

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

Monday, March 3, 2003

9:00 P.M. Worksession

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

Announcement

Chairman Reckhow announced an informational citizen workshop regarding the widening of Alston Avenue from NC 147 to US 70 Business. The meeting would be held at the Asbury Temple United Methodist Church sanctuary located at 201 S. Alston Avenue on March 6, 2003 from 4:00 to 7:00 p.m.

Little River Community Complex

William Ross, President, Little River Community Complex, requested that the Board assist in funding the \$25,000 roof replacement due to the Senior Center's already failing roof and ice storm damage.

County Manager's Recommendation: The Manager recommended that the Board hear the request.

Chairman Reckhow asked Mr. Ross to address the Board of County Commissioners concerning the Little River Community Complex roof replacement.

Mr. Ross said that the Little River Community Complex is requesting \$25,000 to replace the Little River Community Complex Senior Center roof. The plan is to spend \$20,000 to replace the exterior roof and \$5,000 to replace insulation and damaged ceiling tile in the Senior Center and in the hallways. The Senior Center serves approximately 100 seniors. On a typical day, 30 to 35 seniors are served a hot meal and approximately 40 walk in the gym.

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

Commissioner Heron made comments about the Little River Community Complex. She supported the \$25,000 request for roof repair.

Chairman Reckhow suggested that the request be referred to County staff. She asked Mr. Ross to submit current financial information and any other pertinent background information to staff. The County must get a better understanding of the situation before allocating its resources. The County Manager would make a recommendation to the Commissioners at their March 24, 2003 meeting.

Chairman Reckhow voiced appreciation to Mr. Ross for bringing this matter to the Board's attention. We will see what we can do. Great work is being accomplished at the complex!

Citizen Comments—E. L. Allison

Dr. E. L. Allison requested time on the agenda to speak to the County Commissioners regarding the M/WBE program for Durham County.

Dr. Allison wished to discuss item Nos. 7, 9, and 10 in the Memorandum of Understanding between Durham County and Durham Public Schools.

Dr. Allison began her comments with item No. 7, "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." She was concerned because information is released to the public after the fact, which gives citizens no opportunity for effective input.

Dr. Allison continued with item No. 9, "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." Dr. Allison said that at the beginning of the process, there must be an evaluative process to determine what has been left out, what has been included, and what is missing. We need to do that before the fact. Again, this is opened-ended.

Item No. 10 of the memorandum states, "The Board of County Commissioners and the Durham Public Schools Board of Education shall jointly meet in the last quarter of the fiscal year to review compliance with this Memorandum of Understanding prior to the commencement of budget discussion for the 2003-2004 Fiscal Year." Dr. Allison said that the Retention Report for grades 1, 3, 5, 6, and 8 does not get to the Commissioners until October, even though this information is available the end of July. The Commissioners should have this information at the end of the first semester. These three items are too open-ended.

Chairman Reckhow stated that the School Board made one or two changes to the memorandum at its last meeting in response to the Durham Committee on the Affairs of Black People. The School Board is sending the document back to the Commissioners for further consideration. Chairman Reckhow appreciated Dr. Allison's observations and recommended that her issues be considered in the update process.

Chairman Reckhow asked Commissioner Cousin to take the lead role in getting the comments pulled together from the Commissioners and the public regarding the memorandum. The Board of County Commissioners and the DPS Board of Education will meet on April 28, 2003 to discuss the draft Memorandum of Understanding.

Durham Public Schools Board of Education Travel Allowance and Stipend

Commissioner Heron expressed concern about the School Board's conversation at a recent meeting. The members were discussing the need for a larger travel allowance and stipend so they could go to a meeting in San Francisco for individual development. That is just not acceptable with the funding shortages we have now. The Board of County Commissioners has a travel freeze at the present time. I hope that Chairman Reckhow, Commissioner Cousin, and the County Manager have explained to the School Board that we still have a budget crisis. If that message has not been conveyed to the School Board, it should be. The School Board should respect the fact that the budget crunch does exist.

Chairman Reckhow asked the Commissioners if it would be acceptable to convey the message orally to the School Board in a few weeks.

Review of Legislative Agenda for Durham Crime Cabinet

The Durham Crime Cabinet has adopted a Legislative Agenda for the 2003 Legislative Session. Several of the issues on that agenda address concerns voiced by several members of the Board of County Commissioners. Consequently, Chairman Reckhow requested that a review of the agenda might be appropriate.

Resource Person(s): Ellen W. Reckhow, Chairman, Durham County Board of Commissioners and Co-Chair of the Durham Crime Cabinet; Jim Hardin, District Attorney and member of the Durham Crime Cabinet

County Manager's Recommendation: Review the agenda and advise staff if any additional action is necessary.

Chairman Reckhow commented that the Durham Crime Cabinet Legislative Committee met to discuss potential changes to various North Carolina laws. Members of the Durham Legislative Delegation were present at the meeting. The Legislators advised that statewide support for the legislation would facilitate the process. The Durham Crime Cabinet is working to obtain necessary support. Commissioner support will help get the legislation passed.

Chairman Reckhow asked Mr. Hardin to present a brief overview of the legislative agenda adopted by the Durham Crime Cabinet for the 2003 Legislative Session.

Mr. Hardin came forward and presented an overview of the legislative agenda. The subjects he discussed follow:

1. Magistrate Appointment, Supervision, and Retention
2. Resolution of Class H and Class I Felonies in District Court
3. Constitutional Amendment for Non-Jury Trials
4. Use of Firearms
5. Identity Fraud
6. Gang Status Offenses
7. Habitual DWI
8. Felony Death by Vehicle

The Board of County Commissioners asked questions and made comments.

District Attorney Hardin responded.

Chairman Reckhow suggested that this item be placed on the March 10, 2003 Regular Session Agenda and that it be transmitted to our local delegation. At least one of these recommendations is on the City's legislative agenda. County Commissioner reinforcement of the City's recommendations would help get the proposed legislation ratified.

Annual Report for the Minority/Women Business Enterprise (M/WBE) Program

The Board of County Commissioners adopted a new ordinance relative to the M/WBE program on January 22, 2001, which requires that the County Manager provide an annual report for the preceding year.

It is the policy of Durham County to provide minorities and women equal opportunity to participate in all aspects of the County's contracting programs, including, but not limited to, employment, construction projects, and/or materials and service contracts consistent with law. It is also a policy of the County to prohibit discrimination against any business in pursuit of these opportunities on the basis of race, color, national origin, religion, sex, age, disability or veteran's status, and to conduct its contracting programs to prevent such discrimination, to investigate any claims of discrimination, and correct any discriminatory practices.

After completion of the disparity study in 2000 (which included several community meetings), various areas of need were identified such as additional training for M/WBEs, outreach notification, and modification of subcontracting requirements. These needs have been and are being addressed as the new ordinance is implemented.

