlights the importance of employing regular family activities as a way to facilitate parent-child communication and encourages Americans to make family dinners a regular feature of their lives; and

WHEREAS, the National Center on Addiction and Substance Abuse (CASA) at Columbia University launched Family Day in 1991 as an annual event to be celebrated on the fourth Monday of each September; and

WHEREAS, surveys conducted by the National Center on Addiction and Substance Abuse have consistently found that children and teens who routinely eat dinner with their families are far less likely to use illegal drugs, tobacco and alcohol; and

WHEREAS, frequent family dining is also linked with doing well in school and developing healthy eating habits; and

WHEREAS, this pattern holds true regardless of a teen's gender, family structure, and family socioeconomic level:

NOW, THEREFORE, I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim Monday, September 22 as

FAMILY DAY—A DAY TO EAT DINNER WITH YOUR CHILDREN

in Durham County. I urge all people in Durham County to make an extra effort to eat dinner together. I invite all citizens to spend quality time with their families by engaging in other positive activities that help unite and strengthen the bonds between parents and children.

This the 8<sup>th</sup> day of September, 2003.

/s/ Ellen W. Reckhow, Chairman

### **Consent Agenda**

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

- \* (a) Budget Ordinance Amendment No. 04BCC000011—Criminal Justice Resource Center—Juvenile Day Reporting Center (approve the budget ordinance amendment in the amount of \$1,188 for the Criminal Justice Resource Center);
- \* (b) Budget Ordinance Amendment No. 04BCC000012—Social Services—Recognizing Funding from Urban Ministries for Child Care (approve the budget ordinance amendment to recognize a \$12,500 grant from Urban Ministries);
- \* (c) Budget Ordinance Amendment No. 04BCC000013—Appropriate Funds to the Literacy Council’s GED Program (approve the budget ordinance amendment and fund the Literacy Council’s GED Program with \$32,500 from the Commissioners’ contingency fund and approve the contract amendment with the Literacy Council);
- \* (e) Capital Project Ordinance Amendment No. 04CPA000004 and Approve Contract Amendments for Completing Agriculture Building Renovations—Project No: DC068-48 (approve the capital budget amendment which represents the County contribution [\$325,000] for FY 2003-04 and approve contract amendments with Michael Hining Architects P.A. and The Zehia Corporation, including execution of any change orders or related contracts, if necessary, not to exceed the available project budget);
- \* (f) Approval of Memorandum of Understanding with Durham Public Schools (approve the Memorandum of Understanding for FY 2003-2004); and
- (h) Two Ambulance Remounts—Emergency Medical Services (authorize the County Manager to enter into a contract with Southeastern Specialty Vehicles Inc. for \$105,728.00).

The motion carried unanimously.

\*Documents related to these items follow:

Consent Agenda 5(a): Budget Ordinance Amendment No. 04BCC000011—Criminal Justice Resource Center—Juvenile Day Reporting Center (approve the budget ordinance amendment in the amount of \$1,188 for the Criminal Justice Resource Center).

The Budget Ordinance Amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 2003-04 Budget Ordinance  
Amendment No. 04BCC000011

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

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Public Safety	\$35,789,342	\$1,188		\$35,790,530
<u>Revenues</u>				
Intergovernmental	\$295,143,512	\$1,188		\$295,144,700

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

This the 8<sup>th</sup> day of September, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

Consent Agenda 5(b): Budget Ordinance Amendment No. 04BCC000012—Social Services—Recognizing Funding from Urban Ministries for Child Care (approve the budget ordinance amendment to recognize a \$12,500 grant from Urban Ministries).

The Budget Ordinance Amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 2003-04 Budget Ordinance  
Amendment No. 04BCC000012

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

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Human Services	\$354,076,173	\$12,500		\$354,088,673
<u>Revenues</u>				
Intergovernmental	\$295,144,700	\$12,500		\$295,157,200

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

This the 8<sup>th</sup> day of September, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

Consent Agenda 5(c): Budget Ordinance Amendment No. 04BCC000013—Appropriate Funds to the Literacy Council’s GED Program (approve the budget ordinance amendment and fund the Literacy Council’s GED Program with \$32,500 from the Commissioners’ contingency fund and approve the contract amendment with the Literacy Council).

The Budget Ordinance Amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 2003-04 Budget Ordinance  
Amendment No. 04BCC000013

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments for the Literacy Council’s GED Program.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Human Services	\$354,088,673	\$32,500		\$354,121,173
Other	\$ 18,850,959		\$32,500	\$ 18,818,459

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

This the 8<sup>th</sup> day of September, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

Consent Agenda 5(e): Capital Project Ordinance Amendment No. 04CPA000004 and Approve Contract Amendments for Completing Agriculture Building Renovations— Project No: DC068-48 (approve the capital budget amendment which represents the County contribution [\$325,000] for FY 2003-04 and approve contract amendments with Michael Hining Architects P.A. and The Zehia Corporation, including execution of any change orders or related contracts, if necessary, not to exceed the available project budget).

The Capital Projects Ordinance Amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 2003-04 Capital Projects Ordinance  
Amendment No. 04CPA000004

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

AGRICULTURAL BUILDING RENOVATION PROJECT

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Agricultural Bldg Renovation Project	\$418,875	\$325,000		\$743,875

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

This the 8<sup>th</sup> day of September, 2003.

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

Consent Agenda 5(f): Approval of Memorandum of Understanding with Durham Public Schools (approve the Memorandum of Understanding for FY 2003-2004).

Commissioners Jacobs and Cousin commented on this consent agenda item. They commended the Board of Education for including language in the MOU to encourage diversity in the school system's administration and senior staff. Commissioner Jacobs expressed her hope that the school system would also encourage its administration and staff to reside in Durham County.

The memorandum of understanding follows:

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered this 8th day of September 2003 by and between the DURHAM COUNTY BOARD OF COMMISSIONERS and the DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION.

WHEREAS, the Durham Public Schools has presented and the Durham County Commissioners have approved its proposed Fiscal Year 2003-2004 Budget; and,

WHEREAS, the Board of County Commissioners and the Board of Education mutually desire to improve the educational achievements of all Durham school children; and,

WHEREAS, members of the Board of County Commissioners and the Board of Education understand the importance of regular communications during the budget process and throughout the school year.

### IT IS NOW THEREFORE AGREED THAT:

1. The term of this Memorandum of Understanding shall be two years, beginning on July 1, 2003 and ending on June 30, 2005.
2. The Durham Public Schools shall follow the budget process and format for the 2005 Fiscal Year that was utilized for the 2001, 2002, 2003, and 2004 Fiscal Years. The budget document will incorporate measurable objectives and key accomplishments.
3. The Durham Public Schools shall provide the Board of County Commissioners with reports according to the established 2003-2004 and 2004-2005 Schedule for Information Reports (attached) as prepared by the Durham Public Schools Office of Public Affairs. The reports will include disaggregated information by school. These reports shall be disseminated at the same time copies are provided to the Board of Education.
4. A copy of all reports provided to the Office of Civil Rights will be provided to the Clerk to the Board of County Commissioners. Reports/topics will be addressed during quarterly joint meetings.
5. The Durham Public Schools shall provide the Board of County Commissioners with copies of the following program evaluations upon completion:
  - Lakeview School
  - DPS Third Grade Reading Goal
  - Hillside High School Plan Evaluation/Status Report
6. The Board of Education, with input from concerned citizens including, but not limited to members of organizations in the African-American and Latino communities and other appropriate stakeholders, representing the population most at risk, will continue



to set measurable goals and outcomes in an effort to further reduce the dropout rate. Efforts will also be made to increase the attendance rate to the state average by 2005.

7. The Durham Public Schools shall continue to work with Durham County to develop alternative education programs for all suspended students with the goal of reducing the number of long-and short-term suspended students.
8. The Durham Public Schools shall work with any appropriate entities to enhance and expand workforce preparedness training, cooperative school/work programs and internships.
9. The Durham Public Schools and the Durham County Board of Commissioners shall provide one another appropriate information regarding school funding as such information is released to the public.
10. The Superintendent of Durham Public Schools and the Durham County Manager, working with representatives from both boards, will direct appropriate staff members to develop future school sites in a manner that ensures maximum use (co-locating parks, libraries on school sites or jointly using existing and expanded facilities) by the public using a joint planning protocol approved by both boards. This will require joint planning in accordance with the agreed-upon Joint Planning Protocol prior to the purchase of school sites and prior to finalizing the architectural specifications for school buildings.
11. The Durham Public Schools will consult with the Durham County Board of Commissioners on school construction and develop energy-efficient and cost-effective plans and specifications with focus on the recommendations included in the state planning report of April 1993.
12. The Durham Public Schools recognizes that diversity is important in the employment of public school administrators. Efforts will be made to ensure that appointed administrators/senior staff members are representative of the community at large.
13. The Board of County Commissioners and the Durham Public Schools Board of Education shall jointly meet in the last quarter of each fiscal year to review compliance with this Memorandum of Understanding prior to the commencement of budget discussion for the 2004-2005 and 2005-2006 Fiscal Year. Adjustments to this Memorandum of Understanding may be made as a result of this review and evaluation.

**Public Hearing—School Impact Fee Ordinance [TC03-10]**

The Board of County Commissioners has expressed a desire to establish school impact fees on new residential property to recover a portion of the costs that new residential development imposes on the taxpayers to provide for public school improvements.

The ordinance provides for the establishment of a school impact fee on January 1, 2004 in the amount of \$2,000 for single-family dwelling units and \$1,155 for multi-family dwelling units, both of which represent less than half of the maximum allowable cost. The collected fees will be used to offset the cost of capacity-related improvements to Durham Public Schools.

