

**DURHAM COUNTY BOARD OF COMMISSIONERS  
SPECIAL BREAKFAST MEETING WITH  
DURHAM COUNTY LEGISLATIVE DELEGATION**

Friday, January 19, 2007

8:00 A.M.

**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 (left at 8:55 a.m.), and Commissioners Lewis A. Cheek and Michael D. Page

Absent: Commissioner Philip R. Cousin Jr.

Legislators: Representatives Larry Hall, Paul Luebke, and Henry Michaux Jr.

Presider: Chairman Reckhow

**Welcome**

Chairman Reckhow welcomed everyone to the January 19, 2007 Joint BOCC/Durham Legislative Delegation Meeting, stating that no introductions were necessary.

Vice-Chairman Heron remarked that she must leave no later than 8:35 a.m. to interview candidates for the Director of the Senior Center.

**Items and Discussion Regarding the 2007 Legislative Agenda**

Chairman Reckhow stated that the agenda is organized—Priority Local Items, Priority Statewide Items, and Additional Statewide Issues, with a separate handout entitled, “The Durham Board of County Commissioners and the Durham City Council Proposal for the Addition of a Prepared Foods Tax to the Respective Legislative Agendas for the 2007 Session of the North Carolina General Assembly”.

**Prepared Foods Tax**

Chairman Reckhow informed the members that the prepared foods tax proposal emanated from the Durham Cultural Master Plan Advisory Board, which made a presentation to the County Commissioners in August 2006. One of its recommendations was a new revenue source. Ms. E’Vonne Coleman-Cook and Mr. Barker French were selected to co-chair the Cultural Tax Advisory Task Force to consider a cultural tax. They have worked quite a bit on this issue over the past few months.

Chairman Reckhow recognized Ms. Coleman-Cook and Mr. French.

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Representative Luebke asked if the information in the packet dated November 10 was identical to the handout dated January 19.

Chairman Reckhow informed Representative Luebke that the information was identical; the date should have been changed on the document in the packet.

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Prepared Foods Tax (continued)

Mr. French provided brief background information. He stated that he and Ms. Coleman-Cook co-chaired a committee to examine options to fund the implementation of the Durham Cultural Master Plan. The committee included a variety of folks who had involvement in the community; it met a number of times over a period of about five weeks. There is no menu of taxes from which to choose; the taxes are very limited. The tax determined to be the best suited was the prepared foods tax, which is estimated to yield about \$5 million. “It allows us to offer the various stakeholders in support of the tax what they need so they can bring their support to the table. Only about 60 percent of the tax yield will be paid by Durham residents. The other 40 percent will be paid by people who come to Durham and buy meals at restaurants, for example. The tax is spread more evenly and is less of a burden on Durham citizens. The restaurant owners and operators do not appear to oppose the one-percent tax. A need exists to support Durham citizens at the lower end of the income stream who are paying the tax, albeit not as much as those who visit the more expensive restaurants. In the proposal, about \$750,000 is designated for social services, particularly Lincoln Community Health Center and subsidized childcare, both of which are very much needed in this community.”

Ms. Coleman-Cook asked the Representatives to consider one key matter regarding this particular tax—the intent. Durham is losing ground in the cultural sector in terms of what is happening to organizations. Durham has organizations it is proud of such as the African-American Dance Ensemble; however, these organizations have had difficulties over the last several years because they are not receiving funding from the corporations that one would expect, including statewide corporations that are based in Durham. In this community, most of the larger cultural venues are owned by the City or by the City and County. Durham has an extremely fragile cultural sector. Ms. Coleman-Cook stressed that one should keep in mind during this discussion the critical nature of how Durham is losing ground, i.e. one opera company, and is having difficulty sustaining an artist community (they moved out of downtown, because they can no longer afford to be housed downtown). “We have to do something to sustain what we think is important in our true identity. While you will get deep into the discussion about the nature of this particular tax or other options, please keep in mind that the cultural community is extremely fragile, and we are going to lose what we thought and still think is our true identity, which is our richness. Thank you for taking the time to consider this.”

Chairman Reckhow called for questions for Ms. Coleman-Cook and/or Mr. French.

No one put forward questions.