The report of contractual activity provided a synopsis of M/WBE and contractual activity during the past calendar year.

Resource Person(s): George Quick, Finance Director, and Yolanda Moore-Gaddy, Business Development Manager

County Manager's Recommendation: The County Manager recommended that the Board receive the M/WBE report for the 2002 Calendar Year and advise staff if any additional information is necessary.

Chairman Reckhow called on Mr. Quick to make introductory remarks about the agenda item.

Mr. Quick said that this is the annual report on the Minority/Women Business Enterprise program for the preceding year. Some progress has been made. We continue to move forward to make progress. The problem is finding adequate labor in the market to support our program.

Mr. Quick asked Ms. Moore-Gaddy to give the formal report to the County Commissioners.

The M/WBE Contractual Participation report for January 2002 - January 2003 was presented using the following subsections:

Formal Construction Projects: \$200,000.00 and above
Informal Construction Projects: \$0 to \$199,999.00
Professional Formal Services Contracts: \$20,000.00 and above
Informal Professional Services Contracts: \$0 to \$19,999.99
Formal Architectural Projects: \$0 to \$600,000.00
M/WBE Outreach

The Board of County Commissioners asked questions and made comments.

Ms. Moore-Gaddy and Mr. Quick responded to the questions and comments.

Chairman Reckhow stated that the Board has received the report. No action is needed or required.

Revisions to County's 10-Year Capital Improvements Program (CIP)

Staff undertook a review of the board-adopted, 10-Year CIP for FY 2004-2013 with the following goals:

- Review all project estimates for accuracy and ensure that all costs have been included to bring each project to fruition;

- Consider any new projects that may have surfaced since last revision;
- Revise project scheduling and funding to accommodate the earlier completion of several projects; and
- Revise revenue estimates for property taxes, sales taxes, and other dedicated revenues for the capital finance plan which supports the CIP.

Resource Person(s): Mike Ruffin, County Manager; Carolyn Titus, Deputy County Manager; Wendell Davis, Deputy County Manager; Pamela Meyer, Budget and Management Services Director; George Quick, Finance Director; Glen Whisler, County Engineer; Mike Turner, General Services Director; and Keith Lane, Senior Budget Analyst

County Manager's Recommendation: The Manager requested that the Board receive the presentation, set special meeting dates and times to continue review of the recommended revisions, identify any specific projects that it desires to review in greater detail, and advise staff if any additional information is necessary.

Chairman Reckhow referred the agenda item to County Manager Ruffin for presentation to the Board of County Commissioners.

County Manager Ruffin said that a committee process was employed to bring forth these recommendations for consideration. He explained why the CIP is being revisited this soon after its adoption in August 2001. First, the Board of County Commissioners has one new member. Second, projects change and those updates and changes need to be integrated into the CIP. New projects emerge in a county with significant growth like Durham. Third, revenues change. The slump in sales taxes changed some of the forecasting to raise the money to pay for scheduled projects. Bond rating bureaus want Triple A counties to frequently re-value their capital spending plans.

Chairman Reckhow noted that the agenda item would be lengthy. She asked that questions for clarification purposes be asked during the presentation. Comments or concerns should be voiced following the presentation.

County Manager Ruffin presented the CIP to the Commissioners and spoke on the following:

- Goals for Today's Review of Recommended Revisions to CIP
- Recommended CIP Program Highlights
- Four Major Projects in Ten-Year CIP
- Nine (9) New Projects
- CIP Projects Underway & Funded in Previously Approved Capital Improvement Plan
- Human Services Complex & Associated Parking
- New Justice Center & Justice Center Parking Projects
- American Tobacco Project
- Technology Projects

- NCMLS BioQuest Phase II Project
- FY 2004 G.O. Bond Issue Recommended--\$118.39 million
- G.O. Bond Referendum FY 2010--\$76.5 million
- G.O. Bond Referenda By Year
- 2004 G.O. Bond Issuance Schedule (\$118.4 million)
- Total COPS Debt by Year
- Total 2/3 Bonds by Year
- Revenue Changes
- 2004 G.O. Bond Referendum Tax Needs
- Estimated Funds from One Cent (Property Tax)
- Capital Finance Program Property Tax Needs
- Proposed CIP Worksession Dates

The County Commissioners asked several questions and made comments about the CIP.

County Manager Mike Ruffin, Finance Director George Quick, Budget and Management Services Director Pamela Meyer, and Senior Budget Analyst Keith Lane responded to the questions and comments.

Chairman Reckhow suggested that the Mental Health plan be heard and discussed at a worksession on March 24, 2003 from 4:00 – 6:00 p.m. (prior to the Board's regular session). If no changes are made to the document, approval could be moved forward to the consent agenda at the 7:00 p.m. regular session.

Chairman Reckhow asked the Commissioners if they could meet on March 25 from 9:00 a.m. - noon and again on March 26 from 9:30 a.m. - 12:00 noon.

The Commissioners concurred to meet on those dates.

Chairman Reckhow wanted each project reviewed so the Commissioners could ask questions and identify issues to be addressed. All of the problems will not be solved today. Staff will be given time to research items of concern and revisit the Board with answers to the questions.

The Commissioners and the administration discussed the following CIP issues:

1. New Justice Center/Parking
 - Size of new facility
 - Use of Annex/First Union Building
 - Parking
2. Judicial Building Renovations
 - Reference-facility plan etc.
3. Whitted School/Head Start Relocation
 - Renovation cost of new facility (YMCA)

- Site visit before 24th
- 4. Animal Control Facility
 - More information
- 5. EMS West Station
 - Co-location possibilities
 - School site
 - Fire department site
- 6. Sheriff's Training Center & Driving Range
 - What does City use
- 7. Youth Home
 - Options being addressed
- 8. Open Space Land Acquisition
 - Move \$100k in for FY 04 and FY 05
- 9. Agriculture Building Renovations
- 10. Human Services Complex
 - What has changed
 - How much is project less than version with all three in one complex
 - What are Northern Durham High School Stadium options/costs
 - Impact of changes on downtown master plan
- 11. Durham Technical Community College
 - Northern Durham Campus
 - Where are students from
 - Newton Building Expansion
 - Coordination with DPS on workforce preparedness
- 12. Durham Public Schools—Update from Board of Education
- 13. Main Library Renovations
 - Update on information from approved CIP
- 14. Southwest Branch Library
 - Push back project until impact of South Regional Branch is known
- 15. Bragtown Branch Library
 - Removed from old CIP; may need more information on why this project was re-requested
- 16. NC Museum of Life and Science
 - Possibility of shared costs between County and NCMLS for Dino Trail
- 17. Capital Finance Plan Model/Revenues
 - To be reviewed on March 24, 2003

The following is a summary of the FY 2004-2013 10-Year CIP:

Summary
FY 2004-FY 2013 10-Year CIP

New Projects

1) IT-Finance System:

- Replacement/Upgrade of existing Finance, HR, Purchasing, and Budget Systems. The current software company will not support present versions of the systems after 2005. This project will determine processing requirements needed by the County HR/Payroll and Financial departments and then acquire the software best able to meet those needs. Computer hardware will then be purchased as necessary to support the new software platform. The project is scheduled to commence July 2003 and to be completed by October 2004. The end solution is envisioned to meet County needs until FY 2007 when another upgrade would be likely.
- The Durham County HR/Payroll v 2.3.2 and Financial v 2.2 application packages will become obsolete and unsupported as of July 2005. AMS (the present software vendor) has moved the next version, 3.0, to a client server format and will offer no support for the current platform. AMS will have no enhancements and restrict support to only necessary platform, legal, regulatory, or tax changes. Annual maintenance will increase 15% each year, beginning in 2004 until July 2005. The project schedule will allow an appropriate, although not excessive, time to complete a conversion; perform sufficient testing; and train personnel prior to production implementation. This project would be negatively impacted by delays in excess of 3 months. The net effect of any delay in excess of that amount, or in postponement of the project would be 2005-year end creation of W-2s and 1099 forms would not be possible using AMS software, as they would not have prepared the appropriate updates for our application.
- Department heads from IT, Finance, HR, and Budget, as well as key employees, are already in the process of reviewing new or upgraded software possibilities to meet this need.

2) PC Replacement/Purchase Project:

- It has been determined that the “lease” arrangement proposed in last fiscal year’s budget for PC replacements, is not the best option from a financial perspective. This project assumes that the county will purchase the computers needed through short term (3 year) financing with a banking institution. The 2004-13 CIP recommendation plans the replacement of 2/3rds of the PC’s countywide in FY 2004 and the final third in FY 2005. Future year costs repeat the cycle of replacements on a three-year schedule; along with other IT related replacements for servers, mainframe computers and Finance/HR/Budget software upgrades.
- This project provides the same result as funds allotted in the General Fund yearly budget were expected to do, but keeps all spending and cost controls within the

county. Also, this project will put the county on a more systematic replacement and update schedule for IT components.

3) Whitted School/Head Start Relocation Project:

- In order to facilitate the continued operation of the Operating Breakthrough Head Start program, it is recommended that the County purchase the currently vacant downtown YMCA preschool building. This building will be purchased with equal payments over 4 years, and should be available to Operation Breakthrough early in FY 2003-04. With Operation Breakthrough leaving its current location at the Whitted School site for the new YMCA space, it is also recommended that the County move towards demolition of the Whitted School building, which is a progressively deteriorating building that is both difficult and costly to maintain. Estimates from the Engineering department for demolition of the school are around \$1 million. Demolition is recommended for FY 2005-06.

4) Animal Control Facility:

- A facility is needed to house the Animal Control Division of the Department of General Services. This project will provide approximately 3,340 square feet of office and associated support areas to manage the day-to-day operation of the County Animal Control Program. In addition to the facility, approximately 17,000 square feet of public/employee parking, driveways and concrete walkways are included. The proposed construction is a one level wood framed office building.
- The current doublewide modular unit was planned as a temporary solution, with the relocation of Animal Control, for the convenience of daily operation of both Animal Control and the Animal Shelter. The current office space is too crowded for a staff 15 to effectively operate. There is also a need for a space to provide rabies vaccinations to walk-in traffic, a conference/training area and storage of supplies equipment and records.
- The only alternate option considered was to leave the Animal Control staff in the existing leased mobile unit. The current lease expires in two years and will either need to be extended or an option to purchase executed for permanent use.

5) EMS-West Station:

- This project will include the acquisition of approximately a ¾ acre of land, and construction of a two bay EMS sub station that will initially house the EMS vehicle and crew currently housed at Durham Fire Department Station 5 on Chapel Hill Road. The facility will eventually house a second vehicle and crew as call volume increases dictate, (3-5 years).
- Until FY 1999-00, that portion of Durham County referred to as the Southwest District, which encompasses the area generally bounded by 15-501, Pickett Road, Old Chapel Hill Road, and the Orange County line to the west, was served by EMS units stationed on the Duke Campus, Lincoln Community Health Center and Parkwood Volunteer Fire Department. In addition, the New Hope Volunteer Fire Department and the City of Durham Fire Department provided first responder

assistance, (with no ambulance transportation), from their various fire stations located throughout that area. Up to that point, EMS response times averaged a minimum of 9 and a maximum of 15 minutes to residents of that area.

- A new County-wide EMS plan was approved by the Board of County Commissioners for implementation in FY 2001, that would allow some expanded EMS coverage in that area by placing a Durham County Ambulance and crew at the City of Durham Fire Station #5, located on Chapel Hill Road near Lakewood Shopping Center. This arrangement was initially understood to be temporary, as the availability of space to house an adequate number of vehicles/crews to address future growth needs is not available at that location. The result was immediate. Response time averages to the eastern and central sectors of that district were reduced by approximately half, to minimums of 5 and maximums of 12-15 minutes.
- It was apparent, however, that this new configuration would only serve to reduce response times to approximately half of the designated district. Parkwood Volunteer Fire Department agreed to provide some additional assistance by staffing their Farrington Road station as they could, given limited financial resources. They currently staff that station less than 50% of the time, and, as a result, average response times to the western portion of that district still do not approach the approved County-wide goal of 8 minutes or less. Currently, average EMS response times from the central, (South Square area), west to the Orange County line remain in the 10-15 minute range, with some exceeding 18 minutes. With both commercial and residential growth currently underway and widening of Chapel Hill Boulevard planned for the near future, it is felt that the location of a permanent EMS station in the southwestern portion of the County will address current response time deficiencies as well as anticipated future growth in the entire district.

6) Detention Center Improvements:

- The proposed project involves the installation of modified ventilation grills and channel frames on windows to reduce the risk of suicide at the Durham County Detention Center. The project proposal includes modification of vents in twelve (12) inmate pods (48 cells per pod), fourteen (14) cells in booking area, and twelve (12) cells in the medical unit of the Detention Center. Each cell has two (2) vents that will be retrofitted with "S-Vent" Security Grilles, which are designed to prevent vandalism, obstructed ventilation, and the risk of suicide. The total number of vents to be upgraded is 1,178.
- Funding for other detention center improvements will be recommended in the annual budget, as each priority project is less than \$1 million and/or will require less than a year for completion. Approximately \$750,000 will be recommended in the annual budget for other necessary detention center improvements for FY 2003-04.

