

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

Monday, November 26, 2007

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 Becky M. Heron, and Commissioners Lewis A. Cheek, Philip R. Cousin Jr., and Michael D. Page (arrived at 7:05 p.m.)

Absent: None

Presider: Chairman Reckhow

**Opening of Regular Session**—Pledge of Allegiance

**Agenda Adjustments**

Chairman Reckhow acknowledged a revised agenda and an agenda action form for a closed session at each Commissioner's station.

**Announcements**

No announcements were made.

**Minutes**

Commissioner Cousin moved, seconded by Vice-Chairman Heron, to approve as submitted the October 22, 2007 Regular Session and November 5, 2007 Worksession Minutes of the Board.

The motion carried with the following vote:

Ayes: Cheek, Cousin, Heron, and Reckhow

Noes: None

Absent: Page (arrived late)

**Recognition for MaryAnn Black and Steve Toler, Chairs of "Vote for Learning" Committee**

Chairman Reckhow introduced MaryAnn Black, Associate Vice President of Community Relations for Duke University Medical Center, and Steve Toler, Steve Toler LLC, as the co-chairs of the "Vote for Learning" committee responsible for the successful marketing of

Durham County's \$207.1 million bond referendum on November 6, 2007. She stated that this is the second time these individuals have produced winning results for a Durham County bond referendum. They co-chaired the County's \$124 million bond referendum in 2003.

Ms. Black thanked Durham citizens, Commissioners, and volunteers from Durham Public Schools, Durham Technical Community College, and the Museum of Life & Science for contributing to the success of the bond referendum.

Mr. Toler echoed Ms. Black's comments. He particularly thanked the following individuals and institutions: Mr. Mike Wilson, Treasurer, "Vote for Learning" Committee; Ms. Carver Camp Weaver, Square One Marketing Inc.; Time Warner Cable; Fairway Advertising; Glaxo Smith Kline; Duke University Health System; Verizon Wireless; Quintiles; Bank of America; SunTrust; Duke Energy; AICPA; Homebuilders' Association of Durham, Orange, and Chatham Counties; C. T. Wilson Construction; RBC Centura; Measurement Incorporated; The Freelon Group; KB Home; BB&T; Greenfire Development; O'Brien/Atkins; Scientific Properties; Steve Shule; and Barker French.

Chairman Reckhow presented gifts of appreciation to Ms. Black and Mr. Toler.

#### **Recognition of Stuart Albright, Durham Public Schools 2007 Milken Recipient**

Chairman Reckhow announced Stuart Albright, an English instructor at Jordan High School, as the North Carolina's "2007 Milken Family Foundation National Educator" award recipient. She stated that the Milken National Educator Awards are called the "Oscars of Teaching". The honor includes an unrestricted financial award of \$25,000 and membership in a network of over 2,300 past recipients across the country. Mr. Albright is one of 80 most recent recipients and the only one from North Carolina this year. He was named Jordan High School's Teacher of the Year for 2006-07 and Durham Public Schools Teacher of the Year for 2006-07.

Chairman Reckhow commented that Mr. Albright was noted for his ability to establish and nurture a sense of community with each of his classes. He differentiates his instruction and assignments so that each student experiences success in the classroom.

Richard Webber, Principal of Jordan High School, briefly remarked on the magnificent work of Mr. Albright at Jordan by encouraging the students' writing skills. His dedication to writing has led to the creation of several creative writing classes where students not only have opportunities to meet authors but become authors themselves and have their work published.

Mr. Albright thanked the Commissioners for recognizing this award and thanked Mr. Webber for the support. Mr. Albright expressed his love for teaching and the students at Jordan High School.

Chairman Reckhow expressed gratitude to Mr. Albright for his efforts and for his willingness to continue teaching at Jordan.

**November Anchor Award Winner—Diane Wright**

Chairman Reckhow introduced Diane Wright, Organizational Development Manager for the Department of Social Services (DSS), as the winner of the November Anchor Award. Chairman Reckhow stated that in Ms. Wright's nomination letter, Director Sammy Haithcock notes that she is a leader in the agency's efforts to develop a high performing staff; she is an excellent ambassador for Social Services as well as Durham County Government.

Mr. Haithcock elaborated on Ms. Wright's role, stating that she is involved in training and orientation of new staff at DSS and provides training at statewide events. She also serves as a faculty member for the Office of State Personnel Certified Training Program. Mr. Haithcock deemed Ms. Wright a high-leveled professional. He thanked the Board for recognizing Ms. Wright for this award.

Ms. Wright expressed appreciation for the recognition. She attributed her success to assistance from Sharon Hirsch, Communications and Development Administrator; Mr. Haithcock; and her DSS coworkers. Ms. Wright asked four of her coworkers to stand and be recognized.

Chairman Reckhow presented Ms. Wright with the Anchor Award, an honorary check, and a \$200 check.

**Recognition of Jurisdiction Award to Durham County Tax Administration Department by NCAAO**

Chairman Reckhow reported that the North Carolina Association of Assessing Officers Jurisdiction Award is awarded each year in recognition of a county or counties' achievement in areas of property tax assessment and/or collections that enhance the overall effectiveness of a county tax department. The Durham County Tax Administration Department is the winner in the large jurisdiction category. This is the second year for the award in which recognition is presented in large, medium, and small categories. The award was presented last week at the organization's annual conference.