Chairman Reckhow stated that 60+ people served on the Durham Cultural Master Plan Advisory Board; now 14 people are working on the Master Plan implementation effort. Seed money (\$500,000) out of the extra one percent occupancy tax will sustain them for a while. A few weeks ago, the Board of Commissioners approved the first set of projects presented by the Advisory Board; however, within the next year, no money will remain. Without a continuous stream of money, implementation of the Cultural Master Plan could be in jeopardy.

Chairman Reckhow informed the Representatives that she would be happy to share the Cultural Master Plan with them.

Mr. French interjected, "It is a 15-year plan; it is not designed to stop after the \$500,000 in the occupancy tax is allocated." Over 500 people participated in the study; 250 people at six community meetings; 114 individual meetings; 33 small group meetings; and 63 people served on the Advisory Board, along with a special executive committee. The needs of the entire community were considered.

Chairman Reckhow stated that the Plan envisions Durham becoming a real cultural arts capital in this part of the state. Resources are needed to implement the Plan.

Mr. French conveyed the various ways in which culture is important to the community.

Chairman Reckhow stated that 25% of the estimated revenue from a prepared foods tax would go toward cultural arts; 25% toward civic and visitor-related amenities; 5% toward community cleanup; 20%--marketing; 10%--hospitality and emerging industry workforce training; and 15%--health and social services support. She explained the ways in which the revenue would be used in the Durham community.

Mr. French mentioned that the Durham Athletic Park needs some renovation if the Minor League Baseball Association moves to Durham.

Chairman Reckhow stated that the prepared foods tax has the support of the two local governing bodies. This has been discussed intermittently for over a decade.

Per a question by Representative Luebke, Chairman Reckhow explained that an interlocal agreement between the City and County would govern the allocation of funds that would be jointly administered. An agreement on the framework has been reached. An interlocal would not be composed until the legislation passes.

Vice-Chairman Heron remarked that a portion of the revenue would be used on the Museum of Life and Science.

Representative Michaux expressed concern that the City and County may have a disagreement on the interlocal if the legislation passes.

County Attorney Chuck Kitchen interjected that an agreement has been reached on the major categories; however, each year the percentages may change depending on the year's events. Flexibility is needed.

County Manager Mike Ruffin stated that the major differences between the City and County have been settled through compromises. The mechanics will not be difficult to resolve.

Representative Luebke conveyed that the proposal has been very controversial for a decade. He reminded the Commissioners of the many points of agreement between the Legislators and Commissioners, i.e. the DOT situation regarding the repair money. State and local governments battle with each other over scraps. Thirty years ago the federal government provided more support. The Reagan revolution did tremendous damage to state and local governments in terms of decreasing federal funding.

Representative Luebke voiced complete support of the Cultural Arts Master Plan; however, he expressed problems with the funding mechanism. He asked why the Plan would not be funded out of the 2½-cent sales tax and the property tax.

Commissioner Cheek replied that Durham County has insufficient revenue to fund the Plan unless it raises property taxes or realizes other sources of revenue.

Chairman Reckhow stated that most of the sales tax money is dedicated directly to the CIP to fund the debt service on school bonds.

Representative Luebke commented that the industrial commercial tax base of Durham is growing at a great rate; this should be considered. In addition, he opined that the tax valuations should be performed every four years instead of every six years, because property values would be higher and the rate would come down to raise the same amount of money. This would provide a truer assessment of the tax rate being closer to market value. The greatest discrepancies are in the homes of affluent people. A tremendous gap exists between market value and tax assessed value. Failure to revalue every four years gives a tax break to the more well-to-do people of Durham and hurts public relations because of the artificially high tax rate.

Chairman Reckhow explained the reason for the six-year valuation. The Tax Administrator assessed the situation in 2005, which revealed a huge vacancy rate in the commercial, warehouse, and industrial sector. Values in the non-residential would have been lower; more of a tax burden would have been placed on the residential because they kept their value

through the economic recession. By waiting, the vacancy rates are decreasing; now Durham County will get a truer and better valuation.

County Manager Ruffin stated that Representative Luebke was incorrect about the appraisal of the higher valued homes. Revaluation does not seek to remedy that inequity. Appraisal techniques do that. Durham County now has a full-time appraisal staff. Revaluation shifts the burden from residential to business and personal property. With the vacancy rate due to 9-11, the burden would not have shifted if the valuation had been done at that time.

