

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

June 9, 2003

7:00 P.M. Regular Session

**POST AGENDA**

1. **Opening of Regular Session**-Pledge of Allegiance

2. **Agenda Adjustments**

County Manager Ruffin added item No. 13 to the agenda-" FY 2003'2004 Funding for Holloway Street Neighborhood Achievement School."

3. **Minutes**

Commissioner Heron moved, seconded by Commissioner Jacobs, to approve the March 24, 2003 BOCC/Area Mental Health Board Minutes as corrected and the May 12 and May 27, 2003 Regular Session Minutes of the Board as submitted.

The motion carried unanimously.

4. **Consent Agenda**

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

- (a) Budget Ordinance Amendment No. 03BCC000067-Family to Family Funding Through Social Services (approve the budget ordinance amendment for \$30,000 in Family to Family funding);
- (b) Budget Amendment No. 03BCC000068-Social Services-Recognizing Additional Smart Start and Subsidy Child Care Revenue (approve the budget ordinance amendment to recognize additional intergovernmental revenue in the amount of \$25,922 for Child Care Subsidy payments and Smart Start funds); and
- (c) One-Year Extension of Contract Agreement between the State of NC and Regional Response Team (RRT) (approve of this one-year extension of the contract agreement between the State of NC, Durham County, and Parkwood Fire Department).

The motion carried unanimously.

5. **Public Hearing on Revised 2003-2013 10-Year Comprehensive Solid Waste Management Plan (SWMP)**

The Department of General Services requested that the Board of County Commissioners conduct a public hearing to receive comments from interested parties on the revised 2003-2013 10-Year Comprehensive Solid Waste Management Plan.

North Carolina General Statute 130A-309.09A(b) requires each unit of local government, either individually or in cooperation with other local governments, to develop a Ten-Year Comprehensive Solid Waste Management Plan and submit the plan to the North Carolina Department of

Environment & Natural Resources (NC-DENR) for approval. In addition, each local government is required to submit a three-year revision to the SWMP following a public hearing and adoption by resolution by the Board of County Commissioners.

On June 23, 1997, the Board adopted the County's first 10-Year Comprehensive SWMP for 1997-2006. On June 26, 2000, the original plan was revised and adopted by the Board for 2000-2010. The next revision is due to DENR by June 30, 2003 for the period 2003-2013.

The revised plan includes: new population estimates; residential, commercial, and construction/demolition tonnage estimates; and a listing of current programs and intended actions.

At the Board's May 12, 2003 Regular Session, the Commissioners set a public hearing for June 9, 2003 to receive public comment on the revised plan. The appropriate public notices were advertised in the Durham Herald-Sun and the Carolina Times newspapers. Copies of the draft SWMP were made available for public review beginning May 16, 2003 at the Clerk of Court's office, main branch of the Durham County Public Library, Office of the Clerk to the Board, and the Department of General Services. In addition, copies were mailed on May 16, 2003 to all waste collectors serving Durham County.

Prior to the public hearing, staff will briefly summarize revisions to the plan and be prepared to document comments received from all interested parties.

Resource Person(s): Michael Turner, Director of General Services; Larry Dixon, Solid Waste Supervisor; and Thomas Bryant, Litter Control Officer

County Manager's Recommendation: The County Manager recommended that the Board receive public comment on the revised 2003-2013 Ten-Year Comprehensive SWMP, adopt a resolution as required by NCGS 130A-309.09A(b) to approve the plan subject to the inclusion of public comment, and authorize the County Manager to implement the plan effective July 1, 2003.

Commissioner Jacobs moved, seconded by Commissioner Cousin, to approve the plan and authorize the County Manager to implement the plan effective July 1, 2003.

The motion carried unanimously.

6. **Public Hearing-Zoning Text Amendment to Make Changes to the Buffer and Tree Preservation Standards [TC03-4]**

The Joint City-County Planning Committee (JCCPC) recommended changed buffer standards between low density residential and other types of development and changed requirements regarding specimen tree protection. This JCCPC request was made after hearing a request from a citizen group seeking broader changes related to these matters. The Zoning Committee considered the proposal and favored adoption with an increase in the width of rights-of-way against which the buffers would be applied to 65 feet.

On April 21, 2003, the City Council voted not to adopt this ordinance.