Ken Joyner, Durham County Tax Administrator, briefly thanked the Tax Administration staff for their diligent work. He stated that the award is a reflection of the staff and reveals their dedication to the department, the County, and the citizens.

Chairman Reckhow read the plaque's inscription as follows:

“The 2007 NCAAO County Jurisdiction Award, Large Jurisdiction, presented to Durham County in Recognition of Outstanding Achievement in Tax Administration and Public Service, Awarded by the North Carolina Association of Assessing Officers, November 15, 2007.”

Chairman Reckhow congratulated Mr. Joyner on receiving the award, while presenting the plaque to him.

**Recognition Sheriff's Office Designation as 2007 Flagship Agency by the Commission on Accreditation of Law Enforcement Agencies (CALEA)**

Chairman Reckhow introduced this item. She stated that the Commission on Accreditation of Law Enforcement Agencies (CALEA) has designated the Durham County Sheriff's Office as a "2007 Flagship Agency". The Flagship Agency Program was introduced at the 2004 Winter Conference to acknowledge the achievement and expertise of some of the most successful CALEA Accredited public safety agencies, and also to provide "flagship examples" to assist other agencies. Chairman Reckhow announced that the Durham County Sheriff's Office, under the leadership of Sheriff Hill, is proud to accept this honor as the 7<sup>th</sup> North Carolina agency and only Sheriff's Office in the state to receive this designation.

Sheriff Hill gave recognition to two Sheriff's Office staff members for preparing for the inspection: Captain R. D. Buchanan, Commander of Professional Standard, and Captain Buchanan's assistant.

Captain Buchanan briefly explained the accreditation process. Agencies that have met the criteria and completed at least two re-accreditation processes are nominated by the Program Manager to the CALEA Board for selection.

On behalf of the Board of County Commissioners, Chairman Reckhow congratulated Sheriff Worth Hill and the Sheriff's Office staff.

**Consent Agenda**

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

- \*a. Property Tax Releases and Refunds for Fiscal Year 2007-2008 (accept the property tax release and refund report for July 2007 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
- \*b. Budget Ordinance Amendment No. 08BCC000036—2007 Emergency Management Performance Grant (EMPG) (recognize \$66,144 in grant revenue received from the North Carolina Division of Emergency Management to be applied to Durham County Emergency Management);
- \*c. Budget Ordinance Amendment No. 08BCC000037 and Capital Project Amendment No. 08CPA000008—Advancement of \$4,703,550 in County Funds (Fund Balance) for School Capital Projects to be Reimbursed by General Obligation Bond Funds Issued in Spring 2008 (appropriate General Fund fund balance of \$4,703,550 in order to create three new Durham County Public School projects and increase funding for seven existing Durham County Public School projects, with the funds to be reimbursed back to the General Fund per a previously approved Reimbursement Resolution);

- \*d. Budget Ordinance Amendment No. 08BCC000038 and Capital Project Amendment No. 08CPA000009—\$438,897 Appropriation of Capital Financing Fund Fund Balance to Increase the Durham County Detention Center Expansion Project  
(No.: DC086) to \$706,090;
- \*e. Budget Ordinance Amendment No. 08BCC000039—Criminal Justice Resource Center, Pretrial Services (approve in the amount of \$146,723; establish a 1.0 FTE in the Criminal Justice Resource Center for a pretrial specialist; authorize the Manager to expand the current contract with Reliant Management for electronic monitoring services by \$102,870);
- \*f. Resolution Declaring the Results of the Special Bond Referendum (approve the Resolution declaring the results of the Special Bond Referendum held on November 6, 2007 and direct the Clerk to publish the results in the newspaper);
- g. Request Approval of Right-Of-Way Agreement with Duke Energy Corporation (DEC) for the Fayetteville Street Elementary School project located at 2905 Fayetteville Street, Durham, NC 27701 (authorize the Manager to enter into the agreement);
- h. Exemption of Durham County Detention Center Expansion Projects from RFQ Procedures for Hiring an Architect (exempt the Detention Center expansion projects from the RFQ process to allow the construction schedule to move as quickly as possible and ensure coordination of the projects);
- i. Durham Public Schools—Purchase Surplus Real Property—Dacian Avenue (decline an offer to purchase the property);
- j. Appointment of Interim Tax Administrator (appoint Kim Simpson, Deputy Tax Administrator, to the position of Interim Tax Administrator at a salary of \$96,870, and approve the purchase of Public Official Bond in the amount of \$250,000; the effective date of the appointment is January 1, 2008); and
- \*k. Resolution of Support for Durham At-Risk Youth Collaborative Request for a Dropout Prevention Grant from the Department of Public Instruction (approve the resolution and forward to Mr. Barker French for inclusion in the Department of Public Instruction Dropout Prevention Grant request from the Durham At-Risk Collaborative).

The motion carried unanimously.

\*Documents related to these items follow:

Consent Agenda Item No. a. Property Tax Releases and Refunds for Fiscal Year 2007-2008 (accept the property tax release and refund report for July 2007 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report).

Due to property valuation adjustments for over assessments, listing discrepancies, duplicate listings, and clerical errors, etc., the report details releases and refunds for the month of October 2007.