Representative Luebke expressed that the revaluation should have been done in 2006 when the Country was not in a recession and Durham County was not in a recession. This would have provided a much fairer property tax without an artificially high rate.

Representative Michaux asked if the Commissioners would be willing to put the prepared foods tax out for referendum.

Commissioner Cheek responded in the affirmative and agreed that it should be put to the people.

Chairman Reckhow cited that many other local governments in the state get this tax without a referendum; it is not a huge amount of money. The Commissioners have to stand for election. If the citizens of Durham County do not appreciate the Commissioners, they can be voted out of office. The prepared foods tax was the topic of a front page article in yesterday's Herald-Sun; yet, she received no complaints from citizens.

Representative Michaux expressed that he was trying to reach a middle ground.

Vice-Chairman Heron stated that she gets many calls from citizens when they pay their taxes, not during revaluation.

Chairman Reckhow reiterated Vice-Chairman Heron's remarks in agreement.

Representative Luebke stated that Hope Valley is tremendously under assessed. A huge gap exists between the tax value of the homes and their market value. He stated that he made a great exception at the Commissioners request to help provide the decisive vote for the ½-cent sales tax in 2003. Fundamentally, sales tax is regressive; they take more from the lower income people. If necessary, the Commissioners should consider raising property taxes to support the Cultural Arts Master Plan.

Chairman Reckhow estimated that based on the upcoming CIP (between \$900 million and \$1 billion) and the Schools' needs (\$200 million in short-term needs), property taxes will probably be increased in June. "At what point must we stop? Should we raise property taxes by 10 cents?"

Commissioner Cheek asked about the impact of the prepared foods tax (i.e. per person, per year).

County Manager Ruffin replied that if property taxes are increased, taxpayers will contend that they are funding improvements that many people from outside Durham County are coming to enjoy. In contrast, 40% of the proceeds from the prepared foods tax will be paid by persons who do not reside in Durham. The average increase per household would be \$18.00.

Commissioner Cheek stated that in exchange for the \$18.00 per family, Durham would gain \$5 million in additional revenue.

Chairman Reckhow offered that a low-income family would pay about \$10 more per year; a wealthy family would pay an additional \$30 per year.

Regarding property taxes, County Manager Ruffin stated that a penny raises a little more than \$2.4 million. He disagreed with Representative Luebke that the failure to reevaluate in 2006 caused a significant loss in revenue. The large vacancy rates must be considered. Durham County made the right decision.

Chairman Reckhow stated that a referendum could be considered if it is the only way to move forward. The Commissioners feel that the prepared foods tax is reasonable and palatable way because of the supportive feedback from the community. Durham County needs the money. Putting it on the ballot this fall, in addition to a bond referendum, may be poor timing.

Representative Luebke communicated that he was not convinced that the revenue could not be obtained through property taxes. He restated that the sales tax is a regressive tax. He had a problem that the tax burden is the same on the lower end as on the upper end. The Commissioners need to take into consideration the difference in poverty rates between Wake County and Durham County. Durham's poverty rate is 58% higher than Wake County's. More families on the low end get hit by this sales tax.

Chairman Reckhow explained that the prepared foods tax is used in Mecklenburg and Cumberland Counties in which the demographics are similar to Durham County. Many of Durham's neighbors have alternative revenue sources. Durham County has been trying for 17 years to get a school impact fee and for over a decade to get the prepared foods tax.

Representative Michaux conveyed that the Delegation has no problem with the impact fee; it is the action of the entire General Assembly.

County Manager Ruffin stated that the Cultural Tax Advisory Task Force considered revenue options that could pass through the General Assembly. The opinion of the Task Force was that if the local Delegation put in a local bill for the prepared foods tax, it would likely win General Assembly approval.

Representative Michaux agreed.

Other Items

Deborah Craig-Ray, Assistant County Manager, requested that Mr. French elaborate on the court personnel request.

Mr. French stated the following request: 6 new magistrates (4 criminal, 2 civil); 3 new ADA's; 5 new clerks; and 1 District Judge.