7) Bragtown Library Branch Renovation Project:

- This project will replace the 41 year-old, non-ADA compliant 1,000 square foot facility with an ADA compliant, 10,000 square foot facility equipped with expanded meeting room space, additional space for collections, an upgraded and expanded public computing center, and better workroom/office space for staff.
- The current Bragtown Branch is too small to offer adequate book collections or reference materials to support homework assistance or quality reading selections within its community. The tight space limits the number of computer workstations that can be deployed to less than six, well below what the children and families in the surrounding neighborhoods really need. The facility size also reduces programming space to a corner of a single common room shared by all users.
- The size and lack of modernization hurts the general community served by the branch, and decreases the branch's ability to augment other area education/information facilities. The branch cannot effectively serve as an additional resource for students of the nearby Lakeview School, which runs alternative learning programs for special needs students within the Durham Public Schools.

8) NC Museum of Life & Science BioQuest Phase III Project:

- A new Phase III amount (\$7,527,683) for continued growth (new and expanded exhibits) in this project has been requested, starting in FY 2006-07. Recommended funding would come from a small amount of County Contribution in FY 2008-09 (\$179,819) and G.O. Bonds in FY 2009-10 (\$7.374 million)
- BioQuest III, the third phase of the North Carolina Museum of Life and Science project, will promote science learning with new outdoor exhibits, visitor amenities, and facility improvements. The project is subdivided into two, self-standing components.
 - Component A, totaling \$4,615,561 for completion in 2007-08, provides for a new tethered balloon exhibit, expanded visitor amenities, and improvements to the Main Museum Building.
 - Component B, totaling \$2,912,122 for completion in 2009-10, brings on new animal exhibits for *Down to Earth*, a Maintenance/Animal Support Facility, and a Special Events Amphitheater.

9) ENTERPRISE FUND: Reused Waste Water Facilities:

- This project will provide the facilities needed to utilize the highly treated wastewater for approved uses in the community. The most common local uses are irrigation and cooling towers. More uses are subject to develop as the quality of the product improves, as the quantity of the product increases, and as the availability of potable water decreases.
- The project consists of the final monitoring, measurement, and distribution of the treated water into the community. Treatment and pumping facilities are included

- in the major upgrades currently under way at the plant (Phases I and II of the WWTP Improvements Project). The Reuse program is expected to continue indefinitely, with a small percentage of the County's discharge returned to the community in the first few years and higher percentages as time progresses. These types of facilities (distribution lines) are scheduled to last approximately 50 years.
- The County's major upgrades to the Wastewater Treatment Plant will provide efficient biological treatment with Nitrogen and Phosphorous levels as low as currently possible. The Reuse project will contribute to this effort specifically by reducing the amount of Nitrogen in the County's plant discharge, both to maintain compliance with the NPDES discharge permit, and to improve water quality even more in Northeast Creek and downstream waters.
 - The schedule of this project is related to the completion of Phase II of the WWTP Improvements Project, after which the highly treated water will be available. The first steps are community notification and education, planning, and design. The project will be implemented as soon as is possible and practical to provide the water quality benefits.
 - This project will provide benefits to the entire Durham community through the conservation of potable water. There are also local and statewide benefits because of the improvements to the water quality in Northeast Creek and downstream. The costs of these facilities have been considered in the development of the Rate Model for the Enterprise Fund, which will bear the entire cost of the project. Debt service and additional operating impacts for this project will be offset by the wastewater treatment rates or by charges for the product.

Existing Projects With Changes

1) New Justice Center Project:

- The overall scope of the project has not changed, however, the completion date has moved out two years from the FY 2002-11 CIP (Approved CIP) to FY 2008-09. Also, the recommended funding sources have moved from:
 - County Contribution (FY's 2002-2004) in the Approved CIP to 2/3rds G.O. Bond funds issued in FY 2003-04.
 - GO bonds (issued in FY 2003-04 and FY 2005-06) in the Approved CIP to a single COPS issuance in FY 2005-06.

2) New Justice Center Parking Project:

- Onsite parking for the New Justice Center project has been decreased from an estimated 1,250 spaces in the Approved CIP to 1,122 in the current CIP recommendation. Funding for this project has decreased proportional (\$2,640,750) to the decrease in the number of spaces. The recommended funding has changed from:
 - County Contribution (FY's 2002-04) in the Approved CIP to 2/3rds G.O. Bond funds issued in FY 2003-04

- GO bonds (FY 2003-04) and COPS (FY 2005-06) in the Approved CIP to a single COPS issuance in FY 2005-06. A COPS issuance is needed two years before construction on the deck begins because this parking deck is considered part of the New Justice Center project. Funding guidelines for COPS dictate the debt be for a single asset.

3) American Tobacco Project:

- In the Approved CIP, there were many details to be finalized, and while not altering the overall cost of the project, the timing of funding has changed. Approximately \$14.198 million has been allocated for COPS issuance in FY 2002-03 (these funds are shown on the spreadsheets as being issued in FY 2003-04, but will actually be issued in late FY 2002-03) for the South Garage. The remainder of funds (\$5.362 million) will be issued as COPS in FY 2004-05 to support approximately 400+ spaces in an East Garage.

4) Justice Building Renovations:

- The major funding source for this project has changed from the Approved CIP, as well as the timing of its completion. The scope and total costs of the project have not changed. Timing of this project is related to completion of the new Justice Center. When the New Justice Center is completed, work can start on renovation of the old Justice Building. Therefore as the new Justice Center project has moved out two years, so too has this project. Expected completion of these renovations will occur in FY 2009-10. The recommended funding source for this project has changed from G.O. Bonds in FY 2005-06 to 2/3rds G.O. Bond funding and County Contribution in FY 2007-08

5) New Youth Home:

- This project's cost has increased by \$500,000 to support any future land purchase. Estimated completion of the project has not changed from the Approved CIP, but the bulk of the project work has moved from FY 2003-04 to FY 2004-05.

6) Open Space Land Acquisition Project:

- The significant change to this project occurs in the timing of the recommended funding source, and the type of large funding source. In the Approved CIP \$1.5 million of G.O. Bond funds was to be allocated to Open Space. In the current CIP, the funding source has increased to \$2 million, shifted out to FY 2005-06, and changed to 2/3rds G.O. Bonds. The timing of those funds will give Open Space personnel a chance to develop clear uses for those funds.

7) Agriculture Building Renovations:

- This project increases in cost by \$325,000, and continues the process of renovating the building to be ADA compliant and to have central air, among other changes. Costs have risen substantially due to legal requirements related to ADA compliance.

8) Human Services-Social Services Project & Human Services-Public Health & Mental Health Project:

- Approximately \$93 million was planned for the two Human Services Complex and Human Services Parking projects in the Approved CIP. It was anticipated that these projects were to be completed by FY 2008-09. Changes in the scope and costs of the two projects have occurred primarily due to state mandated changes to the Mental Health System, while the timing of the projects have stayed essentially the same. In an effort to reduce the overall debt burden of the CIP several options for the Human Services Complex were reviewed. One option that made the most fiscal sense, while still providing appropriate service for Durham County citizens, was to build a new DSS building downtown and build a new Public Health and Mental Health facility on land that currently holds the County stadium.