Releases & Refunds for 2007 Taxes:

Real Estate	\$ 22,680.68
Personal	\$ 40,591.53
Registered Vehicles	\$ 44,155.05
Vehicle Fees	\$ 1,110.00
Solid Waste	\$ <u>505.00</u>
Total for 2007 Taxes and Fees	\$109,042.26

Prior years' (2001-2006) releases and refunds for October 2007 are in the amount of \$19,377.20. The total current year and prior years' releases and refunds amount to \$128,419.46.

(Recorded in Appendix A in the Permanent Supplement of the November 26, 2007 Minutes of the Board.)

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Consent Agenda Item No. b. Budget Ordinance Amendment No. 08BCC000036—2007 Emergency Management Performance Grant (EMPG) (recognize \$66,144 in grant revenue received from the North Carolina Division of Emergency Management to be applied to Durham County Emergency Management).

DURHAM COUNTY, NORTH CAROLINA  
FY 2007-08 Budget Ordinance  
Amendment No. 08BCC000036

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$362,640,556	\$66,144	\$362,706,700

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$48,203,999	\$66,144	\$48,270,143

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

This the 26<sup>th</sup> day of November, 2007.

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Consent Agenda Item No. c. Budget Ordinance Amendment No. 08BCC000037 and Capital Project Amendment No. 08CPA000008—Advancement of \$4,703,550 in County Funds (Fund Balance) for School Capital Projects to be Reimbursed by General Obligation Bond Funds Issued in Spring 2008 (appropriate General Fund fund balance of \$4,703,550 in order to create three new Durham County Public School projects and increase funding for seven existing Durham County Public School projects, with the funds to be reimbursed back to the General Fund per a previously approved Reimbursement Resolution).

DURHAM COUNTY, NORTH CAROLINA  
FY 2007-08 Budget Ordinance  
Amendment No. 08BCC000037

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Other Financing Sources	\$32,061,263	\$4,703,550	\$36,764,813

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Other	\$30,532,034	\$4,703,550	\$35,235,584

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

This the 26<sup>th</sup> day of November, 2007.

DURHAM COUNTY, NORTH CAROLINA  
FY 2007-08 Capital Project Ordinance  
Amendment No. 08CPA000008

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 Capital Project Ordinance is hereby amended to reflect budget adjustments for the following projects:

<u>Expenditures</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
Hillside High School	\$70,000	\$491,000	\$561,000
Jordan High School	\$195,000	\$707,400	\$902,400
Northern High School	\$70,000	\$594,200	\$664,200
Riverside High School	\$70,000	\$475,400	\$545,400
Southern High School	\$70,000	\$483,800	\$553,800

Durham School of Arts	\$6,034,600	\$300,000	\$6,334,600
Hamlin Facilities	\$635,850	\$360,000	\$995,850
Club Blvd. Elementary	\$0	\$400,000	\$400,000
Fuller Building	\$0	\$273,600	\$273,600
Lakeview School	\$0	\$618,150	\$618,150

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

This the 26<sup>th</sup> day of November, 2007.

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Consent Agenda Item No. d. Budget Ordinance Amendment No. 08BCC000038 and Capital Project Amendment No. 08CPA000009—\$438,897 Appropriation of Capital Financing Fund Fund Balance to Increase the Durham County Detention Center Expansion Project (No.: DC086) to \$706,090.

DURHAM COUNTY, NORTH CAROLINA  
 FY 2007-08 Budget Ordinance  
 Amendment No. 08BCC000038

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>CAPITAL FINANCING FUND</u>			
Other	\$37,255,036	\$438,897	\$37,693,933

Expenditures:

<u>Function</u>			
<u>CAPITAL FINANCING FUND</u>			
Other Financing Sources	\$24,674,527	\$438,897	\$25,113,424

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

This the 26<sup>th</sup> day of November, 2007.

DURHAM COUNTY, NORTH CAROLINA  
 FY 2007-08 Capital Project Ordinance  
 Amendment No. 08CPA000009

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 Capital Project Ordinance is hereby amended to reflect budget adjustments for the following projects:

<u>Expenditures</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
Detention Center Improvements	\$267,193	\$438,897	\$706,090



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

This the 26<sup>th</sup> day of November, 2007.

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Consent Agenda Item No. e. Budget Ordinance Amendment No. 08BCC000039—Criminal Justice Resource Center, Pretrial Services (approve in the amount of \$146,723; establish a 1.0 FTE in the Criminal Justice Resource Center for a pretrial specialist; authorize the Manager to expand the current contract with Reliant Management for electronic monitoring services by \$102,870).

DURHAM COUNTY, NORTH CAROLINA  
FY 2007-08 Budget Ordinance  
Amendment No. 08BCC000039

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
General Fund	\$0	\$0	\$0

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
General Government	\$32,975,612	(\$146,723)	\$32,828,889
Public Safety	\$48,362,557	\$146,723	\$48,509,280

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

This the 26<sup>th</sup> day of November, 2007.

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Consent Agenda Item No. f. Resolution Declaring the Results of the Special Bond Referendum (approve the Resolution declaring the results of the Special Bond Referendum held on November 6, 2007 and direct the Clerk to publish the results in the newspaper).