Representative Luebke remarked that a persuasive case had been made for the magistrates.

Representatives Michaux and Luebke had no problem with the request for court personnel; they pledged to work on the request.

Mr. French assured the Delegation that he would work with Administrative Office of the Courts and others to enhance their efforts.

County Attorney Chuck Kitchen explained the legislation to allow counties to adopt an Adequate Public Facilities Ordinance, including a requirement for the provision of educational space and facilities or the payment of funds in lieu thereof.

Chairman Reckhow assisted with the explanation, stating that the legislation is pertinent only if the schools are at or above capacity.

Representatives Michaux and Luebke interpreted the legislation as an impact fee. They asked whether the school capacity is determined system wide or by attendance zone.

Representative Hall requested that County Attorney Kitchen address the transfer policy and how it plays into the equation.

County Attorney Kitchen stated that Durham County has much variety in its schools and many offerings. A vast number of students do not attend the schools in their districts. School zoning for impact fees will not work because of the liberal transfer policy. In addition, the County controls very little of the new development. Most is controlled by the City.

Representative Luebke questioned whether the Commissioners had been in conversation with the Town of Chapel Hill and the City of Durham about denying requests for new subdivisions.

Chairman Reckhow mentioned that the Board presented an adequate public facilities ordinance to the City a few years ago; the City would not approve it.

County Manager Ruffin informed the Delegation that schools have no financial impact on the City.

County Attorney Chuck Kitchen stated that cities grow by having residential development because they do not pay for human services.

Representatives Michaux and Luebke stated that they see no difference in item Nos. 3 (Adequate Public Facilities Ordinance) and 4 (Impact Fee for School Construction).

Representative Michaux stated that if Durham County gets No. 4, it will not need No. 3.

Chairman Reckhow stated that 4 is better than 3. The only reason 3 was brought up was because Cabarrus County got 3 a couple of years ago, with the proviso.

Commissioner Page asked if No. 4 was a dead issue.

Representative Luebke replied, "Absolutely not. You want to have 4a as the land transfer tax. The one-percent land transfer tax has already been recommended out of one study commission and it's rumored that there will be a second study commission that's going to recommend the one-percent land transfer tax."

Representative Hall stated that the Delegation is having no problem with impact fees.

County Manager Ruffin commented that the County is speaking with the Schools about the transfer policy.

Chairman Reckhow stated that most of the impact fees relative to item No. 4 were refunded to out-of-state homebuilder companies. The County allocated the interest to the School System.

Representative Luebke encouraged the Commissioners to have a separate lobbying effort from the Association of County Commissioners to join the School Board Association in calling for the land transfer tax and/or the developer impact fee—separate from the menu. "The menu is not going to fly because I not will support an increase in the sales tax statewide local option because too many counties will use it to lower property taxes on wealthy people and businesses and stick it to poor people. You've got to take this in single items. I'd be happy for you to get the Association of County Commissioners to have a separate resolution supporting developer impact fees and a separate resolution supporting the one-percent land transfer tax. That would help us a lot."

Representative Michaux stated no problem with No. 5 (I-40 Resurfacing).



County Manager Ruffin and Chairman Reckhow answered questions posed by Representatives Michaux and Luebke regarding No. 6 (Resolution to Allow Local Governments to Enact Fees for Food and Lodging Inspections).

Ms. Craig-Ray thanked the Delegation for the work they did last year on item No. 1 (Statewide—Medicaid Relief).

Chairman Reckhow stated that the Menu of Revenue Options (No. 2) has been discussed. She expressed a desire for an initial movement to study and consider a raise in the compulsory school attendance age (No. 3), which has the support of Durham's School Board and the City Council.

Chairman Reckhow replied to Representative Michaux's questions about the phased approach.

Representative Michaux stated that no one has a problem with No. 6 (State Earned Income Tax Credit) or No. 4 (Funds to Help DSS Hire Spanish Interpreters). Item Nos. 5 (Kinship Care Funding), 7 (Funding for Childcare Subsidy), and 8 (Funding for In-Home Services for Elderly) are matters that have been discussed and argued all last year. "I don't know what the makeup of the committees is going to be this year. The only thing we can do is wait; then we can come back with more definitive answers, particularly to item Nos. 5, 7, and 8."