Resource Person(s): Mike Ruffin, County Manager; Chuck Kitchen, Durham County Attorney; and Frank M. Duke, AICP, Durham City-County Planning Director

County Manager's Recommendation: The County Manager recommends that the Board consider the public comments, and if appropriate, adopt the ordinance.

County Manager Mike Ruffin, made a PowerPoint presentation to provide an overview of the County Commissioners' proposal regarding the school impact fee ordinance. The presentation included answers to frequently-posed questions about impact fees. It would be accessible from the County's Website on Tuesday, September 9. The County Manager explained that impact fees are one-time charges assessed against new development, and are designed to recover some of the costs incurred from school construction. He stressed that the impact fee would apply only to new residential construction, and not to business construction or age-restricted communities. Revenues raised would address only increases to school population—those capacity-related improvements. County Manager Ruffin stated that about \$5 million in impact fees could be raised in the first year the ordinance is fully assessed. Impact fees would enable the County to reduce the property tax rate increase necessary to pay for increased debt service. The impact fees would be expended within six years of their collection.

County Manager Ruffin remarked that an impact fee study was conducted in 2001 to calculate the fee amount needed. The initial calculation suggested an impact fee for single-family units of \$4,936 and for multi-family units of \$2,851. The amount the County has actually proposed is about 40.5% of the amount the study cited as being a full, justifiable fee—\$2,000 for single-family units and \$1,155 for multi-family units. The County would contribute the remaining 59.5% from other sources (bonds, property taxes, sales taxes, the County's savings account, etc.).

If adopted, the ordinance would become effective January 1, 2004. The fee would be assessed when a building permit is issued. The time of collection would be prior to the issuance of a Certificate of Occupancy. The County would examine the fee recommendation every three years to justify the fee amount set by the County Commissioners.

The County Manager responded to inaccuracies printed in the brochure published by the Durham Citizens for Responsible Governments.

County Manager Ruffin stated seven reasons for moving forward now:

- The County has sought legislative authority for ten years. Numerous local bills presented by Durham County's legislative delegation have failed due to intensive statewide lobbying by real estate and home building interests. Thus, the County Attorney has advised the County Commissioners to use their general authority to accomplish the fee.
- Impact fees are not new. The City of Durham has imposed impact fees for years for streets, parks, open space, water, and sewer. Clearly, public school facilities are equally important.
- The recommended school impact fees are less than the aggregate of City impact fees.
- Impact fees will provide Durham County with another financing tool to keep pace with school infrastructure needs (over \$210 million) without putting too great of a burden on the property tax rate.
- The reduction of the burden on property taxes for public school improvements will make Durham County more competitive for economic development. (Tax rates are often a critical issue for industries considering a Durham County plant location). In addition, a companion method of financing public school improvements will help the residents with low or fixed incomes stay in their homes by buffering them from excessive tax rate increases.
- The ordinance under consideration offers a fair approach that shares the cost of new school facilities between impact fees and property taxes.
- There are several large residential projects, either in the pipeline or soon-to-be-announced, that will create significant school capacity needs.

Chairman Reckhow opened the Public Hearing and, due to the large number of speakers signed (46), set the time limit at two minutes each. She called the signed speakers forward:

PROPONENTS:

Larry Holt, 5110 Stardust Drive, Durham 27712

Steve Bocckino, 7340 Abron Drive, Durham 27713

Jackie Brown, 3005 Davie Drive, Durham 27704

Andy White, 2707 Beck Road, Durham 27704 (yielded time to Jackie Brown)

Caleb Southern, 604 W. Morgan Street, Durham 27701

Jane Avery, 5525 Middleton Road, Durham 27713

Angie Elkins, 3723 Kenmore Road, Durham 27712

Ann Recesso, 8 Winslow Place, Chapel Hill 27517

Robert Jentsch, 3906 Springstop Lane, Durham 27705

Liz Pullman, 1114 Scott King Road, Durham 27713

Reeves Young, 5808 Williamsburg Way, Durham 27713

Carol W. Young, 5808 Williamsburg Way, Durham 27713

John Parrish, 2704 Burton Road, Durham 27704

Paul T. Glenn, 2612 Burton Road, Durham 27704

Gracie Council, 2005 Bundy Avenue, Durham 27704

Melvin Whitley, (InterNeighborhoods Council) 2614 Harvard Avenue, Durham 27703

John Schelp, (Durham Branch of the NAACP) 1022 Rosehill Avenue, Durham 27705

Pat Carstensen, (Headwaters Group of the Sierra Club) 58 Newton Drive, Durham 27707

Dabney Hopkins, 1700 Sprunt Avenue, Durham 27705

John Rorem, 1500 Duke University Road, Apt. F3A, Durham 27701

Milo Pyne, (Peoples Alliance) Vickers Avenue, Durham 27701

Fred Broadwell, (Livable Durham Roundtable) 2707 Elgin Street, Durham 27704

Hildegard Ryals, 1620 University Drive, Durham 27707

Michael Bacon, 911 Iredell Street, Durham 27705

Steven Matherly, (People's Alliance) 2022 W. Club Boulevard, Durham 27705

Steve Barnett, 208 Glen Eden Road, Durham 27713

Dr. E. Lavonia Allison, (Durham Committee for the Affairs of Black People) PO Box 428, Durham 27702

#### OPPONENTS

John E. Childers Jr., 624 Hoyle Street, Durham 27704

Deb Anderson, (Wood Partners) 16 Consultant Place, Suite 102, Durham 27707

John Schlichenmaier, (HBA of Durham & Orange Counties) 20 W. Colony Place, Durham 27705

Fen Adcock, 2819 Ellis Chapel Road, Bahama 27503

Steve McDowell, (Mortgage Research Corp.) 3708 Lyckan Parkway, Durham 27707

Wendell Bullard, (Durham Assoc. of Realtors) 1532 Pomona Drive, Durham 27707

Sheila Willis, (Durham Assoc. of Realtors) 6513 Falconbridge Road, Chapel Hill 27514 (yielded time to Wendell Bullard)

Darius Irani, (Director of Applied Economics, RESEI of Towson University) 8000 York Road, Towson MD 21252

Preston Edwards, 6516 Loganbury Lane, Durham 27713 (yielded time to Darius Irani)

Don Fraley, (MI Homes) 1500 Sunday Drive, Suite 113, Raleigh

Tony Craver, (Durham Assoc. of Realtors) 2929 Buckingham Road, Durham 27707

Terry McCabe, 112 Weathersfield Drive, Durham 27713

R. Christopher Sinclair, (Triangle Community Coalition) 7413 Six Forks Road, #505, Raleigh 27615

Steve Payne, (Town & Country Homes), 2913 Highway 70, Durham 27703

Nicholas J. Tennyson, (HBA of Durham & Orange Counties) 20 W. Colony Place, Durham 27705

Torrance J. Porter, (Durham Assoc. of Realtors) 500 Woodcroft Parkway, #4B, Durham 27713

Jon Parker, (Durham Assoc. of Realtors) 105 McKinley Street, Durham 27705

Elizabeth Allardice, (Realtor) 6 Thornblade Court, Durham 27712

Barnette Crabtree, (Builder) 2805 Saddle Drive, Durham 27712

Chairman Reckhow closed the public hearing and thanked the speakers for their participation. She clarified the information presented by several speakers.

At Chairman Reckhow's request, County Attorney Chuck Kitchen addressed the question of support for this ordinance by the local legislative delegation. The County's legislative delegation has tried over the last 14 years to pass legislation to enact a school impact fee, but has failed due to pressure from the state's home builder groups.

Regarding the County's authority to set a school impact fee, the County Attorney stated that there is a general statute, which allows the County Commissioners to set fees for required services. The County Attorney stated his opinion that the Durham Board of County Commissioners has this authority. It was the County Attorney's opinion also that, should a lawsuit be brought against the County over this ordinance, any fees collected pending settlement of the lawsuit should be placed in an escrow account.

The County Attorney and County Manager addressed the questions and concerns posed by the Commissioners. Commissioner Jacobs expressed her concern that the fee would be passed down from the developers to the homebuyers.

The Commissioners spoke individually of their positions regarding the proposed school impact fee ordinance. After the Commissioners' comments, the following motion was made:

Commissioner Heron moved, seconded by Vice-Chairman Bowser to adopt the School Impact Fee Ordinance [TC03-10] on new development to become effective January 1, 2004.

The motion carried with the following 4 to 1 vote:

Ayes: Bowser, Cousin, Heron, and Reckhow

Noes: Jacobs

The School Impact Fee Ordinance follows:

**ORDINANCE ADOPTING IMPACT FEE PROCEDURES FOR THE IMPOSITION,  
CALCULATION, COLLECTION, ADMINISTRATION AND  
EXPENDITURE OF SCHOOL IMPACT FEES TO BE IMPOSED  
ON NEW RESIDENTIAL CONSTRUCTION**

WHEREAS, the County is authorized to establish and impose School Impact Fees on new Residential Construction to finance new School Facilities necessitated by such new Residential Construction pursuant to G.S. §§ 153A-102, 153A-121, 153A-340ff,

Article IX, Sec.2(2) of the North Carolina Constitution, and the common law powers of the County; and

WHEREAS, the County is experiencing rapid growth accompanied by accelerating growth in public school enrollment that leads to overcrowded School Facilities; and

WHEREAS, new Residential Construction has generated the need for School Impact Fees so that existing levels of school services will continue to be provided and so that future deficiencies in School Facilities will be prevented from occurring; and

WHEREAS, all moneys collected from School Impact Fees will be deposited in the School Impact Fee Fund which clearly identifies those monies as School Impact Fees; and

WHEREAS, this Ordinance is consistent with the Durham County/City Comprehensive Plan; and

WHEREAS, the County has adopted a capital improvements plan through 2010 based on the Durham Public Schools Board of Education's school facilities capital plan.