- Moving Public Health and Mental Health to the County stadium site would cancel the need for a downtown Human Services Complex Parking Deck, saving the County approximately \$22.26 million. The downsizing of the Mental Health space needs, along with building on the County stadium site, would save approximately \$9.598 million on the total cost of building both the DSS building and the new Public Health and Mental Health facility. The total savings in estimated costs from the two Human Services Complex projects approved in the FY 2002-11 CIP compared to the two projects in the current FY 2004-13 CIP is \$31.7 million.

9) DTCC Newton Building Expansion:

- The source of funding and scope of this project have not changed since the Approved CIP. Expected completion of the project has moved out two years to FY 2006-07 (issuance of G.O. Bond funds would not occur until 2005-06), per agreement with DTCC staff.

10) DTCC Campus Improvements Project:

- The major changes to this project concern its scope and costs. The scope has been broadened to include a number of improvements to various campus buildings. The funding for this project in FY 2004 reflects the current year funding (FY 2003), which was frozen, as well as an additional \$200,000 in FY 2001 funds which were never appropriated or spent. Future year increases of \$4m have been shifted from the Northern Durham Center Expansion project, to allow DTCC flexibility in the future to determine which campus projects have priority. Overall the total project request only increased by the \$200k in prior year funding for Campus Improvements.

11) DTCC Northern Durham Center Expansion:

- The scope of this project has been downsized, with the shift of \$4 million mentioned above, to the DTCC Campus Improvements Project. The \$1 million for expansion of the Northern Durham Center have been moved out to a

completion date of FY 2007-08 rather than FY 2003-04 shown in the Approved CIP.

12) DTCC Student Services Building Project:

- The request from the County is still a \$3 million match requirement. The \$9.3 million reflects the total project costs, which includes State Bond funding for DTCC. The recommended funding source is G.O. Bonds in FY 2003-04.

13) Durham Public Schools:

- The funding for FY 2003-04 has been increased to a \$101 million G.O. Bond Referendum. Correspondingly, there will be no additional G.O. referendum necessary for DPS projects in FY 2005-06 or FY 2007-08 (as in the Approved CIP). While the recommended referendum for schools has almost doubled from the Approved CIP, the anticipated issuance of those funds has been estimated over a five-year period. The Capital Finance Plan model presented with this document assumes issuance of \$26.1m for school projects in FY 2003-04, an additional \$40m in FY 2005-06 with the remaining \$35m in FY 2007-08. Under this financing strategy the tax rate (needed to support this debt) will not be dramatically affected in any one year.

14) Southwest Regional Library Branch Renovations

- The Southwest Regional Library Branch Renovations, in the Approved CIP, were to be funded through a GO Bond referendum in FY 2003-04. In the recommended CIP this project has moved out two years, with the funding source changing to 2/3rds G.O. Bonds in FY 2005-06, and scheduled completion in FY 2007-08. The overall cost of the project has increased to account for inflation growth as the project completion date moves out.

15) NC Museum of Life & Science BioQuest Phase II Project:

- An increase of approximately \$1.658 million has been requested to complete Phase II of this project as compared to Approved CIP funding. The recommended source of funding has changed from COPS to G.O. Bonds. The scope of the project has changed in various ways as more definitive cost estimates have been derived.
- From a NCMLS report:
 - Between January and April 2002, a total project analysis was completed. The work captured all the requirements that had changed since 1996 and served to update the cost model. The analysis revealed a \$4.5 million shortfall over the \$10.7 million project estimate. Two events, in particular, had contributed.

First, the Magic Wings Butterfly House, the premier component of the 1998 BioQuest expansion, had provided a glimpse at the pressures that the next *BioQuest* expansion will place on visitor parking, admissions, restroom needs, admissions, and general circulation. The former Master Plan had underestimated these demands. For example, the restrooms in

Catch the Wind and *Down to Earth* were undefined and the Museum Entry was undersized. Also, storage needs had not been taken into account.

Second, the National Science Foundation grant to fund the development and fabrication of the interactive exhibits for the *Catch the Wind* and *Down to Earth* was not awarded until 1996. The grant has since served to develop the cutting-edge educational exhibits that have defined the project as a national model. Resulting exhibits have required a more intensive site development plan, for instance, the use of more extensive pathways and boardwalk surfaces for exhibit interpretation, a large sailboat pond and amphitheater in *Catch the Wind*, and a sophisticated animal holding building for the lemurs in *Down to Earth*.

Cost Reduction Strategies

While the Pre-Design cost model had demonstrated a significant shortfall, it also provided the project team with the tools to evaluate and prioritize each program component on a cost-value basis. By May 2002, \$3.6 million was eliminated and enabled BJAC to embark upon Schematic Design. These cost reductions were achieved through scope and quality clarification.

- The Amphitheater, for live raptor, flight-demonstrations in *Catch the Wind* was reduced in scale.
- The Maintenance/Animal Support Facility was deferred and the holding facilities associated with the new animal exhibits in *Down to Earth* enhanced to achieve significant savings.
- Deferring the Maintenance/Animal Support Facility also reduced renovation the Main Museum building, and an exclusive-use service road connection could be eliminated.
- The Museum Entry was reduced in scope, deferring renovation to the existing Gift Shop, thus minimizing the construct impact on the current Lobby.
- *Catch the Wind* was compressed in area, creating a more economical use of pathways, reduced landscaping and earth work, while maintaining the desired exhibit experience.
- Management of invasive plants in *Down to Earth* was eliminated from the base contract and will be performed by in house staff and volunteers.
- Pathway treatments were changed to achieve a cost savings.
- Rockwork and water features were changed to reduce the cost of the animal exhibits.

Schematic Design

At the completion of Schematic Design in September 2002, an external cost estimator provided an updated cost model using actual unit take-offs. Project costs had increased, including a 2.5% adjustment to contractor

overhead and profit, or \$0.2 million, to reflect recent trends in the local construction market

To balance budget and project integrity, another \$0.5 million was eliminated, including:

- paving changes
- redesign of the restroom roof
- elimination of banner poles
- replacement gas service with electric
- elimination of equipment upfit
- reduction in the area size of the Museum Entry canopy
- reduction in size of the admissions ticket booth

16) ENTERPRISE FUND: County Waste Water Treatment Plant Improvements

- The scope of this project has not changed, while the type and timing of funding have. The Approved CIP showed Phases II and III as one project. The FY 2004-13 CIP shows the third phase as separated because its construction cannot begin until the construction of Phase II facilities are complete, when an existing structure can be taken out of service and demolished to build Phase III. Phase III is expected to begin in FY 2004-05.