In response to a question by Commissioner Page, Representative Michaux explained that the bone of contention regarding Nos. 5 and 7 is the fee problem with foster care. There is a tremendous gap between what is paid for foster care in Durham County and in Gaston County, in Mecklenburg County, etc. Until the fee structure can get straightened out, there will be problems.

Representative Michaux explained that item No. 9 (Allow Boards of Education to Obtain Sales Tax Refunds) did not get fixed in 2006 because the Schools asked for the lump sum to be returned rather than the sales tax refunds; that was the Schools' priority.

County Attorney Chuck Kitchen stated that No. 10 (Indigent Appeals in DSS Handled by Court Appointed Trial Attorney) is a statewide issue. The Legislature changed the way appeals come out of DSS. The person who did the legal work at the trial level had no responsibility for the appeal. If the attorney lost, he would file an appeal. This resulted in numerous frivolous appeals. This has caused a huge burden to county attorneys and results in a financial burden to counties without full-time representation.

County Attorney Kitchen and Representative Michaux expressed different views regarding "frivolous" appeals.

Chairman Reckhow pointed out that most of the priorities have been addressed. Because of Durham's population, the Commissioners are very concerned with item No. 13 (Reduce

Uninsured in NC). She requested that the Delegation consider the recommendations of the Institute of Medicine to help relieve the situation.

Representative Luebke informed Chairman Reckhow that the House passed the bill; the Senate did not take it up.

Chairman Reckhow announced that Mental Health Parity (No. 14) is also an issue; over half the states in the country have mental health parity.

Representative Michaux informed that more work would be done on that this year.

Representative Luebke stated that insurance companies are opposed to No. 14.

Chairman Reckhow mentioned Support Item No. 4 (Increase Court Facility Fees). She stated that the cost of covering the courts is enormous. The Commissioners support the Regional Legislative Agenda from TJ COG. Chairman Reckhow requested that Ms. Craig-Ray forward the NCACC Legislative Agenda to the Delegation.

Chairman Reckhow thanked the Delegation members for attending the meeting. She asked that the dialogue be kept open during the session. Durham County wishes to have a cooperative effort with the Delegation. "Generally, we are on the same page. Some work obviously needs to be done on the prepared foods tax. Please keep an open mind. The ultimate goal is to provide some new revenue for Durham County. Huge capital improvements are needed. An infusion of new revenue would be very helpful and very timely. We should all work on that together."

Representative Luebke asked that Durham County, the City of Durham, and the Town of Chapel Hill converse about not approving more single-family subdivisions that are producing more school children. "Without the revenue, you should be saying 'no'."

Representative Michaux recapped the discussion by stating the following:

- Court Personnel—no problem
- Prepared Foods Tax—more discussion
- APFO in conjunction with the Impact Fee—not much of a problem
- No. 5 (I-40 Resurfacing Costs Exempted for State's Equity Funds)—probably introduce new legislation to avoid what DOT wants to do
- No. 6 (Resolution to Allow Local Governments to Enact Fees for Food and Lodging Inspections)—will come up for discussion
- Medicaid Relief—no problem
- Menu of Revenue Options—"I'll do it again and see where it goes"
- Increase School Attendance Age—no problem
- Funds to Help DSS Hire Spanish Interpreters—no problem
- State Earned Income Tax Credit—no problem

- Item Nos. 5 (Kinship Care Funding), 7 (Funding for Childcare Subsidy), and 8 (Funding for In-Home Services for Elderly) will have to be looked at as we get to them to see what happens
- Allow Boards of Education to Obtain Sales Tax Refunds—no problem
- Indigent Appeals in DSS Handled by Court Appointed Trial Attorney—to be discussed by Representative Michaux and County Attorney Chuck Kitchen
- An Act to Allow the County to Contest Administrative Subpoenas Without Having to File Suit in Superior Court—done
- Mental Health Parity—we will talk again because we are still developing the whole mental health program

Representative Luebke stated that the Delegation's priority will be with the low-wealth counties where a huge percentage of their budgets is going to Medicaid.

### **Adjournment**

The meeting adjourned at 9:56 a.m.

Respectfully submitted,

Vonda C. Sessoms  
Clerk to the Board