

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

Monday, February 11, 2013

7:00 P.M. Regular Session

MINUTES

Place: Commissioners' Chambers, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman Fred Foster, Jr., Vice-Chair Brenda A. Howerton, and Commissioners, Michael D. Page, and Ellen Reckhow

Absent: Commissioner Wendy Jacobs

Presider: Chairman Fred Foster, Jr.

Opening of Regular Session—Chairman Foster asked everyone to join in the Pledge of Allegiance. Chairman Foster noted that Commissioner Jacobs was absent due to a family emergency.

Vice-Chair Howerton moved, seconded by Commissioner Page that Commissioner Wendy Jacobs' absence be excused.

The motion carried unanimously.

Agenda Adjustments

There were no adjustments to the agenda.

Announcements

Chairman Foster made the following announcements:

- "In Touch with Durham County," the Durham County Television show, airs on Cable TV Channel 8 at 8:30 a.m. and 12 noon on Mondays; and 8:30 a.m., 12 noon and 6:30 pm on Tuesday–Sundays. Our County Commissioners' meetings are also rebroadcast on Thursdays at 2:00 p.m., Saturdays at 9:00 p.m., and Sundays at 9:00 p.m.
- Durham County needs you! If you have a few hours to commit, Durham County has a number of boards and commissions that can benefit from your participation. We invite you to make a difference in our community. Contact the Clerk's Office at 919-560-0025, visit the County's website, or email Clerk@dconc.gov for more information. Please note that all City and County taxes must be current at the time of application.

Minutes

Commissioner Reckhow moved, seconded by Commissioner Page, to approve as submitted the January 14, 2013 Regular Session Minutes of the Board and the January 28, 2013 Regular Session Minutes of the Board.

The motion carried unanimously.

Consent Agenda

Chairman Foster asked the Commissioners if they desired to pull any items from the Consent agenda.

Commissioner Page questioned if consent agenda item “e” were approved tonight, would the legislative agenda indeed be finalized. Chairman Foster answered in the affirmative. Commissioner Page then requested to pull item “e.”

Vice-Chair Howerton moved, seconded by Commissioner Reckhow, to approve the following consent agenda items (5a, b, c, d, f, g, h and i):

- *a. Approve Budget Ordinance Amendment No. 13BCC000055 to amend the AnimalKind budget, thereby increasing the contract amount to allow the reimbursement of \$5,450 from NC Department of Agriculture and Consumer Services Spay/Neuter Program to Durham County to be disbursed to AnimalKind for additional Durham County animals to be provided low cost spay and neutering services;
- *b. Approve Budget Ordinance Amendment No. 13BCC000056 in the amount of \$4,000 from the National Association of County and City Health Officials (NACCHO) for the Environmental Health Division;
- *c. Approve Budget Ordinance Amendment No. 13BCC000057 appropriating \$36,379 of General Fund fund balance to support an invoice payment by the Finance department of a Sales Tax Audit by Dixon Hughes Goodman;
- d. Approve the Durham County Local Emergency Planning Committee (LEPC) membership roster as presented and accept the report of the past year’s activities;
- *f. Approve Budget Ordinance No. 13BCC000058 to recognize additional revenues in the amount of \$1,251,974 for Crisis Intervention, Low Income Energy Assistance Payments, LIEA & CIP Administration, Child Care, and Progress Energy’s Energy Neighbor Program, in the amount of \$1,251,974;

- *g. Approve the resolution for the rate reduction to the South Parking Deck; and authorize the Manager and the Chief financial Officer to execute the necessary documents;
- h. Approve the contract amendments with Jackson Lewis, LLP and Womble Carlyle Sandridge & Rice, LLP in an amount not to exceed \$80,000 respectively; and authorize the County Manager to execute the contracts;
- i. Amend the 2013 BOCC Meeting Calendar to cancel the regular meeting for March 26, 2013 and change the time of the September 3, 2013 Worksession to 9:00 am.

The motion carried unanimously.

*Document(s) related to this item follow:

Consent Agenda Item No. a.

DURHAM COUNTY, NORTH CAROLINA
FY 2012-13 Budget Ordinance
Amendment No. 13BCC000055

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2012-13 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	\$52,041,262	\$5,450	\$52,046,712

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Public Safety	\$47,184,010	\$5,450	\$47,189,460

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

This the 11th day of February, 2013.

Consent Agenda Item No. b.

DURHAM COUNTY, NORTH CAROLINA
FY 2012-13 Budget Ordinance
Amendment No. 13BCC000056

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2012-13 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	\$52,046,712	\$4,000	\$52,050,712

Expenditures:

<u>Function</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Human Services	\$85,502,711	\$4,000	\$85,506,711

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

This the 11th day of February, 2013.

Consent Agenda Item No. c.

DURHAM COUNTY, NORTH CAROLINA
 FY 2012-13 Budget Ordinance
 Amendment No. 13BCC000057

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2012-13 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	\$22,080,922	\$36,379	\$22,117,301

Expenditures:

<u>Function</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
General Government	\$85,608,065	\$36,379	\$85,644,444

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

This the 11th day of February, 2013.

Consent Agenda Item No. f.

DURHAM COUNTY, NORTH CAROLINA
 FY 2012-13 Budget Ordinance
 Amendment No. 13BCC000058

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2012-13 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	\$52,050,712	\$1,251,704	\$53,302,416
Contributions & Donations	\$751,383	\$270	\$751,653

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Human Services	\$85,506,711	\$1,251,974	\$86,758,685

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

This the 11th day of February, 2013.