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

1. That the Durham County Code of Ordinances is hereby amended by adding a chapter, to be numbered Chapter 7, which chapter reads as follows:

#### Chapter 7

### SCHOOL IMPACT FEES

#### ARTICLE I – GENERAL

##### Sec. 7-1. Purpose and Intent.

The purpose and intent of this Ordinance is:

- A. To establish uniform School Impact Fees throughout the County and establish procedures for the imposition, calculation, collection, administration and expenditure of School Impact Fees imposed on new Residential Construction; and
- B. To facilitate the implementation of the goals, objectives and policies of the Durham County Comprehensive Plan relating to assuring that new Residential Construction contributes its fair share towards the costs of school facilities necessitated by such new Residential Construction; and

- C. To ensure that new Residential Construction is reasonably benefitted by the provision of the Public School Facilities provided with the proceeds of School Impact Fees; and
- D. To impose a school impact fee of not more than fifty percent (50%) of the actual cost of providing for school capital needs; the remaining fifty percent of cost to be provided by the State and County governments; and
- E. To ensure that all applicable legal standards and criteria are properly incorporated in these procedures.

Sec. 7-2. Definitions.

The words or phrases used herein shall have the meaning prescribed in the current Durham County Code of Ordinances except as otherwise indicated herein:

“Accessory Building or Structure” shall mean a detached, subordinate building, the use of which is clearly incidental and related to the use of the principal residential building or use of the land and which is located on the same lot as the principal residential Building or use.

“Administrator” means the County Manger or his designee.

“Applicant” shall mean any person who files an application for a Building Permit, and/or a Certificate of Occupancy, and/or a Manufactured home permit and/or final inspection.

“Appropriation or to appropriate” shall mean an action by the School Board to identify specific School Facilities for which School Impact Fee may be utilized pursuant to this Ordinance.

“Appeal” shall mean any appeal of a determination made by the Administrator as allowed by Sec. 7-37 of this Ordinance.

“Board” shall mean the Board of County Commissioners of Durham County, North Carolina.

“Building” shall mean any permanent structure designed or built for the support, enclosure, shelter or protection of persons, chattels, or property of any kind.

“Building Permit” shall mean the official document or certificate issued by the County or the Cities under the authority of ordinance or law, authorizing the commencement of construction of any Building, or parts thereof, as new Residential Construction. “City or Cities” shall mean the cities of Durham, Raleigh, the Town of Chapel Hill, and the Camp Butner Reserve.

“Comprehensive Plan” shall mean the various plans making up the Durham County Comprehensive Plan inclusive of all its elements, goals, objectives, policies, maps and official amendments which have been adopted by the Board.

“County” shall mean the County of Durham, a political subdivision of the State of North Carolina.

“County Attorney” shall mean the Person appointed by the Board to serve as its counsel pursuant to G.S. § 153A-114, or the designee of such person.

“Development” shall mean the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, the dividing of land into three or more parcels, including any of the activities defined as “development” under Article 18 of Chapter 153A of the General Statutes of North Carolina.

“Dwelling Unit” means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

“Encumbered” shall mean monies committed by contract or purchase order in a manner that obligates the County or the School Board to expend the Encumbered amount upon delivery of goods, the rendering of services or the conveyance of real property by a vendor, supplier, contractor or owner.

“Family” shall mean one (1) or more persons who live together in dwelling unit and maintain a common household.

“Manufactured Home” shall mean a structure as defined in G.S. § 143-143.9(6).

“Multi-Family Dwelling Unit” shall mean a Building or a portion of a Building, regardless of ownership, containing more than one Dwelling Unit designed for occupancy by one family, where the units are attached and not customarily offered for rent for only one day. Multi-Family Dwelling Unit includes attached apartments and condominiums.

“Owner” shall mean the Person holding legal title to the real property upon which new Residential Construction is to be built.

“Person” shall mean a corporation, company, association, society, firm, partnership, a joint stock company, as well as an individual, state, all political subdivisions of state, or an agency or instrumentality thereof.

“Public Schools” shall mean all schools operated by law under the control of the School Board.



“Residential” or “Residential Use” means Multi-Family Dwelling Units, Manufactured Homes or Single-Family Detached Houses as they are defined by this Ordinance.

“Residential Construction” shall mean the construction or establishment of a Residential Use that occurs after the effective date of this Ordinance.

“Restrictive Covenant” shall mean a provision in a deed limiting the use of the property by providing that no one under the age of 21 is permitted to permanently reside on the property.

“School Board” shall mean the governing board for the Durham Public Schools; the body that operates, controls, and supervises all free public schools within the County of Durham, North Carolina, as authorized by Article IX of the Constitution of the State of North Carolina.

“School Board Attorney” shall mean the person appointed by the School Board to serve as its counsel, or the designee of such Person.

“School Facilities” shall mean those facilities of the school system including ancillary plants, auxiliary facilities, educational facilities, and educational plants, which a need is created for by new Residential Construction.

“School Impact Fee” shall mean an impact fee which is imposed on new Residential Construction in connection with and as a condition of the issuance of a Certificate of Occupancy or final inspection and which is calculated to defray all or a portion of the costs of the School Facilities required to accommodate the impact to the school system of that new Residential Construction, and which fee is applied to School Facilities which reasonably benefit the new Residential Construction. An “Impact Fee” means any impact fee established pursuant to Sec. 7-21 of this Ordinance or an independent fee calculated and approved pursuant to Sec. 7-33 of this Ordinance.

“School Impact Fee Fund” shall mean the separate special revenue fund created pursuant to Sec. 7-35 of this Ordinance.

“School Impact Fee Schedule” means the impact fee amounts due and payable pursuant to Sec. 7-21, as may be amended from time to time.

“School Impact Fee Study” shall mean the study by Tischler & Associates entitled “School Impact Fees”, dated September 26, 2001 and as supplemented pursuant to Sec. 7-6 of this Ordinance.

“School System” shall mean the school facilities which are used to provide instruction within the public schools operated by law under control of the School Board.

“Single-Family Detached House” shall mean a detached Dwelling Unit and which is not considered to be a Manufactured home.

“Superintendent” shall mean the chief administrative officer of the Durham Public Schools, or his/her designee.

Sec. 7-3 Rules of Construction.

For the purpose of the administration and enforcement of this Ordinance, unless otherwise stated in this Ordinance, the following rules of construction shall apply:

- A. In case of any difference of meaning or implication between the text of this Ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
- B. The word “shall” is always mandatory and not discretionary, and the word “may” is permissive.
- C. Words used in the present tense shall include the future; and words used in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary; use of the masculine gender shall include the feminine gender.
- D. The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” and “occupied for.”
- E. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction “and,” “or” or “either. . .or,” the conjunction shall be interpreted as follows:
  - 1. “And” indicates that all the connected terms, conditions, provisions or events shall apply.
  - 2. “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
  - 3. “Either. . .or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- F. The word “includes” shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- G. All time periods contained within this Ordinance shall be calculated on a calendar day basis, including Sundays and legal holidays.

- H. The terms owner, developer, builder, or applicant shall be used interchangeably in reference to the Person responsible for abiding by the provisions of this Ordinance as this Ordinance applies in a given situation.

Sec. 7-4. Findings.

It is hereby ascertained, determined and declared:

- A. That the School Board has determined that capital improvements to the School System in the amount of \$101,038,036.00 as of February 4, 2003 are necessary in order to maintain current levels of service in order for new Residential Construction to be accommodated without decreasing the current levels of service.
- B. That the Board of Commissioners has determined that current ad valorem tax revenue and other currently available revenues will not be sufficient to provide the capital improvements to the School System that have been requested by the School Board and are necessary to accommodate growth resulting from the approval of new Residential Construction by the Cities over which the Board of Commissioners has no control.
- C. That G.S. § 153A-341 provides for the County to adopt a Comprehensive Plan to provide for, among other things, the adequate provision of schools.
- D. That the implementation of a School Impact Fee to require future growth to contribute its fair share of the cost of growth necessitated capital improvements to the School System is necessary and reasonably related to the public health, safety, and welfare of the people of Durham County.
- E. That providing School Facilities which are adequate for the needs of growth is in the general welfare of all residents of the County and constitutes a public purpose.
- F. That the projected capital improvements to the School System and the allocation of projected costs between those necessary to serve existing development and those required to accommodate the School Facilities needs of new Residential Construction are presented in the School Impact Fee Study, and such study is hereby approved and adopted by the County and such study is found to be consistent with the Comprehensive Plan of the County.
- G. That an Intergovernmental Agreement shall be executed as soon as is reasonably possible between the County and the Cities to assist in the implementation of this Ordinance.
- H. That the establishment of a School Impact Fee is consistent with and is necessary for implementing the Durham County Comprehensive Plan; necessary to ensure

that Developments are assessed for their impacts to the School System; and necessary to ensure coordination of new Residential Construction with the provision of School Facilities.

- I. That after a three (3) year period from the Effective Date of this Ordinance, this Ordinance will be subject to review pursuant to Sec. 7-6 herein.
- J. That any deficiencies which currently exist in capacity of the School System capital improvements will be addressed with revenues other than School Impact Fees.
- K. That the Board considered the short and long term public and private costs and benefits of the proposed School Impact Fee Ordinance and the School Impact Fee Study and has determined that sufficient information has been provided to enable the Board to act.