RESOLUTION DECLARING THE RESULTS OF THE SPECIAL BOND REFERENDUM HELD IN THE COUNTY OF DURHAM ON NOVEMBER 6, 2007 UPON THE QUESTIONS OF APPROVING \$194,240,000 SCHOOL BONDS, \$8,680,000 COMMUNITY COLLEGE BONDS AND \$4,180,000 MUSEUM BONDS

BE IT RESOLVED by the Board of Commissioners for the County of Durham:

Section 1. The Board of Commissioners for the County of Durham, North Carolina, having received from the Durham County Board of Elections a certified copy of the proceedings of said Board of Elections taken on November 13, 2007, evidencing said Board's determination of the results of the canvass of the returns of the special bond referendum held in said County on November 6, 2007 upon the questions of approving \$194,240,000 School Bonds, \$8,680,000 Community College Bonds and \$4,180,000 Museum Bonds of said County, does hereby declare and certify the results of said referendum to be the results which are set forth in the following statement of the results of said referendum, which statement has been prepared by said Board of Commissioners:

STATEMENT OF THE RESULTS of the SPECIAL BOND REFERENDUM  
held in the COUNTY OF DURHAM, NORTH CAROLINA on November 6, 2007  
UPON THE QUESTIONS OF APPROVING \$194,240,000 SCHOOL BONDS,  
\$8,680,000 COMMUNITY COLLEGE BONDS AND \$4,180,000 MUSEUM BONDS

At a special bond referendum held in the County of Durham on November 6, 2007, 145,623 voters were registered and qualified to vote.

At said referendum 27,589 votes were cast for the order adopted on July 23, 2007, authorizing not exceeding \$194,240,000 School Bonds of the County of Durham, North Carolina, for the purpose of providing funds, with any other available funds, for erecting additional school buildings and other school plant facilities, remodeling, enlarging and reconstructing existing school buildings and other school plant facilities and acquiring any necessary land, furnishings and equipment therefore, in order to provide additional school facilities in said County to maintain the school term as required by Section 2 of Article IX of the Constitution, and authorizing the levy of taxes in an amount sufficient to pay the principal of and the interest on said bonds, and 7,970 votes were cast against said order, and a majority

of the qualified voters of said County who voted thereon at said referendum voted in favor of said order.

At said referendum 26,330 votes were cast for the order adopted on July 23, 2007, authorizing not exceeding \$8,680,000 Community College Bonds of the County of Durham, North Carolina, for the purpose of providing funds, with any other available funds, for expanding and improving the facilities for Durham Technical Community College, including the acquisition of land and a building and the expansion and renovation of buildings and other facilities to provide additional and improved teaching, parking, storage and other related facilities and the acquisition of necessary furnishings and equipment therefore, and authorizing the levy of taxes in an amount sufficient to pay the principal of and the interest on said bonds, and 8,414 votes were cast against said order, and a majority of the qualified voters of said County who voted thereon at said referendum voted in favor of said order.

At said referendum 24,395 votes were cast for the order adopted on July 23, 2007, authorizing not exceeding \$4,180,000 Museum Bonds of the County of Durham, North Carolina, for the purpose of providing funds, with any other available funds, for enlarging and improving visitor facilities, exhibits, administrative, storage and maintenance facilities and landscaping at the North Carolina Museum of Life and Science and authorizing the levy of taxes in an amount sufficient to pay the principal of and the interest on said bonds, and 10,922 votes were cast against said order, and a majority of the qualified voters of said County who voted thereon at said referendum voted in favor of said order.

Board of Commissioners for the  
County of Durham, North Carolina

Section 2. The Clerk to said Board of Commissioners shall file a copy of the foregoing statement of the results of said referendum in his office and shall publish such

statement once in The Herald-Sun. A statement in substantially the following form shall be published with the foregoing statement:

Any action or proceeding challenging the regularity or validity of this bond referendum must be begun within 30 days after November 30, 2007.

Board of Commissioners for the  
County of Durham, North Carolina

Section 3. This resolution shall take effect upon its passage.

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Consent Agenda Item No. k. Resolution of Support for Durham At-Risk Youth Collaborative Request for a Dropout Prevention Grant from the Department of Public Instruction (approve the resolution and forward to Mr. Barker French for inclusion in the Department of Public Instruction Dropout Prevention Grant request from the Durham At-Risk Collaborative).

#### RESOLUTION

WHEREAS, the “Durham At-Risk Youth Collaborative” is a proactive approach to reducing the dropout rate in Durham County; and

WHEREAS, the program will use community collaboration to improve outcomes for Durham’s at -risk youth aged 8 -17 by mobilizing the efforts of five successful programs: Restoration Institute for Leaders (RIL), Personal Responsibility to Overcome with Understanding and Determination (P.R.O.U.D.), African American Male Leadership Academy (AAMLA), Durham-YO, Truancy Triage Center; and

WHEREAS, the funders and directors of these programs are willing to work together, not provide competing services, and allow an oversight committee and/or coordinator to direct the administration of the Collaborative including the distribution of funds raised on behalf of the Collaborative; and

WHEREAS, the Collaborative’s approach is to intensify and coordinate the efforts of these 5 programs which are focused on:

- Improving behavior
- Developing personal values
- Creating positive personal relationships
- Reinforcing the importance of school and
- Reinvigorating parental involvement and commitment; and

WHEREAS, combining the efforts of these organizations will reduce duplication of efforts and provide a continuum of care for the student participants by providing year round contact, support services in school, along with operational efficiencies for the programs:

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

“DURHAM AT-RISK YOUTH COLLABORATIVE”

a program designed to prevent Durham students from dropping out and to provide supportive strategies and services to help them stay in school until graduation.