Phase III - Biosolids Facilities
 - Design in Progress
 - Construction Scheduled to Start Upon Completion of Phase II

- Phase II funding for this project changed from COPS (Approved CIP) to Revenue Bonds after a rate study was completed in FY 2002-03 supporting a fee structure change that was also implemented in FY 2002-03. By changing the fee structure and issuing revenue bonds, this project was able to avoid any debt support from the General Fund (as estimated in the Approved CIP) and will be completely supported from revenues earned in the Enterprise Fund. Phase III of this project will also be supported from Enterprise Fund income.

CIP Projects With no Changes to Timing or Funding

- 1) Sheriff's Training Center and Driving Range
- 2) County Water Extensions
- 3) County Sewer Extensions
- 4) Main Library Branch
- 5) South Regional Library Branch
- 6) Collection System Rehabilitation (Enterprise Fund)

CIP Projects Underway & Funded in Previously Approved Plan

- 1) Animal Shelter Renovation
- 2) Relocation of EMS Base at Lincoln Community Health Center
- 3) Purchase of EMS Building at Lebanon

- 4) Inspections—One Stop Shopping Initiative
- 5) Human Services Parking Deck
- 6) Community Shelter Renovations
- 7) New Senior Center
- 8) East Library Branch
- 9) North Regional Library Branch
- 10) Stanford L. Warren Library Branch Renovations

Recommended CIP Highlights

- 31 projects
- \$461 million
- \$100 million less than FY 2002-2011 approved CIP

Four Major Projects in Ten-Year CIP

- New County Courthouse (Justice Center)
- American Tobacco
- Human Services (DSS, Public Health, and Mental Health)
- Durham Public Schools

Nine New Projects

- Technology Replacements--\$3.6 million (FY 04 financing)
- Financial System Upgrade--\$2.4 million (FY 04 financing)
- Whitted School/Head Start Relocation--\$187,000 (FY 04 impact)
- NC Museum of Life & Science BioQuest Phase II--\$4.5 million (FY 04 financing)
- Reused Waste Water Facilities--\$100,000 (FY 04 Enterprise Fund—supported)
- Animal Control Facility—No FY 04 impact
- EMS-Southwest Station—No FY 04 impact
- Detention Center Improvements—No FY 04 impact
- Bragtown Library Branch Renovations—No FY 04 impact

CIP Projects Underway & Funded in Previously Approved Capital Improvement Plan

- Animal Shelter Renovation
- Relocation of EMS from Lincoln Community Health Center
- Purchase of Former Lebanon VFD for EMS
- One-Stop Shopping Initiative (City/County Inspections)
- Community Shelter Renovations
- New Senior Center
- East Library Branch
- North Regional Library Branch
- Stanford L. Warren Library Branch Renovations

Human Services Complex & Associated Parking

- Approved CIP--\$92.8 million
 - Complex--\$70.5 million

- Parking--\$22.3 million
- Recommended Revisions--\$61.1 million
 - DSS Downtown with parking--\$33.4 million
 - MH Facility needs downsized due to MH Reform
 - PH/MH on County Stadium Site--\$27.7 million
- Overall Savings from Revised Recommendation--\$31.7 million

New Justice Center & Justice Center Parking Projects

- FY 02 and FY 03 funding deferred into FY 04 (except \$125,000)
- Recommended funding moved to 2/3 Bonds FY 04 and COPS FY 06
- Project completion shifted from FY 08 to FY 09
- On-site parking of 1,122 spaces (none on AT Campus)

American Tobacco Project

- Total County participation in two garages--\$19.5 million
- Financing for South Garage moved from FY 04 to FY 03
- Financing for East Garage moved from FY 06 to FY 05

Technology Projects

- \$2.4 million for Financial/HR/Budget Systems Upgrade
- \$3.6 million for Replacement/Purchase Project
- Both recommended for short-term financing vs. straight-lease program submitted in FY 03 budget

NC Museum of Life & Science BioQuest Phase II Project

- \$1.658 million increase from FY 2002-11 approved CIP
- Revised cost estimates and demand on facilities contributed
- Recommended funding changed from COPS to GO Bond FY 04

FY 2004 G.O. Bond Issue Recommended

\$118.39 million

- \$101.04 million—Durham Public Schools
- \$8.2 million—Durham Technical Community College
- \$4.64 million—South Regional Branch Library
- \$4.51 million—NC Museum of Life & Science BioQuest

G.O. Bond Referendum FY 2010

\$76.5 million

- \$3.1 million—Sheriff's Training Center and Driving Range
- \$66 million—Durham Public Schools
- \$7.4 million—NC Museum of Life & Science

Adequate Facilities Ordinance Amendment

This proposed amendment to the zoning ordinance would preclude the rezoning of property to a residential zone if the schools become overcrowded in the County. The draft ordinance provision does not attempt to set up zones for measuring overcrowded schools, but instead uses the entire county area.

If the Board wishes to proceed with the proposed amendment, the next step would be to send the draft to the joint City/County Planning Committee. After that step, the amendment would go to the Zoning Committee of the Planning Commission and then back to the Board of Commissioners for a public hearing.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: Consider the proposed amendment language and forward it to the joint City/County Planning Committee with any changes desired by the Board.

Chairman Reckhow asked County Attorney Kitchen to speak on this agenda item.

Attorney Kitchen said that approximately one year ago, the City and County established an ad-hoc committee to consider adequate public facilities. The committee presented a draft ordinance amendment, part of which required a change in the statute (to allow the developers to buy their way out if the schools became overcrowded). The statute change was presented to the legislature; it failed to be approved. Subsequently, Attorney Kitchen was asked to redraft the ordinance. A couple of things were changed in the draft. The provision previously mentioned was taken out. A total school building capacity of 120% would eliminate rezonings to residential districts or districts which allow residential development. This would not be a moratorium on development of any kind. This document states if the schools become over capacity, then no rezoning to a higher intensity of residential units in that zone can occur. The developer would be allowed to develop under the current zoning.

Attorney Kitchen discussed the idea of designating districts to allow no rezoning in the district if the schools in that district become 120% over capacity. He recommended that districts not be established.

The ad-hoc committee recommended adoption of an ordinance amendment (which would allow no rezonings). If the Board adopts a policy, a rezoning could be denied or approved depending on whether it is in compliance with the policy. That would give the Commissioners the ability to decide. The decision would be up to each individual Commissioner.

The Board of County Commissioners asked questions and made comments about the adequate facilities ordinance amendment.

Chairman Reckhow said that the amendment would be sent to the City-County Planning Committee. She asked the Commissioners whether they prefer an ordinance or policy.

The Commissioners held a lengthy discussion on this agenda item.

The County Attorney received direction to draft the amendment as a policy and to work with the Planning Director on factors that could be considered by the governing bodies. The amendment would be sent to the City-County Planning Committee when redrafting is completed.

No official action was taken on this agenda item.