#### 7-5. Adoption of Impact Fee Study.

The Board hereby adopts and incorporates by reference the School Impact Fee Study by Tischler & Associates, Inc. entitled "School Impact Fees," dated September 26, 2001 and as supplemented pursuant to Sec. 7-6 of this Ordinance.

#### 7-6. Review.

- A. The Impact Fee Study may be reviewed by the Board, at least once every three (3) years. The purpose of this review is to demonstrate that this Impact Fee does not exceed reasonably anticipated costs associated with growth necessitated capital improvements. In the event the review of the Impact Fee Study required by this section alters or changes the assumptions, conclusions and findings of the School Impact Fee Study accepted by reference in Sec. 7-5 then such study shall be amended and updated to reflect the assumptions, conclusions and findings of such reviews and the School Impact Fee shall be amended in accordance therewith.
- B. The initial and each subsequent review shall include all of the following that is to be compiled into a report:
  - 1. Recommendations on amendments, if appropriate, to these procedures;
  - 2. Proposed changes to the Capital Improvements Program, including the identification of school facility projects anticipated to be funded wholly or partially with School Impact Fees;
  - 3. Proposed changes to the School Impact Fee Schedule;
  - 4. Proposed changes in the School Impact Fee calculation methodology;
  - 5. Other data, analysis or recommendations as the Administrator may deem appropriate, or as may be requested by the Board.

- C. The Administrator shall submit the report to the Board, which shall receive the report and take such actions as it deems appropriate.
- D. The failure to prepare or to submit a report as provided herein shall not affect the effectiveness or the administration of this Ordinance.

Secs. 7-7 - 7-20. Reserved.

## ARTICLE II - APPLICABILITY

Sec. 7-21. Imposition.

- A. Except as provided hereafter and except to the extent exempted by general or local law, all new Residential Construction occurring within the incorporated and unincorporated areas of the County shall be subject to the provisions of this Ordinance and the imposition of School Impact Fees.
- B. Upon this Ordinance becoming effective, all new Residential Construction occurring within the County shall pay the following School Impact Fee according to the following School Impact Fee Schedule: Single-Family Detached House including Manufactured Homes \$2,000.00 per Dwelling Unit. All other new Residential Construction (including Multi-Family Dwelling Units) \$1,155.00 per Dwelling Unit.
- C. The School Impact Fee shall be assessed at the time an application for a Building Permit is submitted. The School Impact Fee shall be paid prior to the issuance of a Certificate of Occupancy. Where a Certificate of Occupancy is not required the School Impact Fee shall be paid prior to final inspection.
- D. Exemptions. An exemption must be claimed by the Applicant or it shall be waived. Payment of the School Impact Fee shall not apply to the following situations if the Applicant clearly demonstrates with competent substantial evidence to the Administrator one of the following:
  - 1. New Residential Construction for which a completed application for Building Permit has been submitted to the Administrator prior to the effective date of this Ordinance.
  - 2. Facilities provided by the Federal Government, the State of North Carolina, the County, the Cities, or any subdivision or agency thereof shall be exempt from this Ordinance.
  - 3. Other Uses. No School Impact Fee shall be imposed on a use, development, project, structure, building, fence, sign, public or private utility, or other non-residential construction activity that cannot result in an increase in the demand for school facilities. An Applicant who requests an exemption pursuant to this subsection for an activity not specifically

enumerated herein shall request a determination from the Administrator that the activity does not result in an increase in a demand generator for School Facilities. An Applicant may appeal such a determination pursuant to Sec. 7-36 of this Ordinance.

4. Alterations or Expansions. No School Impact Fee shall be imposed for alterations or expansions of a Dwelling Unit that exists on the effective date of this Ordinance where no additional Dwelling Units are created. However, where an alteration or expansion will create an additional Dwelling Unit, a School Impact Fee equivalent to the difference between the School Impact Fee amount for the existing use and the new use shall be due for each additional Dwelling Unit pursuant to the School Impact Fee Schedule in place at the time of the change in circumstances.
  5. Accessory Buildings. No School Impact Fee shall be imposed for construction of Accessory Buildings or Structures that cannot create additional Dwelling Units.
  6. Replacement of Dwelling Unit. No School Impact Fee shall be imposed for the replacement of a Dwelling Unit, in whole or in part, as long as the Owner can demonstrate that the same use existed at the time that this School Impact Fee Ordinance became effective. However, where a replacement will create a greater student demand generator, as defined in the School Impact Fee Study, a School Impact Fee equivalent to the difference shall be due for the resulting Dwelling Unit pursuant to the School Impact Fee Schedule in place at the time of the change in circumstances.
  7. Manufactured Homes. No School Impact Fee shall be imposed for the issuance of a Manufactured home permit for a Manufactured Home where the Applicant is able to demonstrate to the Administrator that a School Impact Fee has previously been paid for the lot upon which the Manufactured Home is to be situated.
- E. Waivers. School Impact Fees on new Residential Construction within communities and subdivisions providing housing for persons who are 55 years of age or older may be waived. New Residential Construction within communities and subdivisions meeting the requirements of 42 U.S.C. § 3607 will not be presumed to be waived from paying the School Impact Fee. For the School Impact Fee to be waived the following is required:
1. The County shall be informed at the time of platting that such community or subdivision is intended to provide housing for persons who are 55 years of age or older. Where platting has occurred prior to the effective date of this Ordinance, the County shall be informed at the time of the application for a Building Permit that the new Residential Construction for which the Building Permit is requested is intend to provide housing for persons who are 55 years of age or older; and

2. Prior to the issuance of a Certificate of Occupancy or, where a Certificate of Occupancy is not required, prior to final inspection, a Restrictive Covenant limiting the use of the property by providing that no one under the age of 21 is permitted to permanently reside on the property shall be filed with the deed on the parcel for which the School Impact Fee waiver is sought; and
  3. Prior to the issuance of a Certificate of Occupancy, or where a Certificate of Occupancy is not required, prior to final inspection, a copy of the recorded Restrictive Covenant shall be produced to the County in lieu of payment of the School Impact Fee. However, where a breach or dissolution of such Restrictive Covenant occurs, a School Impact Fee shall be due pursuant to the School Impact Fee Schedule in place at the time of the change in circumstances.
- F. Effect of Payment of School Impact Fees on Other Applicable County Land Development Regulations:
1. The payment of School Impact Fees shall not entitle the Applicant to a Building Permit, Certificate of Occupancy, or a final inspection as such other requirements, standards and conditions are independent of the requirements for payment of a School Impact Fee.
  2. Neither these procedures nor this Ordinance shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the Durham County Comprehensive Plan, the Durham County Zoning Ordinance, or the Durham County Code of Ordinances which shall be operative and remain in full force and effect without limitation.
- G. Any new Residential Construction which is determined to be waived from the payment of School Impact Fees but which, as a result of a change in circumstances, produces a Dwelling Unit not exempt nor entitled to a waiver pursuant to Subsections D or E hereto, shall pay the School Impact Fee imposed by Subsection A according to the Impact Fee Schedule in effect at such time as the change in circumstances occurs.
- H. It shall be the policy of the Board that no more than one-half of the amount necessary to defray all of the costs of the School Facilities required to accommodate the impact to the school system of new Residential Construction shall be generated from impact fees imposed by this ordinance.

Sec. 7-22. Affected Area.

- A. School Impact Fee District. School Impact Fees shall be imposed on new Residential Construction within all of Durham County not otherwise exempted.

For purposes of this Ordinance, the entire County shall be considered one school impact fee district.

- B. Types of Development Affected. These procedures shall apply to all new Residential Construction as herein defined that is not exempted or waived pursuant to Sec. 7-21.

Secs. 7-23 - 7-30. Reserved.

### ARTICLE III - PROCEDURES FOR IMPOSITION, CALCULATION AND COLLECTION OF SCHOOL IMPACT FEES.

Sec. 7-31. Imposition.

The County shall calculate School Impact Fees at the time of Building Permit application. School Impact Fees shall be paid by the Applicant prior to issuance of a Certificate of Occupancy. Where a Certificate of Occupancy is not required for new or additional Residential Construction that is subject to this Ordinance, the School Impact Fee shall be paid prior to final inspection.

Sec. 7-32. Calculation.

- A. Upon receipt of a complete application for a Building Permit, the Administrator shall determine (a) whether it is a residential or non-residential use and (b) the number of new Dwelling Units.
- B. After making these determinations, the Administrator shall calculate the applicable School Impact Fee by multiplying the number of Dwelling Units created by the new Residential Construction by the appropriate School Impact Fee amount pursuant to the School Impact Fee Schedule, incorporating any applicable offsets. If the Applicant has requested an offset pursuant to Sec. 7-34 of this Ordinance, that offset shall be calculated as set forth therein and subtracted from the otherwise applicable School Impact Fee if such offset applies.
- C. An Applicant may request at any time a non-binding estimate of School Impact Fees due for a particular development, however, such estimate is subject to change when a complete application for a Building Permit for new Residential Construction is made.
- D. School Impact Fees shall be calculated based on the School Impact Fee Schedule, pursuant to Sec. 7-21, in effect at the time of the County's receipt of a completed Building Permit application except where provided for in this Ordinance.

Sec. 7-33. Offsets.