BE IT FURTHER RESOLVED that we enthusiastically endorse the efforts of this group to obtain grant funding from the Department Of Public Instruction in the category of Dropout Prevention. We believe this organization has produced an effective, sustainable model to help at risk youth in Durham County and beyond.

This the 26<sup>th</sup> day of November, 2007.

/s/ All Five Commissioners

**Comments on Consent Agenda Item No. j**

Consent Agenda Item No. j. Appointment of Interim Tax Administrator (appoint Kim Simpson, Deputy Tax Administrator, to the position of Interim Tax Administrator at a salary of \$96,870, and approve the purchase of Public Official Bond in the amount of \$250,000; the effective date of the appointment is January 1, 2008).

Chairman Reckhow asked Tax Administrator Ken Joyner and Deputy Tax Administrator Kim Simpson to come forward for comments.

Ms. Simpson thanked the Commissioners for appointing her as Interim Deputy Tax Administrator, effective January 1, 2008.

Mr. Joyner gave a report on the release of the revaluation notices. He encouraged citizens to view their information on the County’s website and to contact Tax Administration at 560-0300 if they have questions.

Commissioner Page asked Mr. Joyner to reiterate the appeals process and the events subsequent to the process.

Mr. Joyner replied that the appeals process has two steps: 1) an informal review; and 2) Board of Equalization and Review evaluation. The informal review requires the citizen to make an appointment with Tax Administration; reviews will begin after January 1. The citizen would meet with a tax appraiser to review property and sales information. Step Two provides an opportunity for the citizen to meet with the Board of Equalization and Review if he/she disagrees with the outcome of the informal review. The Review meetings start during the spring; citizens have until the first Monday in May to file an appeal. If the citizen is still unsatisfied after meeting with the Review Board, then he/she may appeal to the State, which could take up to one year.

Per a question posed by Vice-Chairman Heron, Mr. Joyner responded that not all properties were visited during this revaluation cycle. However, if Tax Administration reviews structural elements of the home and determines that discrepancies exist based on square footage and information obtained by Tax staff, then an interior inspection may be scheduled as part of the Board of Equalization and Review process.

Chairman Reckhow thanked Mr. Joyner for the update and expressed gratitude for the enhancement of Tax Administration customer service.

Mr. Joyner informed Chairman Reckhow that appointments for appeals are being scheduled through December 19.

### **Public Hearing—Zoning Map Change—3837 Airport Road (Z07-35)**

Steve Medlin, Interim City-County Planning Director, requested that the Board approve a zoning map change for a 1.296-acre site located at 3837 Airport Road, south and east of Page Road, west of the Wake County line. Request: RR to OI. He stated that staff certifies that proper notification has been given per the Unified Development Ordinance (UDO) § 3.25. Affidavits have been completed, are part of the case file, and are available for public review.

Mr. Medlin stated that Planning staff recommended approval, based on consistency with the *Comprehensive Plan* and considering the information provided in the report.

The Durham Planning Commission recommended and voted 12-0 for approval on October 9, 2007. The Planning Commission found that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report and comments received during the public hearing.

Mr. Medlin responded to a question posed by Vice-Chairman Heron, responding that the school impact number assumed at four additional students is because OI (Office and Institutional) districts allow residential development. Although the intent of the land is OI, no development plan has been associated with this request to ascertain that no residential development will occur.

Chairman Reckhow directed Mr. Medlin to alter the language in 5. School Impacts, under Section F. Infrastructure Impacts, to read "...could generate..." in lieu of "...will generate..." in future staff reports. The current wording is misleading. As Mr. Medlin explained for Vice-Chairman Heron, the chance of this area generating students is slim since the zoning district is OI.

Chairman Reckhow opened the public hearing that was properly advertised and called signed speaker Craigie Sanders, 430 Davis Drive, Durham 27713, representing the applicant OA Development, forward for comments.

Mr. Sanders supported the zoning map change and presented reasons that the Board should approve the request.

As no one else signed up to speak, Chairman Reckhow closed the public hearing and referred the matter back to the board.

Commissioner Cheek moved, seconded by Commissioner Page, to approve Zoning Map Change—3837 Airport Road (Z07-35).

The motion carried unanimously.

**Public Hearing—Zoning Map Change—Page Road Assemblage (Z06-47)**

Interim Planning Director Steve Medlin stated that staff certifies that proper notification has been given per the Unified Development Ordinance (UDO) § 3.25. Affidavits have been completed, are part of the case file, and are available for public review. He requested, on behalf of Crosland Investment Inc., that the Board approve a zoning map change for a 407.27-acre site located on the west side of Page Road and north of Chin Page Road. Request: IL, CC and RR to IL(D), CG(D) and PDR 4.733.

Mr. Medlin stated that Planning staff recommended denial, based on inconsistency with the *Comprehensive Plan* Policy 8.1.2o and failure to provide required road improvements as identified by the TIA in accordance with Unified Development Ordinance Sections 3.5.6C.3m and 3.3.7.

The Durham Planning Commission recommended and voted 11-2 for approval on October 9, 2007. The Commission found that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report, comments received during the public hearing, and additional committed elements proffered by the applicant at the meeting.

Commissioner Cousin inquired about the requirements for the Page Road and T. W. Alexander Drive intersection.