Impact Fee Ordinance

The proposed Impact Fee Ordinance would charge fees on residential property for the impact the property has on schools. One of the issues is the definition of affordable housing. A new definition is recommended which provides relief for housing for low-income individuals which requires the housing to continue to be used for low-income individuals over a period of years. Please also note that the developer of the property must be a nonprofit agency to qualify for fee payment by the County. Subsequent to the last version of the proposed ordinance, additional research has shown that in one or more counties, fees being paid by the county are credited through capitol expenditures including debt payments. This mechanism allows for payment of these fees without overly burdening the taxpayers. A memorandum from Lanier Blum, Director, Regional Affordable Living Program, TJCOG, outlines various levels at which the definition may be set as a percentage of income together with the price house that could be afforded.

When the Board has a public hearing on the adoption of an ordinance with all the terms, including the definition of affordable housing, new estimates can be presented as well as a revised maximum amount of the impact fee.

Since various sources of legal authority are being used for adoption of the ordinance, it is recommended that the procedure for adopting a zoning amendment be used. This procedure is the most comprehensive in terms of review.

Resource Person(s): Chuck Kitchen, County Attorney, and Michael Ruffin, County Manager

County Manager's Recommendation: Make changes in the proposed ordinance as desired and then send the proposed ordinance to the joint City/County Planning Committee.

Attorney Kitchen said his office has worked on this ordinance since last year. Major changes have occurred in the affordable housing area. One change included specific numbers for the percentage of median income for both rental and home ownership. A requirement for a long-term commitment was included. A requirement was added that the developer of the property must be a nonprofit agency to qualify for fee payment by

the County. This ordinance would not address all of the procedural issues related to the actual payment of fees. A policy to address the procedural issues would be adopted at some point after ordinance adoption.

This ordinance would be sent to the City-County Planning Committee for additional input. It would then go to the Zoning Committee and then back to the County Commissioners for a public hearing. January 1, 2004 was decided as the effective date for implementation. The flexible date could be July 1, 2004.

Attorney Kitchen stated that we have a computer program that will calculate the maximum school impact fee.

Chairman Reckhow asked Attorney Kitchen to calculate the impact numbers as soon as possible to prevent rumors.

Chairman Reckhow requested that Attorney Kitchen meet with the leadership of the Home Builders Association, the Affordable Housing Coalition, and realtors to discuss the impact fees.

Closed Session

Commissioner Cousin moved, seconded by Commissioner Jacobs, to adjourn to closed session to give directions to staff concerning the price and other material terms of a proposed contract for the acquisition of real property pursuant to G.S.143-318.11(a)(5). The property being considered is owned by St. Joseph's Historic Foundation Inc. located at 615 Fayetteville Street.

The motion carried unanimously.

Substantial Equivalency

The State Personnel Act (NCGS 126) covers North Carolina State Department of Health and Human Services (DHHS) employees, namely those employed by the departments of Public Health, Mental Health, Social Services, and Emergency Management.

In September 2001, the Board of County Commissioners petitioned the State Personnel Commission for Substantial Equivalency, which is a delegation of the State's authority to administer Personnel functions at the County level for DHHS employees. The Commission granted this authority to the County in February 2002 in the areas of Recruitment, Selection and Advancement, Position Classification, and Compensation.

The Board of County Commissioners has expressed an interest in the pursuit of Substantial Equivalency in the area of Employee Relations (Discipline, Dismissal,

Grievances and Appeals). The informational packet included information concerning the process for applying for and obtaining Substantial Equivalency in this area.

Resource Person(s): Jackye Knight, HR Director and Elaine Hyman, HR Manager

County Manager's Recommendation: The Manager's recommendation was that the Board discuss this item and provide Human Resources with further instructions concerning application for Substantial Equivalency in the area of Employee Relations.

Ms. Knight said that the Human Resources Department had been asked to consider substantial equivalency in the area of employee relations. Only two counties in North Carolina have achieved substantial equivalency in this area.

Ms. Knight called on Elaine Hyman, HR Manager, to explain the current process and discuss available options.

Ms. Hyman presented to the Board of County Commissioners an overview of the executive summary.

SUBSTANTIAL EQUIVALENCY IN EMPLOYEE RELATIONS EXECUTIVE SUMMARY

North Carolina General Statute 126-11 sets forth the provision that allows for the establishment of a local personnel system that is substantially equivalent to the State Personnel System. This impacts the employees of the Department of Health and Human Services, or DHHS programs (the department of Social Services, the Public Health Department, the Mental Health Department, and the Emergency Management program).

The Durham County Government Personnel System has been granted substantial equivalency in Recruitment, Selection and Advancement, Position Classification, and Compensation. The following information is provided for consideration of Substantial Equivalency in the area of Employee Relations.

Current Appeals Process

Provides for filing appeals for adverse actions (dismissal, suspension without pay, demotions):

County employees, excluding the Sheriff's Office, Register of Deeds, and Board of Elections, appeal to the County Manager.

- The County Manager reviews the information and sets a formal hearing.
- The formal appeals hearing is conducted with the affected employee.
- The employee may be represented by counsel, if desired.

- The employee may call any witnesses with knowledge of the specific action leading to the hearing.
- Present also is the employee's department head, supervisors in the chain of command, and if the employee chooses to be represented by counsel, then a representative from the County Attorney's Office.
- The Human Resources Director is present to advise on process.
- The hearing is recorded and a copy is available to the employee, if requested.
- The County Manager's decision is rendered within fifteen (15) working days of the hearing, is binding, and concludes the County's internal process.

If the employee believes the adverse action to be based on discrimination or retaliation, the employee may file with the Equal Employment Opportunity Commission (EEOC) at any time.

- DHHS employees may appeal adverse actions to the Office of Administrative Hearings (OAH). If the employee alleges the action to be the result of discrimination, the OAH makes a dual filing to the E.E.O.C.
- Employees may be represented by counsel and may present witnesses.
- The County Attorney's Office represents the County.
- Recommendations of the Hearing Officer are sent to the State Personnel Commission for final determination.
- The State Personnel Commission's determination is advisory, except in cases of discrimination, when the decision is binding.
- Department Heads (DHHS) may accept or reject an advisory ruling of the State Personnel Commission.
- The employee may further appeal to the Superior Court if dissatisfied with the ruling.
- The EEOC will also make a determination in dual filings.
- The employee also receives a right to sue notice from the EEOC, which allows them to file with the Court system if they remain dissatisfied with that ruling.
- The County Attorney's Office remains in this process until its resolution.

Provides for filing Complaints alleging discrimination or retaliation with the Human Resources Department. The need for investigation is then determined in concert with the County Attorney's Office.

County employees have no internal avenues of redress beyond the County Manager but may file with the EEOC.

Proposed Process

Establishment of an Appeal Board

The County Commissioners may adopt the State's rules under 25 NCAC 011.2404, which allows for the establishment of an Appeal Board to hear Complaints of adverse actions resulting from allegations of discrimination/retaliation.