- A. Offsets. Offsets against the amount of an School Impact Fee due from new Residential Construction may be provided for the donation of land or cash by an Applicant if such land or cash assists in meeting the demand generated by the new Residential Construction and if either (a) the costs of such land have been included in the School Impact Fee calculation methodology, and (b) the land donated is determined by the Administrator and the Superintendent to be a reasonable substitute for the School Impact Fee due. Offsets are not retroactive to include donations of land made prior to the effective date of this Ordinance.
- B. Requests for offsets shall be submitted at the time of filing the Site Development Permit application. The request for an offset shall be accompanied by relevant documentary evidence establishing the eligibility of the Applicant for the offset. When a request for an offset is received, the Administrator shall:
  1. calculate the applicable School Impact Fee without the offset; and
  2. shall then determine, after consultation with the Superintendent whether an offset may apply and, if so, the amount of the offset;
  3. the offset shall then be applied against the School Impact Fee due; provided, however, that in no event shall an offset be granted in an amount exceeding the School Impact Fee due.
- C. No donations of land by an Applicant will occur without the formal approval of the School Board.
- D. The amount of the offset shall be the value of the donated land determined by fair market value established by private MAI appraisers acceptable to the School Board and the County Board of Commissioners. The Applicant shall bear the cost of the MAI appraisal.
- E. The date of valuation shall be the date of conveyance of the site. If the appraisal does not conform to the requirements of this Ordinance and the applicable administrative regulations, the appraisal shall be corrected and resubmitted.
- F. The offset shall be granted at such time as the property which is the subject of the donation has been conveyed to and accepted by the School Board. No Certificates of Occupancy shall be issued or, where a Certificate of Occupancy is not required, any final inspections conducted until such property is conveyed to the School Board. To convey land to the School Board the following provisions shall be met at no cost to the School Board and all documents shall be in a form approved by the School Board Attorney:
  1. The delivery to the School Board of a complete and current abstract of title or a title insurance commitment to insure said property for the amount equal to the value of the offset; and

2. The delivery to the School Board, of a general warranty deed, in appropriate form, with sufficient funds for recording same based upon the agreed value of the property; and
  3. A Tax Receipt evidencing the payment of taxes for the current year; and
  4. The issuance of a title insurance policy subsequent to recording of the deed; and
  5. Any and all other documents reasonably required by the School Board Attorney.
- G. Voluntary cash contributions shall be considered an offset when the payments are made to the County for the benefit of the Public Schools subsequent to the adoption of this ordinance, including payments made as a condition of site plan, zoning, or other land use approval.
- H. At the request of the Applicant, the offset shall be prorated as to all lots in one subdivision owned by the Applicant. Once the offset has attached to the lots in said subdivision, it shall be unaffected by a change in ownership of the lot, and shall be available to successors and assigns of the Applicant.
- I. Failure to apply for the offset within the time period required shall be deemed a waiver of the offset, regardless of transfer of title to such lands.

Sec. 7-34. Payment/Collection.

- A. Except as otherwise provided in this Ordinance, an Applicant shall pay the School Impact Fees as set forth in Sec. 7-21, School Impact Fee Schedule, unless:
1. The Applicant is determined to be entitled to a full offset; or
  2. The Applicant is determined to not be subject to the payment of School Impact Fees pursuant to Sec. 7-21 D or E.
- B. The Durham County Tax Administrator shall collect the School Impact Fee prior to the issuance of a Certificate of Occupancy for the new Residential Construction. Where a Certificate of Occupancy is not required the School Impact Fee shall be paid prior to the final inspection.
- C. Any School Impact Fee collected by the County shall be held separate and distinct from all other revenues in the School Impact Fee Fund.
- D. The payment of the School Impact Fee shall be in addition to all other fees, charges or assessments due for the issuance of a Building Permit, a Certificate of Occupancy, and a final inspection.

Sec. 7-35. County Enforcement

In additions to the remedies provided in Chapter 1 of the Durham County Code of Ordinances, the County Attorney is specifically authorized to take any and all steps and actions that are legally available to the County, including any court proceedings as are authorized by law, against any person who fails, neglects or refuses to pay a School Impact Fee as required by Sec. 7-21. Knowingly furnishing false information to the Administrator or other official in charge of the administration of this Ordinance on any matter relating to the administration of this Ordinance shall constitute a violation of this Ordinance.

Sec. 7-36. Appeals.

- A. An Applicant who is required to pay a School Impact Fee pursuant to Sec. 7-21 hereto shall have the right to request a hearing before the Board.
- B. Such appeal hearing shall include but not be limited to the review of the following:
  - 1. The application of the School Impact Fee pursuant to Sec. 7-21 hereto.
  - 2. Denial of an offset pursuant to Sec. 7-33 hereto.
- C. Except as otherwise provided in this Ordinance, the Applicant shall request such appeal hearing within ten (10) days of the following, whichever is applicable:
  - 1. Payment of the School Impact Fee; or
  - 2. Denial of an offset; or
  - 3. A change in circumstances that requires payment of the School Impact Fee.
- D. Failure to request an appeal hearing within the time provided shall be deemed a waiver of such right.
- E. The request for an appeal hearing shall be filed with the Board through the Clerk to the Board. The request shall contain the following:
  - 1. The name and address of the Applicant or successor in interest; and
  - 2. The legal description of the property in question; and
  - 3. If paid, the date the School Impact Fee was paid with a copy of the original receipt or cancelled check; and
  - 4. A statement of the reasons why the hearing is requested and supported by documentation and exhibits as to why the School Impact Fee should not be paid.
- F. Upon receipt of such request, the Administrator shall schedule an appeal hearing before the Board at a regularly scheduled meeting or a special meeting called for the purpose of conducting such hearing and shall provide the Applicant written

notice of the time and place of the hearing. The Administrator shall also notify the School Board, being an interested party, of any such appeal hearings. The appeal hearing shall be held within forty-five (45) days of the date that the request for such hearing was properly filed.

- G. Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the appeal hearing shall be conducted in a fair and impartial manner with each interested party having an opportunity to be heard and to present information and evidence. The Board shall make the final determination. A determination shall be in writing and issued within thirty (30) days of the hearing.

Secs. 7-37 - 7-40. Reserved.

#### ARTICLE IV - ESTABLISHMENT OF SCHOOL IMPACT FEE FUND, APPROPRIATION OF IMPACT FEE FUND, AND REFUNDS

Sec. 7-41. School Impact Fee Fund.

The County shall establish a School Impact Fee Fund for School Impact Fees. Such Fund shall clearly be identified as monies collected as School Impact Fees. All School Impact Fees collected by the County shall be deposited into the School Impact Fee Fund.

Sec. 7-42. Appropriation of School Impact Fee Funds.

- A. In General. School Impact Fees shall be appropriated for School Facilities necessitated by new Residential Construction and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the County or the School Board to finance such School Facilities.
- B. School Impact Fees shall, upon receipt by the County, be deposited into the School Impact Fee Fund. The School Impact Fees shall remain in the Fund until transferred to the School Board or expended by the County pursuant to this section.
- C. The monies transferred from the School Impact Fee Fund shall be used solely to provide School Facilities which are necessitated by new Residential Construction, consistent with and as set forth in subsection D, below, and shall not be used for any expenditure that would be classified as an operating expense, routine maintenance, or repair expense. The Administrator shall establish and implement necessary accounting controls to ensure that all School Impact Fees are properly deposited, accounted for and appropriated in accordance with this Ordinance and any other applicable legal requirements.

- D. School Impact Fee Fund monies shall be used only for the following:
1. Costs of School Sites; and
  2. School Building Costs; and
  3. Relocatable Classroom Costs; and
  4. Building Contents Costs; and
  5. Costs of Non-Building Improvements; and
  6. Costs of Vehicles.
- E. Additionally, School Impact Fee Fund monies may be used for the following:
1. repayment of monies borrowed from any budgetary fund of the County subsequent to the effective date of this Ordinance, where such borrowed monies were used to fund growth necessitated capital improvements to School Facilities as provided herein.
  2. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the County to fund growth-necessitated improvements to the School System subsequent to the effective date of this Ordinance.
- F. The School Board shall provide an annual accounting to the County in a report format containing a summary of the School Impact Fees transferred to the School Board during the previous year and a detailed description of the uses and expenditures for which the net School Impact Fee revenue was expended during the preceding year. At a minimum the report shall contain the following:
1. the projects funded in whole or in part with the School Impact Fee Funds;
  2. and the location of the projects; and
  3. the capacity in number of students served by the projects; and
  4. the square footage of each project.

Sec. 7-43. Refunds.

- A. Cancellation or Expiration of Building Permit. An applicant who has paid a School Impact Fee for new Residential Construction for which the Building Permit or Manufactured home permit has expired or been cancelled prior to commencement of the School Facilities impact construction for which the Building Permit or Manufactured home permit was issued, and no work having been done on the new Residential Construction shall be eligible to request a refund from the School Board of School Impact Fees paid.