Wesley Parham, Development Review, City Transportation, noted that the City of Durham's Transportation Division reviews zoning applications and site plans for conformance with the City-County-adopted Unified Development Ordinance. North Carolina Department of Transportation (NCDOT) reviews such projects for compliance with its own standards. The intersection would require the addition of a northbound left-turn lane as well as converting a westbound right-turn lane into a westbound through lane.

George Brine, Chair of the Durham Planning Commission, communicated that the Commission did not feel that NCDOT was requiring improvements at the Page Road and Alexander Drive intersection. The Commission concluded that the applicant's approach to addressing problems at the intersection was reasonable based on the fact that his Traffic Impact Analysis (TIA) shows that a small portion of the traffic would be generated at that intersection. Mr. Brine stated that he did not receive the latest memorandum from NCDOT until this afternoon.

Per a request by Chairman Reckhow, Mr. Parham explained the Level of Service (LOS) summarization table.

Chairman Reckhow asked Mr. Parham to respond to the developer's concern that it is unfair to require the developer to make improvements to the intersection when this project does not contribute greatly to the traffic issues.

Mr. Parham stated that the same standards applied to this project are also applied to site plan reviews, transportation special use permits, and zoning applications that would require a TIA. Staff initially considers why this intersection was studied or evaluated as part of the project. At this particular location, there are two different approaches in both the AM and peak hours in which the project will increase traffic by 10% or more on an approach. When it meets that threshold, then the applicant is required to identify what mitigation measures are necessary to maintain either at or above LOS D or, if it's below LOS D, bring it back up to LOS D.

Mr. Parham clarified for Chairman Reckhow that the project may be adding 7% to all approaches of the intersection; however, there are at least two different approaches where it is over 10%.

Mr. Parham summarized the requests NCDOT submitted in its recent memorandum, which requires additional improvements to be made by the developer.

Chairman Reckhow asked County Attorney Chuck Kitchen if he could recall an instance when the Board approved a zoning map change without the requests of NCDOT being met.

County Attorney Kitchen stated, "Since I have been County Attorney, I am not aware of the Board ever approving a project that DOT had recommended road improvements that the applicant was not proffering at the time it came to the Board of Commissioners. The Board *has* approved a project which Transportation had requested some improvements that the developer did not offer those improvements, but it was in keeping with what DOT had asked. I will make a distinction here, and I think it is an important distinction. If you say you have a project, and you are asking for the developer to do something in order to get an improvement, then you have a situation where you are asking for more than what they are causing. You could cause a constitutional issue. In other words, whatever you ask for has to be proportionate to the damage they are doing in effect that that project is causing an issue. However, there is a different issue and that comes up when DOT is saying we are asking for X but you are asking for more. Then you are asking for an exaction of that. As I understand, what DOT is saying is that we expect them to do this amount of improvements or else DOT is not going to give them a driveway permit. And if that is what DOT is saying, which is what they are normally saying, then it puts you in a situation where you are not asking for them to do anything. It is putting you in a situation where one of two things is going to happen; either you are going to deny it because the development is causing unacceptable traffic problems, or you are going to approve it, and then DOT is going to turn around and say that you cannot connect to the state highways, which creates problems. You have got an approved development that they cannot get a driveway permit for. Of course they could appeal the driveway permit. [I won't mention that.] But it creates an unusual situation. But I do not recall DOT doing this in the past where they have come and said this is what we want and then come back and say no, we were wrong. It is kind of troubling that they do that



at the last minute. It would have been much better, I think, had this happened a few weeks ago, which would have given everybody time to kind of get together and look at what is going on. This is really kind of pushed everything right up to the last minute to try to get something to the Board. And I don't know what the developer is going to say about it, and perhaps after the public hearing, I may have additional comments."

Mr. Parham replied to Commissioner Cheek's question, stating that his understanding of NCDOT's position is that it will not approve driveway permits without all of the recommended improvements unless it reconsiders and changes its position.

Per Commissioner Cheek's request, County Attorney Kitchen reiterated that while it is not illegal to approve a project under these circumstances, he does not recall such an approval taking place.

Commissioner Cheek and Mr. Parham discussed road impacts at Chin Page Road and Page Road.

Chairman Reckhow opened the public hearing that was properly advertised. She called the following signed speakers forward for comments:

Kenneth Spaulding, 2530 Meridian Parkway, Durham 27713, representing the applicant, urged the Commissioners to approve the project.

Attorney Patrick Byker, 2614 Stuart Drive, Durham 27707, representing the applicant, distributed an aerial map and key of the Page Road Assemblage. He briefly reviewed the map which indicates the committed roadways and improvements.

Mr. Parham addressed comments made by Mr. Byker. He stated that 1) in the additional analysis provided by the applicant, if the one improvement at this intersection is made, the average vehicle delay will go from 103 seconds per vehicle down to 136 seconds per vehicle; and 2) all applicants are treated fairly and must adhere to the same policies.

The Commissioners and Mr. Parham discussed the No-Build and Build conditions in 2011 being a LOS D in the chart on page 4 of the TIA. It is a possibility that the roadway improvements may not occur, particularly if the project were to dissipate.

Chairman Reckhow expressed concern that if the developer does not meet all of NCDOT requirements, then NCDOT may not be supportive of the County if issues are raised in the future regarding roadway improvements in this area.