- The Board would be comprised of at least one employee representative and excluding representation from the County Attorney's, the Board of County Commissioners or family members or relatives or either; respectively.
- The Manager may serve on the Board but may not chair.
- The Board must have access to a private attorney, not in anyway associated with the County, so as to avoid a conflict of interest.
- The evidence must be presented and heard by a Hearings Examiner appointed by the County who will provide a written determination of findings to the Board. The examiner shall have subpoena power.
- The hearing must be recorded.
- A transcript may be provided, if requested.
- The Board's decision will be in writing and maintained in the County Human Resources office.
- The decision will be binding and conclude the County's internal process.
- DHHS employees may appeal to the Superior Court; other County employees would need to begin the filing process in the Court system.

OR

Establishment of an Internal Peer Review Board

The County Commissioners may elect to establish a process that allows for formal hearings of complaints of adverse actions resulting from allegations of discrimination/retaliation of all internal conflicts through the establishment of an internal peer review board.

- The Board would consist of a pool of employees from each occupational group; e.g., management, professional, clerical, etc.
- Inclusion in the pool would be voluntary.
- A Human Resources Employee Relations representative would facilitate the proceedings.
- No attorneys would be allowed.
- Employees would be given an opportunity to present evidence and witnesses.
- The proceedings would be recorded.
- The Panel, whose decisions will be binding and final on behalf of the County, would be responsible for reporting its decision in writing to the County Manager and DHHS Directors.

Advantages

- Increases employee participation in problem resolution.
- Gives DHHS employees an additional internal option for resolving issues alleging discrimination.
- Improved timeliness factor since County has more control to set hearing times and resolve issues.

Disadvantages

- The establishment of the Appeal Board would result in additional cost for personnel required by the State for inclusion on the Board; i.e., Hearings Examiner, access to a private attorney not connected to the County, a subpoena server, a recorder/transcriptionist.
- Process would require considerable time to establish; i.e., recruitment and selection of personnel, determination and implementation of an internal hearings system, review and initiate policy changes, design and schedule an employee education process, identify employee pool, train employees in the peer review process.
- Department heads may object to loss of staff time via peer review; i.e., individuals would be required to serve for a designated period of time, once trained.
- Employees may be uncomfortable with peers being involved in the review process.

The Board of County Commissioners had a lengthy discussion about substantial equivalency.

Ms. Knight and Ms. Hyman responded to the questions and comments.

The Board of County Commissioners gave staff several directives regarding the application process for substantial equivalency.

Commissioner Heron requested that Ms. Knight bring an outline to the Commissioners regarding the peer review process.

Commissioner Jacobs said that she wants to review the completed copy of the preliminary document. She also requested that the pages in the document be numbered.

Vice-Chairman Bowser commented that he would prefer a resolution in lieu of an ordinance.

Chairman Reckhow directed staff to prepare the schedule of next steps, answer questions that have been raised, and list the key decisions that must be made by the Board.

Chairman Reckhow directed staff to proceed and move forward with the application process. The preliminary document will be reviewed at the April worksession.

Workers' Compensation Coverage for Smallpox

President Bush instituted a smallpox vaccination program in December 2002. The first stage in the three-stage process is for persons who will be giving vaccinations to be vaccinated themselves. The second stage is vaccinations for first responders and other medical providers; the third stage is vaccinations for the general public. Subsequently, Congress enacted Section 304 of the Homeland Security Act. This Act was intended to

protect public health departments from liability from giving smallpox vaccinations. An unintended result of the Homeland Security Act was to create doubt concerning whether workers' compensation acts, the Federal Tort Claims Act, or private health insurance would be responsible for any adverse reactions to the vaccinations by Health Department nurses who must take the vaccination. An article concerning the confusion currently existing in the area of coverage and an article from the Institute of Government regarding workers' compensation coverage was included for information. Unfortunately, the article from the Institute of Government fails to address whether the North Carolina Workers' Compensation Law is preempted by the Homeland Security Act; thus leaving confusion in the area.

In response to this issue, several Congressmen have written to the President to propose compensation coverage for medical professionals and first responders. Also a bill has been introduced in the State Senate (S 153) which applies primarily to State workers, but also provides coverage under workers' compensation laws for Health Department nurses.

To provide protection for our Health Department nurses, it has been requested that the County Attorney be directed to ensure coverage under North Carolina Workers' Compensation laws for adverse reactions to smallpox vaccinations for the initial vaccination and any vaccinations for first responders or medical professionals, or until such time the law is clarified by legislation being enacted or case law being established. The County Attorney agreeing to binding coverage in the event of an adverse reaction can ensure this coverage. It should be noted that once coverage is acknowledged, it will continue regardless of a change in case law concerning liability.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: The Manager recommended that the Board suspend the rules, and authorize the County Attorney to accept coverage in the event that any of the Public Health nurses have an adverse reaction to the smallpox vaccination. This acceptance authorization will only continue during Stages I and II of the Smallpox Preparedness and Response Plan or until further determination by legislation or case law.

Chairman Reckhow asked Attorney Kitchen to present the agenda item.

County Attorney Kitchen presented the Commissioners an overview of the agenda item.

Attorney Kitchen introduced Dr. Arlene Sena, Medical Director representing the Public Health Department.

Ms. Knight and Dr. Sena responded to Commissioner questions and comments.

Chairman Reckhow directed Attorney Kitchen to write a letter for her signature to our Congressmen and ask that health employees be covered under the Federal program.

Commissioner Jacobs moved, seconded by Vice-Chairman Bowser, to suspend the rules in order to authorize the County Attorney to accept coverage.

The motion carried unanimously.

Vice-Chairman Bowser moved, seconded by Commissioner Cousin, to authorize the County Attorney to accept coverage in the event that any of the Public Health employees have an adverse reaction to the smallpox vaccine.

The motion carried unanimously.

Durham County Legal Department Wins Court Case

Durham County Attorney Chuck Kitchen told the Board of Commissioners that Curtis Massey, Assistant County Attorney, won the In re: Greens of Pine Glen case. This case started in 1997, was in the North Carolina Supreme Court, and involved Section 42 Housing. The question was whether the party involved would have to pay the full amount of taxes. The County argued for the payment of the full amount of taxes under the law. The County won the court case. This case has major statewide implications. Durham County and the City of Durham will generate approximately \$300,000 in additional taxes as a result of this case. The party involved will probably attempt to get legislation passed to exempt the payment of taxes.

Chairman Reckhow directed that a letter be drafted for her signature to the Durham Delegation that Durham County has won this case and that the Commissioners are concerned that legislation may be brought forward to exempt the payment of taxes. We would urge the Delegation to fight any effort for exemption. If legislation is introduced regarding this case, we wish to be notified.

Adjournment

Chairman Reckhow adjourned the worksession at approximately 1:00 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board