Requests must contain the following:

1. documentation evidencing the expiration or cancellation of the Building Permit or Manufactured home permit; and
  2. documentation evidencing that the School Facilities construction has not commenced; and
  3. requests for a refund shall include all information required in Sec. 7-43 D, as appropriate, and shall be submitted to the Board for approval.
- B. Failure of Board to Use the School Impact Fee Funds Within Time Limit. The Applicant may request a refund from the Board of School Impact Fees paid by an applicant if the Board has failed to use or appropriate the School Impact Fees collected from the Applicant within the time limits as follows:
1. encumbered prior to the end of the fiscal year immediately following the sixth anniversary of the date upon which such fees were paid; or
  2. expended prior to the end of the fiscal year immediately following the ninth anniversary of the date upon which such fee were paid.
  3. for purposes of this section, fees collected shall be deemed to be spent or encumbered on the basis of “the first fee in shall be the first fee out.”
  4. refunds shall be made only in accordance with the following procedure:
    - a) the Applicant or a successor in interest shall request the refund within one (1) year following the end of the calendar year immediately following six (6) or nine (9) years from the date on which the fee was received; and
    - b) description and documentation of the Board’s non-use of the School Impact Fees; and
    - c) requests for a refund shall include all information required in Sec. 7-43 D, as appropriate, and shall be submitted to the Board for approval.
- C. Abandonment of Development After Initiation of Construction. An Applicant who has paid a School Impact Fee for new Residential Construction for which a Building Permit or Manufactured home permit has been issued and pursuant to which construction has been initiated, may be eligible for a refund from the Board of School Impact Fees paid if all of the following apply:
1. construction must have been abandoned prior to issuance of a Certificate of Occupancy or the final inspection; and
  2. the Applicant or successor in interest shall not be eligible for a refund unless the uncompleted building is completely demolished pursuant to a valid demolition permit or the Manufactured home removed; and
  3. requests for refunds shall be by written request made within sixty (60) days following demolition, or removal as applicable, of the structure; and
  4. requests for a refund shall include all information required in Sec. 7-43 D, as appropriate, and shall be submitted to the Board for approval.

- D. Requests for refunds must be made by written request to the Clerk to the Board within the time limits as established herein. The Applicant shall submit:
1. a notarized sworn affidavit stating that the individual requesting the refund is the Applicant on which the School Impact Fee was paid; and
  2. name and address; and
  3. the location of the property which was the subject of the Building Permit; and
  4. the date the Building Permit was issued; or the date of expiration, or that it was declared to be invalid; and
  5. the amount of the School Impact Fee paid and copies of original receipts or cancelled checks evidencing such payments; and
  6. a copy of the completed demolition permit if applicable.
- E. Upon receipt of a completed request for a refund, the Administrator shall review the request and documentary evidence submitted by the Applicant as well as such other information and evidence as may be deemed relevant. After complete verification and satisfaction of the requirements, the Board shall refund the School Impact Fee from the School Impact Fee Fund, as established pursuant to Sec. 7-42.

Secs. 7-44 - 7-50. Reserved.

#### ARTICLE V - MISCELLANEOUS

Sec. 7-51. Conflict.

To the extent of any conflict between any other County ordinances and this Ordinance, this Ordinance shall be deemed to be controlling.

Sec. 7-52. Severability

- A. If any section, subsection, sentence, clause, phrase or portion of these Procedures is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or portion of these procedures shall be deemed to be a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions of these procedures nor impair or nullify the remainder of such Procedures which shall continue in full force and effect.
- B. If the application of any provision of these procedures to any new Residential Construction is declared to be invalid by a decision of any court of competent jurisdiction, the intent of the Board is that such decision shall be limited to the specific new Residential Construction immediately involved in the controversy, action or proceeding in which such decision of invalidity was rendered. Such

decision shall not affect, impair, or nullify these procedures as a whole or the application of any provision of these procedures to any other Residential Construction.

- C. This Ordinance shall be in full force and effect on and after January 1, 2004.



**Public Hearing—County Initiated Land Use Plan Amendment—Hamlin Rd.  
(# A03-10)**

This item is a plan amendment for the *North Durham Plan*. The Board of County Commissioners directed staff to bring this plan amendment forward to take into account the changing circumstances of the proposed Northern Durham Parkway alignment and to make the FLUM designation more closely reflect the existing land use of the area. The parcels total 111.995 acres and are located on the south side of Hamlin Road approximately 1,000 feet east of its intersection with the Old Oxford Highway. The Planning Commission considered this item at a public hearing held July 23, 2003 and recommended approval.

Planning Department Recommendation - Approval

Planning Commission Recommendation – Approval (7/23/03 – 13 to 0)

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

County Manager's Recommendation: The County Manager recommends that the Board conduct a public hearing and, if appropriate based on public comment, amend the *North Durham Plan* FLUM to designate the area located on the south side of Hamlin Road approximately 1,000 feet east of its intersection with the Old Oxford Highway for low density residential use.

City-County Planning Director Frank Duke presented the agenda item. He stated that this amendment to the North Durham Plan would change the future land use designation for this acreage from high-density residential to low-density residential. The nearly 112 acres stood out as a high-density pocket in violation of the North Durham Plan. Both the City-County Planning staff and Planning Commission find justification for the amendment based on the changes in land use patterns in the area. Mr. Duke added that, with this change, there would be fewer impacts on the road system and schools.

Chairman Reckhow opened and closed the Public Hearing with no speakers signed.

Vice-Chairman Bowser moved, seconded by Commissioner Cousin, to approve the amendment to the land use plan (A03-10).

The motion carried unanimously.

The resolution amending the North Durham Land Use Plan follows:

BOARD OF COUNTY COMMISSION RESOLUTION  
AMENDING NORTH DURHAM PLAN  
CASE A03-10

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

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

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

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

SECTION 1

That the Future Land Use Map of the *North Durham Plan* be amended as follows:

---to identify as Low Density Residential the recommended future use of parcels 0833-02-97-8568, 0843-01-06-2405 (partial), 0843-01-06-3924, 0843-01-06-5657, 0843-01-06-7305, 0843-01-06-8022, 0843-01-07-0692, 0843-01-07-1232, 0843-01-07-1699, 0843-01-07-2479, 0843-01-07-3381, 0843-01-07-4724, 0843-01-07-4960, 0843-01-07-5591, 0843-07-6135, 0843-01-15-1787, 0843-01-16-1397, 0843-01-16-1982 and 0843-01-25-2706 (partial) as shown on the attached map.

SECTION 2

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

**Public Hearing—Zoning Text Amendment—Amortization of Nonconforming Junkyards and Vehicle Repair Shops [TC 03-9]**

The Zoning Ordinance permits legal nonconforming uses to continue in existence without complying with any of the adopted standards, provided the use was legally in existence at the time the zoning provisions were adopted. This agenda item proposes an amendment to the zoning ordinance to establish differing amortization periods for nonconforming junkyards and vehicle repair shops to either provide a visual screen or achieve compliance, based on whether or not the use is allowed by the underlying zoning.

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

County Manager's Recommendation: The County Manager recommends that the Board conduct a public hearing and approve the text amendment, if appropriate, based on public comment.

City-County Planning Director Frank Duke presented the agenda item. He remarked that this revision to the Zoning Ordinance would provide an amortization period for junkyards and vehicle repair shops that are "grandfathered" by the Zoning Ordinance, but do not meet the standards for screening and environmental issues adopted in 1994. The text amendment arose out of concerns of Northeast Central Durham residents. Some area establishments are without barriers or screens to keep out residents and children. The text amendment would give these junkyards and vehicle repair shops time to either come into compliance or close.

Mr. Duke stated that the Joint City-County Planning Committee and the Zoning Committee have unanimously recommended approval. Planning staff also recommended approval. The Planning Director and the County Attorney recommended deleting the word "therefore" from two paragraphs in the proposed ordinance.

The Planning Director added that the Durham City Council has heard the item and adopted the ordinance.

Chairman Reckhow suggested a change in Section 7, item number 5. At her request, the text "or and" was changed to "and/or."

Chairman Reckhow opened the Public Hearing and recognized one speaker.

Melvin Whitley, 2614 Harvard Avenue, representing the Y.E. Smith Homeowners Association, spoke in support of the zoning text amendment. He commented that the Angier Avenue corridor is only one of several with junkyards visible to the public. He expressed his concern that they are also dangerous to children who have open access to the junk cars. They are also accessible to drug dealers and prostitutes. He urged passage of the text amendment, and applauded Planning Director Frank Duke for his hard work and the City Council for its vote in support of the text amendment.

Vice-Chairman Bowser moved, seconded by Commissioner Jacobs, to approve the Zoning Text Amendment TC 03-9.

The motion carried unanimously.

The Zoning Text Amendment follows:

AN ORDINANCE TO AMEND THE DURHAM ZONING ORDINANCE TO  
PROVIDE STANDARDS FOR THE AMORTIZATION OF NONCONFORMING  
JUNKYARDS AND VEHICLE REPAIR SHOPS

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

WHEREAS, the Zoning Ordinance permits nonconforming junkyards and vehicle repair shops that existed at the time of the adoption of the Zoning Ordinance to continue in existence without complying with any of the adopted standards of the Zoning Ordinance, and

WHEREAS, residents have expressed concern about the visual blight created as a result of these issues, and

WHEREAS, the establishment of an amortization period for compliance would allow owners of such properties time to comply with standards.

NOW, THEREFORE, BE IT ORDAINED THAT:

SECTION 1

That the portion of Section 2.2 [Definitions] titled "Junkyards" be revised to read as follows:

*Junkyard:*

An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste, or for operation and maintenance of a place of business for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor parts.

SECTION 2

That the portion of Section 2.2 [Definitions] titled "Wrecking Yard or Salvage Yard" be revised as follows

*Salvage Yard:*

A space or building for the storage of metal scrap, scrap materials or the dismantling of vehicles and machinery or where more than 2 inoperable motor vehicles are placed, not to include vehicle storage areas

### SECTION 3

That Section 4E.4.5 [I-2 Major Special Uses] Subsection (5) be rewritten as:

#### *5. Junkyards*

### SECTION 4

That Section 4E.5.3 [I-3 Permitted Uses] Subsection (16) be rewritten as:

#### *16. Junkyards*

### SECTION 5

That Section 6 [Table of Permitted Uses] be modified so that the row identified as "Junk yards and wrecking yards" be replaced with the following:

#### *Junkyards*

### SECTION 6

That the portion of Section 7 [Supplementary Requirements] titled "Salvage Operations and Yards" be revised to read as follows:

#### *Junkyards and Salvage Operations and Yards*

When allowed, junkyards and salvage operations and yards shall be subject to the following additional requirements:

1. The junkyards and salvage operations and yards shall be enclosed by a fence and shall be screened from view. The fence shall be 8 feet high, measured from the lowest point of grade. The fence shall be maintained in good condition. No stored materials shall be visible from ground level immediately outside the fence.
2. The applicant shall demonstrate that the stored materials will not pose a danger to surrounding properties, or residents, due to noise, runoff, animal or insect populations or other factors.
3. The site may not be located adjacent to residentially zoned property.
4. A landscape screen shall be provided in conformance with Section 10.
5. The approving authority may add additional conditions in order to protect the general welfare of citizens.