Mr. Parham advised that the Board respond to NCDOT with the following if future issues are raised: 1) the equity formula; and 2) NCDOT did not question whether the improvements by other developers were committed elements; Planning staff learned that the improvements were not committed.

Attorney Byker commented that the developer would be prepared to meet NCDOT's requirements as the driveway permit cannot be obtained without meeting those requirements.

Chairman Reckhow asked Mr. Byker if the developer would be willing to commit to meeting NCDOT's requirements in relation to the intersection.

Attorney Byker responded in the affirmative. He stated that the developer agrees to make all improvements required by NCDOT within the constraints of the existing right-of-way.

Earl Lewellyn, Engineer, Crosland Inc., articulated that the second northbound right-turn lane request would not be feasible as it cannot be constructed in a safe manner; however, there is enough right-of-way to construct the westbound through lane, which in addition to the northbound right-shared through lane, would bring the LOS back to E.

Mr. Parham stated that the developer's commitment would be below standard. Developers do not need to control right-of-way to make appropriate road improvements. The Planning Department has mechanisms in place to allow a developer to seek eminent domain authority through local government to obtain right-of-way if it is necessary. Otherwise, staff expects the applicant to secure that right-of-way from the adjoining property owners in order to make the necessary road improvements.

Vice-Chairman Heron expressed desire for the City Transportation Division, NCDOT, and the developer to work together.

Commissioner Cheek expressed concern about advising a developer to seek eminent domain to obtain additional land for right-of-way.

Chairman Reckhow offered two options: 1) the Board defer action until the December 10 Regular Session; or 2) the developer agree to all of NCDOT's requirements including the northbound right-turn lane.

The Commissioners and the developer discussed the options.

Chairman Reckhow relayed a comment made by J. Wally Bowman, P.E., NCDOT Division Engineer, during a meeting several months ago with the County Manager. She stated that Mr. Bowman warned against construction in the Brier Creek area due to current traffic conditions. Chairman Reckhow reiterated her concern that if the developer does not meet all of NCDOT requirements, then NCDOT may not be supportive of the County if issues are raised in the future regarding roadway improvement in this area.

County Attorney Kitchen asked Mr. Byker about the developer's intent to construct a development if NCDOT does not issue a driveway permit due to all of the committed elements not being met. Without the permit, the development cannot be built.

Attorney Byker responded that the developer would be obligated to condemn private property in order to meet all NCDOT requirements. Currently, it is unknown if off-site right-of-way must be acquired to meet the requirements. He agreed with County Attorney Kitchen that the developer should discuss this with NCDOT.

County Attorney Kitchen inquired about modifying the proposed development plan.

Attorney Byker replied that off-site improvements to the Page Road-Alexander Drive area are required regardless of the phasing plan.

County Attorney Kitchen and Attorney Byker continued to discuss possible obtainment of a driveway permit.

Chairman Reckhow suggested three options for Board action: 1) the Board defer action until the December 10 Regular Session to allow the developer time to compromise on the requirements; 2) the developer accept another committed element to improve to the center section consistent with NCDOT's requirements; or 3) vote on the zoning map change at tonight's meeting.

Mr. Lewellyn responded to Chairman Reckhow's question, stating that as an alternative to the NCDOT northbound right-turn lane requirement, the developer would agree to commit to one of the City requirements—Alexander – Provide 3d westbound through lane. The “Page Road Northbound – Add second left onto Alexander” City requirement is not possible to construct due to the existing skew of the intersection. It would require significant revision to the northbound departure.

Commissioner Cheek expressed interest in having a solid decision from NCDOT about acquiring outside right-of-way. He agreed with the County Attorney that the developer has nothing to lose to committing to all of the requirements, as a driveway permit cannot be obtained without the commitment.

Chairman Reckhow recommended that the Board defer the item until the December 10 meeting. She stated that the public hearing will not close; it will be continued at the December 10 meeting.

Chairman Reckhow directed the County Manager to contact Mr. Bowman to expedite a meeting with appropriate NCDOT staff.

Vice-Chairman Heron made the motion to defer the Zoning Map Change—Page Road Assemblage (Z06-47) until the December 10, 2007 Regular Session.

Commissioner Cheek asked if the developer is opposed to a deferral.

The developer agreed to the deferral.

Commissioner Cheek seconded the motion.

Commissioner Page inquired about the possibility of the developer being ready by December 10.

Attorney Byker stated that a decision must be made by December 10.

The motion carried unanimously.

Vice-Chairman Heron emphasized that any information presented to the Board must be considered by the Durham Planning Commission.

Chairman Reckhow stated that the new information received by the Board was submitted 11 days ago, after the Planning Commission met.

Vice-Chairman Heron commented that parties submitting information should have all documents readily available.

Commissioner Cousin recommended that the dates of when information is received by NCDOT, Durham Planning Commission, and Planning staff should be reported to the Board along with the documents.

Commissioner Cheek noted that the Board has no control over NCDOT.

**Public Hearing—Technical Corrections for Zoning Map Change Case Z05-33 (Sauternes)**

Scott Whiteman, AICP, Planning Supervisor, stated that staff certifies that proper notification has been given per the Unified Development Ordinance (UDO) § 3.25. Affidavits have been completed, are part of the case file, and are available for public review. He requested that the Board adopt the technical corrections for the approved zoning map change case Z05-33 where the property was taken out of RR and PDR 3.210 and placed the same in and establishing PDR 3.000.