The Homebuilders Association requested a 30-day delay in consideration of this item by the Commissioners; therefore, the hearing was moved from May 12, 2003 to June 9, 2003.

The Planning Department recommends denial.

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

County Manager's Recommendation: The Manager recommends that the Board conduct a public

hearing and if appropriate, not adopt the proposal and direct that these issues be addressed in the development of the Unified Development Ordinance (UDO).

Commissioner Heron moved, seconded by Commissioner Cousin, not to adopt the proposal but to direct that these issues be addressed in the development of the Unified Development Ordinance (UDO).

The motion carried unanimously.

7. **Public Hearing-Hamlin Road Subdivision (Rezoning Case P02-77)**

E. T. Development Corporation will present to the Board of County Commissioners a request to rezone a 65.41-acre site located on the south side of Hamlin Road, more than a half mile east of Old Oxford Road from RD to PDR 2.08 (PIN 0843-01-26-0857, 0843-01-17-6277, 0843-01-27-1482). The proposal is in conformance with the small area plan. Staff recommends approval citing adopted plan conformance. The Zoning Committee of the Durham Planning Commission conducted public hearings on February 11, March 11, and May 13, 2003 and voted 6-0 to recommend approval, citing the developer's efforts to mitigate school impacts and the use of constructed wetlands as a stormwater control.

The public hearing for this request was advertised on May 23 and May 30, 2003 in the Durham Herald-Sun.

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

County Manager's Recommendation: The Manager recommends that the Board hold a public hearing on the proposed rezoning and approve it, if appropriate, based on public comments.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve Hamlin Road Subdivision Rezoning Case P02-77.

The motion carried unanimously.

8. **Public Hearing-Ravenstone (Rezoning Case P03-02)**

Sherron Road Ventures will present to the Board of County Commissioners a request to rezone 130.15 acres southeast of the intersection of NC 98 and Sherron Road, between Sherron Road and Bandoek Drive, including all of 150 lots and parts of three previously recorded lots within Shaw Hills. The specific request is to rezone the subject acreage from RD, R-20 and R-10(D) to R-10(D) for a residential development with 306 single-family homes. The proposal is in conformance with the small area plan. Staff recommends approval citing adopted plan conformance. The Zoning Committee of the Durham Planning Commission conducted a public hearing on April 8, 2003 and voted 5-1 to recommend denial, citing school overcrowding and traffic concerns.

The public hearing for this request was advertised on May 23 and May 30, 2003 in the Durham Herald-Sun.

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

County Manager's Recommendation: The Manager recommends that the Board hold a public hearing on the proposed rezoning and approve it, if appropriate, based on public comment.

Commissioner Heron moved, seconded by Vice-Chairman Bowser, to approve Ravenstone Rezoning Case P03-02.

The motion carried unanimously.

9. **Public Hearing-Zoning Text Amendment to Modify the Affordable Housing Unit Density Bonus [TC03-6]**

It was determined that the existing language in the zoning ordinance allowing a density bonus for providing affordable housing units could not be implemented. Further complicating utilization of the existing bonus, no language or process for authorizing the bonus units is included in the ordinance.

The proposal addresses these deficiencies while also reorganizing the bonus provisions for greater clarity.

The Planning Department recommends that the Board approve the amendment.

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

County Manager's Recommendation: The Manager recommends that the Board conduct a public hearing and if appropriate, adopt the amendment modifying the affordable housing unit density bonus.

Commissioner Jacobs moved, seconded by Vice-Chairman Bowser, to adopt the Zoning Text Amendment to Modify the Affordable Housing Unit Density Bonus [TC03-6].

The motion carried unanimously.

10. **Public Hearing-Zoning Text Amendment to Make Changes to the Board of Adjustment Voting Standards [TC03-7]**

Durham County received special state authorization in 1997 to allow the Board of Adjustment [BOA] to take certain actions with a 3/5-majority vote rather than the 4/5-majority vote as required under general legislation. The BOA desires this change and has amended its rules of procedure to accommodate the special legislation. This ordinance amendment proposes to modify the Zoning Ordinance to conform to this special statute.

The Planning Department recommends that the Board approve the amendment.