Existing junkyards and salvage yards on parcels with zoning that permits the use, which were in operation prior to January 1, 1994, and therefore do not comply with the provisions above, shall have until January 1, 2006, to provide a fence consistent with the requirements of 1 (above).

Existing salvage yards and junkyards on parcels with zoning that does not permit the use, which were in operation prior to January 1, 1994, shall have until January 1, 2009, to come into full compliance with all requirements of the Zoning Ordinance or shall be required to cease operation.

## SECTION 7

That the portion of Section 7 titled "Service Stations and Vehicle Repair Shops" be revised to read as follows and be relocated within the Section to accommodate alphabetical order of the Subsections:

### *Service Stations and Vehicle Repair Shops*

When allowed, service stations and vehicle repair shops shall be subject to the following additional requirements:

1. In zoning districts where trucks or other vehicles are displayed as an accessory use for rent, the site plan shall indicate the area to be used to display rental vehicles. Spaces for rental vehicles shall be in addition to any parking spaces required for operation of the other activities. Rental activities may not occupy more than 50% of the site area.
2. Fuel pumps shall be at least 15 feet from property lines. Canopies shall be at least 5 feet from property lines.
3. Any repair, servicing, maintenance, or other work on vehicles shall be conducted within an enclosed structure which does not exceed 20 feet in height
4. Storage of vehicles for 15 days or more or junking of vehicles shall be prohibited. Vehicle sales shall also be prohibited.
5. Replacement parts and/or accessories shall be stored inside. Discarded parts shall not be stored outside.
6. Vehicles associated with the use shall not be stored or repaired within federal, state, or local public rights-of-way, including streets and sidewalks.
7. Uses not covered by an existing site plan shall organize the off-street parking areas to provide adequate customer parking and access for emergency vehicles.
8. Nothing in this subsection shall be construed as allowing properties designated as service stations or vehicle repair shops to be involved in disassembling, tearing down, or scrapping of a vehicle or to permit one vehicle to be scavenged or stripped for parts for use on another vehicle.
9. Vehicle stacking lanes in addition to the required parking spaces shall be provided when businesses perform services such as oil changes on successive vehicles. Stacking space for at least 4 vehicles shall be provided on the site. Parked vehicles and vehicles waiting for service may not block sidewalks, driveways, or streets
10. A sight obscuring wall or hedge shall be provided adjacent to residential property in conformance with Section 10. The landscaping plan shall also be designed to reduce clear views through the building from the right of way.

11. A spill preventions and counter measures plan will be provided with the site plan that will include at a minimum:
  - a. Cleanup procedures for spills occurring inside and outside the building.
  - b. Counter measures for use in preventing spills from entering the storm water collection system.
  - c. Routine cleanup procedures for work areas and parking areas. Wash down water shall not be permitted to enter the storm water collection system.  
[Please note the standards of Section 8 regarding Waste Products]
12. Additional conditions may be added by the approving authority as necessary in order to reduce the visual impact of the site on nearby properties and to protect the health, safety, and welfare of nearby properties. These may include but are not limited to additional buffering, additions to the landscape plan to reduce unsightly views, and other such measures.

Existing vehicle repair shops on parcels with zoning that permits the use, which were in operation prior to January 1, 1994, and do not comply with the provisions above, shall have until January 1, 2006, to provide an opaque screen (a fence or wall at least 6 feet but no more than 8 feet in height, with a vegetative cover that, at maturity, covers 75% of the fence or wall, between the fence or wall and the property line) to fully screen the operations of the vehicle repair shop. Such fences shall not be located within any sight distance triangles at any intersection, but shall be set back to provide unimpeded vision clearance for vehicular traffic.

Existing vehicle repair shops on parcels with zoning that does not permit the use, which were in operation prior to January 1, 1994, shall have until January 1, 2009, to come into full compliance with all requirements of the Zoning Ordinance or shall be required to cease operation.

## SECTION 8

That the portion of Section 8.1 [Performance Standards for All Development] titled "Fences and Walls" be rewritten as follows:

### Fences and Walls

Retaining walls may be located within yard spaces.

1. Fences and walls in residential, office, and neighborhood commercial (NC) zones: Fences and walls not exceeding 8 feet in height, shall be permitted within side and rear yards or along side yard and rear yard property lines. Opaque fences on rear yards with street frontages exceeding 4 feet in height [for example, a stockade fence between a rear yard and a street], shall have a vegetative cover along the street side of the fence. The vegetation at maturity shall cover 75% of the fence. Fences and walls within any portion of the front yard extending across the full width of the lot and lying between the street frontage of the lot and the building front, shall not exceed 4 feet in height,

unless a use permit is obtained from the Board of Adjustment. For corner lots, fences and walls located directly between the primary structure and the side street shall not exceed 4 feet in height along a side yard, which is adjacent to a street unless a use permit is obtained from the Board of Adjustment. An exception shall be granted for lots of 2 acres or more where fences may exceed the 4 foot height limit up to 8 feet without Board of Adjustment approval if the fence is located at least 50 feet from the right of way and is made of a material which allows public view through the fence; for example, a rail fence or a chain link fence. In cases where the Board of Adjustment is asked to rule on a request for a higher fence, the Board shall consider among other things, the size and location of the lot, the dimensions of setbacks on adjacent lots, whether the fence or wall will be detrimental to nearby properties or will affect the health and welfare of the citizens. Fences or walls existing as of August 10, 1998, shall be considered nonconforming and must meet existing regulations if damaged more than 50% of replacement value and rebuilt. In addition, fences and walls required to be higher by other provisions of this ordinance shall be allowed. Higher fences or walls shown and approved on a development plan or site plan may also be allowed. Adjustments to the height limits may be permitted by staff due to field conditions or in order to accommodate decorative features on the fence or wall.

2. Fences and walls in the remaining zones: Fences and walls shall not exceed 4 feet in height in street yards; except when required to screen junkyards or vehicle repair shops within land with a light industrial (I-2) or heavy industrial (I-3) designation. If fences or walls are made of see-through construction, they may exceed the 4-foot height limit and may be allowed up to 8 feet in height. Fences and walls shall not exceed 8 feet in height elsewhere on the property unless a higher fence is specifically required or allowed by the provisions of this ordinance, or has been shown and approved on a development plan or a site plan. Adjustments to the height limits may be permitted by staff due to field conditions, or in order to accommodate decorative features on the fence or wall.
3. The Board of Adjustment may allow fences or walls to exceed the height limits if the following findings are made:
  - a. That the fence or wall does not impede the natural light from reaching the subject or surrounding properties to their detriment.
  - b. That normal circulation of air is not unreasonably impeded by the fence or wall for the subject or surrounding properties.
  - c. That the fence or wall will not hinder access to the subject or surrounding properties for emergency services.
  - d. That the fence or wall shall be reasonably compatible with the surrounding properties in that it will not adversely affect property values.



- e. That vision clearances for pedestrian and vehicular traffic will not be impeded.
- f. Additional conditions may be specified to protect the welfare of the neighborhood and adjacent properties.

## SECTION 9

That Section 19 [Nonconformities] Subsections 19.2 and 19.3 be rewritten as follows:

*19.2 Grandfathered Uses, Structures, and Plans  
(Generally applies to situations involving the transition between the pervious ordinances and the merged ordinance)*

1. Unless specified below, any use, building, development plan, or site plan which was lawfully existing prior to the effective date of this ordinance (January 1, 1994), and not considered a nonconformity prior to the effective date of this ordinance, may continue or be reconstructed as a conforming use from the original adoption of the merged Durham Zoning Ordinance, even though the use, lot, or, building may not conform with the provisions of this ordinance for the district in which it is located. Unless specified below, grandfathered uses, structures and plans may continue as long as they remain otherwise lawful. Structures may be enlarged using standard procedures found in this ordinance, provided that the enlargement shall be in conformance with the dimensional and parking requirements of this ordinance in effect at the time of the enlargement.

The Grandfathering provisions of this Section do not apply to:

- a. Uses and buildings which were in violation of the zoning requirement existing at the time of the effective date of this ordinance. These uses will be considered continuing violations, they may not be replaced and must be corrected to meet current ordinance standards.
- b. Nonconforming signs are required to meet all the requirements of the Sign Section of this ordinance.
- c. Junkyards and salvage yards. Existing junkyards and salvage yards on parcels with zoning that permits the use, which were in operation prior to January 1, 1994, and do not comply with the provisions above, shall have until January 1, 2006, to be enclosed by a fence 8 feet high, measured from the lowest point of grade and therefore screened from view. The fence shall be maintained in good condition. No stored materials shall be visible from ground level immediately outside the fence.

Existing junkyards and salvage yards on parcels with zoning that does not permit the use, which were in operation prior to January 1, 1994, shall have until January 1, 2009, to come into full compliance with all

requirements of the Zoning Ordinance or shall be required to cease operation.