Mr. Whiteman stated that Planning staff recommended approval, based on consistency with the Comprehensive Plan and considering the information provided in the report.

The Durham Planning Commission recommended and voted 12-0 for an approval on October 9, 2007. The Planning Commission found that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission believes the request is reasonable and in the public interest and recommends approval based on the information in the staff report and comments received during the public hearing.

Vice-Chairman Heron asked why PDR would not change the development plan.

Mr. Whiteman explained that the development plan approved by the Board last year will not change; this request is only to correct the record to reflect an accurate ordinance with metes and bounds.

Chairman Reckhow opened the public hearing that was properly advertised. As no one signed to speak, she closed the public hearing and referred the item back to the Board.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve technical corrections for Zoning Map Change Case Z05-33 (Sauternes).

The motion carried unanimously.

**Public Hearing—Unified Development Ordinance (UDO) Text Change—Open Space (TC07-04)**

Julia Mullen, Planner, City-County Planning Department, gave an overview of this item. She stated that staff certifies that proper notification has been given per the Unified Development Ordinance (UDO) § 3.25. Affidavits have been completed, are part of the case file, and are available for public review. Ms. Mullen requested that the Board of County Commissioners receive public comments on Text Change—Open Space (TC07-04) and adopt an ordinance amending the Unified Development Ordinance, incorporating revisions to Article 7, Design Standards, and Article 8, Environmental Protection.

The Planning Department recommended approval.

The Durham Planning Commission held a public hearing on this item on October 9, 2007 and recommended denial with a 6-6 vote.

Ms. Mullen reported that this text amendment would allow small developments that meet certain criteria to make payment in lieu of required open space in order to avoid the financial and administrative burden of creating and maintaining a Homeowner's Association (HOA). Developments without buffers that make payment in lieu of open space could locate tree coverage areas on private lots. This amendment would also streamline the legal review of documents establishing open space.

Vice-Chairman Heron inquired about "payment in lieu of open space".

Ms. Mullen replied that whoever is subdividing the property will make the payment.

Steve Medlin, Interim Planning Director, added that the payment must be paid when the final plat is approved, which means that it would be paid by the original developer or subdivider and received by the County.

Mr. Medlin responded to Vice-Chairman Heron's question regarding tree coverage on private lots.

In reference to Section 1.7.2.2.(B) of the Ordinance to Amend the Unified Development Ordinance Concerning Open Space Requirements, Commissioner Cheek inquired about the section being at the approving authority's discretion.

County Attorney Kitchen responded, "Unless there is another provision somewhere that specifies that the normal, legal standard is that it has to be reasonable and cannot be arbitrary and capricious."

Chairman Reckhow opened the public hearing that was properly advertised.

Vice-Chairman Heron asked staff to explain the denial by the Planning Commission.

Staff explicated that the Commission expressed concerns with the payment in lieu of open space and the cost of tree maintenance and replacement.

Chairman Reckhow elaborated on the intent of this text amendment.

As no one signed to speak, she closed the public hearing and referred the item back to the Board.

Commissioner Cheek moved, seconded by Commissioner Page, to approve Unified Development Ordinance (UDO) Text Change—Open Space (TC07-04).

The motion carried unanimously.

### **Board and Commission Appointments**

Vonda Sessoms, Clerk to the Board, distributed ballots to the Board to make appointments to boards and commissions.

County Manager Mike Ruffin informed the Commissioners that the December 3 Worksession will begin at 9:00 a.m. and may end at 3:00 p.m. Lunch will be provided.

The following appointments were made (incumbents are underlined):

#### Bicycle & Pedestrian Advisory Board

Gregory Garneau (Senior Advocacy)

Ken Kaye (Education)

Lawrence C. Trost (Health)

#### Civic Center Authority

Henry Sims (Recommended by CCA)

#### Criminal Justice Partnership Act Advisory Board

Dewarren K. Langlely (At-large)

Gary R. Thompson (Community-Based Corrections Program)

#### Design District Review Team

Henri Proseri (Recommended by JCCPC)

#### Emergency Medical Services Council

Christopher Wilcox (Representative of Redwood Fire Department)

#### Nursing Home Community Advisory Committee

Dawn M. O'Keefe (Recommended by NHCAC)

Pattie Wallon (Recommended by NHCAC)

#### Open Space & Trails Commission

Charles Welch (At-large)

Women's Commission

Stacy Robinson

Workforce Development Board

Casey Steinbacher (Community-Based Organization; Recommended by WDB)

**Closed Session**

Commissioner Cheek moved, seconded by Commissioner Page, to adjourn to Closed Session to consider the fitness of a public officer or employee pursuant to G.S. § 143-318.11(a)(6); and to preserve the attorney-client privilege and to discuss County of Durham v. Arec 3, LLC, et al., 06 CVS 847 pursuant to N. C. Gen. Stat. § 143-318.11(a)(3).

The motion carried unanimously.

**Reconvene to Open Session**

Chairman Reckhow announced that the Board met in closed session; no action was taken; directives were given to staff.

**Adjournment**

There being no further business, Chairman Reckhow adjourned the meeting at 9:58 p.m.

Respectfully Submitted,

Yvonne R. Gordon  
Deputy Clerk to the Board