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

County Manager's Recommendation: The Manager recommends that the Board conduct a public hearing and if appropriate, adopt the amendment concerning Board of Adjustment voting standards.

Commissioner Heron moved, seconded by Commissioner Jacobs, to adopt the Zoning Text Amendment to Make Changes to the Board of Adjustment Voting Standards [TC03-7].

The motion carried unanimously.

11. **Request by Time Warner to Reconsider Rate Order**

The County has received a letter from Time Warner requesting the Board rescind the Rate Order disapproving Time Warner's requested rate increase. Representatives of Time Warner will be present to explain their position. Robert Sepe, Action Audits LLC, will also be present to answer any questions.

Resource Person(s): Brad Phillips, Time Warner Cable, and Robert Sepe, Action Audits, LLC.

County Manager's Recommendation: The County Manager recommends that the Board receive the information from Time Warner and Robert Sepe, and based on the information presented, determine whether or not to rescind the previous Order.

The Board received the information from Mr. Phillips and Mr. Sepe. It was the consensus of the Board not to rescind the previous Order.

12. **Resolution Setting a Public Hearing on the American Tobacco Project**

The Board is requested to adopt a resolution setting the public hearing on the financing for the American Tobacco Project. The proposed financing is with Bank of America with a 15-year fixed rate of 4.415%. The date of the public hearing is proposed to be June 23, 2003 at the regular Commissioner meeting.

The resolution additionally makes findings as to why the Board is using a G.S. § 160A-20 financing instead of a general obligation bond. These findings are required by statute.

Resource Person(s): George Quick, Finance Director, and Chuck Kitchen, County Attorney

County Manager's Recommendation: The County Manager recommends that the Board approve the resolution setting the public hearing on the proposed financing.

Commissioner Cousin moved, seconded by Commissioner Jacobs, to approve the resolution setting the public hearing on the proposed financing.

The motion carried unanimously.

The public hearing will be held at the Commissioners' next Regular Session scheduled for June 23, 2003.

13. **FY 2003-2004 Funding for Holloway Street Neighborhood Achievement School**

The Board's review of the FY 2003-2004 Budget has been completed with the exception of a decision regarding an application submitted by the Durham Business and Professional Chain for \$100,000 to establish the Holloway Street Neighborhood Achievement School. An initial staff review was conducted late last week after the application was received; however, due to the limited time available to review the application, important information relative to zoning at the proposed school site was not available until today (June 9). According to the City/County Planning Director, use of the property for a school will require a minor special use permit, which is issued by the Board of Adjustment. However, the Planning Department has several concerns about the suitability of the site since both the site and the building are nonconforming, meaning that neither complies with the current requirements imposed by the zoning ordinance. Moreover, and more importantly, variances from the off-street parking, buffer, and setback requirements will be required due to the nonconforming nature of the site; however, the Planning Department does not believe the Board of Adjustment can grant a variance for the setbacks and noted that no variance has ever been granted by the Board of Adjustment for the elimination of a buffer. Finally, the Planning Department questions whether any relief will be granted from the ordinance's off-street parking requirements and advised that the Board has a demonstrated record of refusing to relax off-street parking requirements that are stipulated by the zoning ordinance.

Resource Person(s): Mike Ruffin, County Manager; Carolyn Titus, Deputy County Manager; and Frank Duke, Planning Director

County Manager's Recommendation: The County Manager recommends that the funding for the application be denied due to problems that have surfaced regarding the suitability of the site for a

school and that the \$100,000 be appropriated to Durham Public Schools for Current Expense.

Commissioner Heron moved, seconded by Chairman Reckhow, that the funding for the application be denied due to problems that have surfaced regarding the suitability of the site for a school. Also, that the \$100,000 be appropriated to Durham Public Schools for Current Expense and that any additional monies go toward funding the teachers that were lost during the cuts, particularly at the state level.

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Commissioner Cousin made a substitute motion, seconded by Vice-Chairman Bowser, to delay the Board's decision until the Commissioners and staff meet with the planning committee for the proposed school and ask questions regarding the site and application.

The motion carried with the following vote:

Ayes: Black, Bowser, and Jacobs  
Noes: Heron and Reckhow

Chairman Reckhow adjourned the meeting at approximately 11:00 p.m.



**Last updated: May 3, 2006**

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