- d. Vehicle repair shops. Those vehicle repair shops that are determined to be nonconforming, though they have appropriate zoning, shall be required by January 1, 2006 to provide an opaque screen (a fence or wall at least 6 feet but no more than 8 feet in height, with a vegetative cover that, at maturity, covers 75% of the fence or wall, between the fence or wall and the property line) to fully screen the operations of the vehicle repair shop. Such fences shall not be located within any sight distance triangles at any intersection, but shall be set back to provide unimpeded vision clearance for vehicular traffic.

Those vehicle repair shops located on parcels that do not permit this use but which were in operation prior to January 1, 1994, shall have until January 1, 2009, to come into full compliance with all requirements of the Zoning Ordinance or shall be required to cease operation.

If a grandfathered use is changed to a use which conforms to the provisions of this ordinance, it may not be changed back to a grandfathered use. If a grandfathered use is abandoned, it may not be reestablished

### *19.3 Nonconformities Defined*

*(Generally applies to situations resulting from amendments made to this ordinance after January 1, 1994)*

A nonconformity shall be any property, use, or structure not grandfathered under Section 19.2 or which as a result of amendments to this ordinance or a preexisting condition, does not meet the current standards of the ordinance.

1. A nonconforming lot shall be any legally established parcel which does not conform to the current area or dimensional requirements of the zoning district in which it is located.
2. A nonconforming use shall be any land use or type of residential use which was legally established but has become a prohibited use in the district in which it exists.
3. A nonconforming improvement or structure shall be any legally established improvement, building or structure which fails to meet current ordinance standards for setback, height, or similar factors.

Any lawful lot, use, or structure which lawfully existed prior to any amendments to this ordinance which made it nonconforming may continue, unless the nonconforming use is a junkyard, salvage yard, or vehicle repair shop, in which case it must comply with the provisions of this ordinance governing the amortization of such a nonconforming use. Reconstruction, alterations, and expansions are subject to the provisions of this Section.

## SECTION 10

That Section 19 [Nonconformities] Subsection 19.6 be rewritten as follows:

### *19.6 Nonconforming Uses*

1. For any nonconforming use, floor area may not be enlarged, residential density may not be increased, and lot coverage may not be increased.
2. A nonconforming use may be continued (though for some uses, the period of time within which the use may be continued may be limited) and may be changed to a use which is allowed by the zoning district. A nonconforming use may not be changed to another nonconforming use.
3. Any nonconforming use which is discontinued for a period of 6 consecutive months or longer may not be reestablished. The only use permitted after that time shall be a use which is allowed in the zoning district. If the nonconforming use operates without any structural components, the use may not be reestablished if it is discontinued for a period of 30 days or longer.
4. A nonconforming use may not be relocated to another portion of a lot.
5. A nonconforming use which is damaged or partially destroyed may be restored only if the damage is less than 50% of the tax value or, at the request of the property owner, the Inspections Department may determine the value in terms of replacement costs. If reconstruction is begun within 2 years after the damage occurs, the provision regarding a 6-month abandonment may be waived (Section 19.6.3).
6. No new structures may be constructed to be used as an accessory to a nonconforming use.

## SECTION 11

That the Durham Zoning Ordinance may be renumbered as necessary to accommodate these changes.

## SECTION 12

That this ordinance becomes effective upon adoption.

(Zoning Ordinance amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

### **Consent Agenda Items Removed for Discussion:**

Consent Agenda 5(d): Budget Ordinance Amendment No. 04BCC000014—Appropriate Funds for 100 Years of Powered Flight per Approved Agreement with Raleigh-Durham Airport Authority (approve budget ordinance amendment to appropriate funding for the initial payment of \$50,000 per the agreement with Raleigh-Durham Airport Authority Celebrating 100 Years of Powered Flight. These funds were initially budgeted in the

Commissioners' contingency fund for Fiscal Year 2003-2004 and will be transferred to the County Manager's budget.)

Vice-Chairman Bowser stated that he pulled this consent agenda item to voice his concern that the sales tax revenues generated by the Raleigh-Durham International Airport are not shared with Durham County. He stated that the airport is jointly owned by the Durham community and the Wake County/Raleigh community. Sharing is justified because the majority of traffic served by the airport is coming to Durham County.

He stated that the appearance of this agenda item raised questions for him. He stated he could not vote to send any more money to the airport until there is clarity as to why the airport revenues cannot be shared. He stated that this is not fair.

County Manager Mike Ruffin responded that he had spoken twice with Reyn Bowman, President of the Durham Convention and Visitors Bureau, regarding the Vice-Chairman's concern. County Manager Ruffin commented that Mr. Bowman understood the concern. He advised that, because taxes are collected "on a situs basis," a statewide legislative change would be required to redistribute taxes to the four units of government helping to pay for the airport.

Chairman Reckhow remarked that the situation is that the Board has approved the agreement. The payment was due July 1. She placed the matter before the Board for action.

Commissioner Heron made the statement that Vice-Chairman Bowser has a legitimate concern that the Board should recognize. In answer to her question, the County Manager stated that the other three jurisdictions have made their installment payment for the "100 Years of Powered Flight" memorial.

Commissioner Cousin asked if the matter could be taken to the Durham legislative delegation.

Chairman Reckhow suggested that the first installment payment be made as agreed and that the Board bring up the matter, if it chooses, at the next meeting with the Durham legislative delegation.

Vice-Chairman Bowser said he would support the item if the Board agrees to pursue the sales tax revenue distribution matter with the legislative delegation and the City of Durham.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve consent agenda item 5(d) and pay the first \$50,000 installment to the Raleigh-Durham Airport Authority with the understanding that the Board, in

January 2004, will draw up a proposal to present to the legislative delegation to bring about fair and equitable distribution of the sales tax and other revenues generated by the Raleigh-Durham Airport, to include Durham County and the City of Durham.

The motion carried unanimously.

The Budget Ordinance Amendment follows:

DURHAM COUNTY, NORTH CAROLINA  
FY 2003-04 Budget Ordinance  
Amendment No. 04BCC000014

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

GENERAL FUND

	<u>Current</u> <u>Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised</u> <u>Budget</u>
<u>Expenditures</u>				
General Government	\$22,626,954	\$50,000		\$22,676,954
Other	\$18,818,459		\$50,000	\$18,768,459

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

This the 8<sup>th</sup> day of September, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

Consent Agenda 5(g): Joint Resolution on Vocational Educational Opportunities (approve A Joint Resolution to Establish a Task Force to Study Enhancing Vocational Educational Opportunities in Durham County.

Vice-Chairman Bowser pulled this consent agenda item. He stated he was under the impression that the Board should be able to choose the nine members for the Task Force from a list of about 18 nominees.

Chairman Reckhow advised that, based on the criteria for membership, the process followed by the County Manager has been to target these people and to approach and ask them to serve. They are not the type to respond to a newspaper advertisement for applicants. She assured Vice-Chairman Bowser that these are suggested nominees and that the County Manager intends to work closely and individually with the Commissioners to find persons that all will accept. He has knowledge of the Board's expectations as relates to those nine positions. The Board will have the final approval.

County Manager Mike Ruffin advised his intent to speak with all five Commissioners. He would suggest some persons and ask the Commissioners for their suggestions. A list would be made to circulate among the Board. The process would continue until there is a slate of nominees with which the Board would feel comfortable.

Vice-Chairman Bowser commented he could accept this.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve Consent Agenda Item 5(g) and adopt the resolution to create a task force to study enhancing vocational education opportunities in Durham County.

The motion carried unanimously.

The resolution follows:

A JOINT RESOLUTION TO ESTABLISH A TASK FORCE TO STUDY  
ENHANCING VOCATIONAL EDUCATIONAL OPPORTUNITIES IN DURHAM  
COUNTY

WHEREAS, Durham County ranked #1 in job announcements and new manufacturing investment among North Carolina counties in 2002; and

WHEREAS, over the last ten years, \$305 million in expanded investment and 2,700 new jobs have been announced in Durham County; and

WHEREAS, the Board of Commissioners of Durham County and the Board of Education of the Durham Public Schools desire to strategically prepare high school student, including students at risk of dropping out, to favorably compete for new and existing jobs created in Durham County.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Durham County and the Board of Education of the Durham Public Schools to create a Task Force to investigate the feasibility of a Career and Technical Education School. The Task Force shall be comprised of twenty-one (21) representatives; two (2) representatives from the Board of County Commissioners and two (2) representatives from the Board of Education. The remaining seventeen members shall be appointed by the Board of County Commissioners and the Board of Education. The county manager shall nominate nine (9) citizens for consideration to the Board of County Commissioners and the superintendent shall nominate eight (8) citizens for consideration to the Board of Education. The Task Force shall make a report to the School Board and Board of County Commissioners by December 31, 2004."

Adopted this the 8<sup>th</sup> Day of September, 2003.

**Closed Session**

The Board is requested to adjourn to closed session to discuss matters relating to the location or expansion of industry pursuant to G.S. § 143-318.11(a)(4).

Commissioner Cousin moved, seconded by Commissioner Jacobs, to adjourn to Closed Session to discuss matters relating to the location or expansion of industry pursuant to G.S. § 143-318.11(a)(4).

The motion carried unanimously.

**Reconvene to Open Session**

The Board of County Commissioners returned to Open Session. Chairman Reckhow stated that the Board gave direction to staff in the Closed Session.

**Adjournment**

There being no further business, the meeting was adjourned at 11:04 p.m.

Respectfully submitted,

Garry E. Umstead, CMC  
Clerk to the Board