Consent Agenda Item No. g.

FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT

THIS FIRST AMENDMENT TO INSTALLMENT FINANCING CONTRACT (this “First Amendment”), dated as of February ____, 2013, is made and executed by BANK OF AMERICA, N.A., a national banking association organized and existing under the laws of the United States of America (the “Bank”), and the COUNTY OF DURHAM, NORTH CAROLINA, a body corporate and politic and a political subdivision of the State of North Carolina (the “County”).

WITNESSETH:

WHEREAS, the County and the Bank executed and delivered an Installment Financing Contract dated August 20, 2003 (the “Contract”), pursuant to which the Bank made an Advance in the original principal amount of \$14,502,000 (the “Advance”) to the County to finance the development of a multi-level parking garage located on the northeast corner of Julian Carr Street and Willard Street in the downtown area of the County of Durham, North Carolina, containing approximately 1,140 parking spaces and called the South Garage (as further defined in the Contract, the “Project”); and

WHEREAS, the amount of the Advance currently outstanding is \$6,443,057.75; and

WHEREAS, the County and the Bank have agreed to reduce the Interest Rate applicable to the Amount Advanced under the Contract and to modify the prepayment provisions under the Contract; and

WHEREAS, capitalized terms used but not otherwise defined herein shall have the respective meanings given such terms in the Contract;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and in the Contract, the parties hereto do hereby agree as follows:

Section 1. The definition of “Interest Rate” set forth in Article I of the Contract is hereby modified from 4.415% to 1.60%, so that the definition shall read as follows:

“Interest Rate” means 1.60% per annum calculated on the basis of a 360-day year of twelve 30-day months.”

Section 2. The **Payment Schedule** to the Contract is hereby replaced with the modified **Payment Schedule** attached hereto.

Section 3. Section 3.4(a) of the Contract is hereby deleted in its entirety and replaced with the following:

Section 3.4 Prepayment of Amount Advanced.

(a) The County shall have the option to prepay or provide for the prepayment of the outstanding principal components of the Installment Payments, in whole or in part, at any time, upon payment of the principal components of the Installment Payments to be prepaid, plus accrued interest thereon to the date of prepayment, plus the Prepayment Fee.

The Prepayment Fee will be the sum of fees calculated separately for each Prepaid Installment, each such fee determined as follows:

(i) The Bank will first determine the amount of the interest component of the Installment Payments that would have accrued each month at the Interest Rate applicable to the Prepaid Installment had it remained outstanding until the applicable Original Payment Date.

(ii) The Bank will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment or redemption through the Original Payment Date, using the Treasury Rate.

(iii) If (i) minus (ii) for the Prepaid Installment is greater than zero, the Bank will discount the monthly differences to the date of prepayment by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment.

The following definitions will apply to this definition of the Prepayment Fee:

“Original Payment Date” means the date on which the prepaid Installment Payment would have been paid had there had been no prepayment.

“Prepaid Installment” means the amount of the Installment Payment to be prepaid which would have been paid on a particular Original Payment Date.

"Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal to the Original Payment Date of the Prepaid Installment which are principal payments (calculated as of the date that is three Business Days prior to the date of prepayment in accordance with accepted financial practice and rounded to the nearest month), as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Bank shall select a comparable publication to determine the Treasury Rate in a manner reasonably acceptable to the County.

Section 4. The Contract is hereby amended by adding a new Section 16.13 thereto, which shall read as follows:

Section 16.13 No Advisory Services. The County acknowledges and agrees that: (i) the transaction contemplated by the Contract as amended by this First Amendment is an arm's length, commercial transaction between the County and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the County; (ii) Bank has not assumed any advisory or fiduciary responsibility to the County with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Bank has provided other services or is currently providing other services to the County on other matters); (iii) the only obligations Bank has to the County with respect to the transaction contemplated hereby expressly are set forth in the Contract as amended by this First Amendment; and (iv) the County has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

Section 5. Except as specifically provided in this First Amendment, the terms and provisions of the Contract are ratified and confirmed and shall remain in full force and effect. This First Amendment may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed as a document under seal as of the date first above written.

BANK:

Bank of America, N.A.

By:

Name:

Title:

COUNTY:

County of Durham, North Carolina

By:

Name:

Title:

Attest:

By:

Name:

Title:

[SEAL]

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

Local Government
Commission
Signature page for First Amendment to Installment Financing
Contract by and between Bank of America, N.A. and
the County of Durham dated February __,
2013

This Agreement has been approved by the Local Government Commission under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

By: _____
T. Vance Holloman, Secretary

Public Hearing to Consider Allocating Economic Development Investment Funds to bioMerieux, Inc.

Chairman Foster recognized Ms. Marqueta Welton, Deputy County Manager, who introduced the item.

Ms. Welton provided a brief background on bioMerieux, as well as a detailed explanation of the company's plan for future business expansion. Ms. Welton then provided information regarding the investment funds that were being proposed.

Chairman Foster opened the public hearing and recognized citizens who signed up to speak.

Mr. Brian Riley, bioMerieux, commented on the company's positive involvement with Durham County over the years.

Ms. Casey Steinbacher, Greater Durham Chamber of Commerce, provided remarks in support of the bioMerieux project in Durham County. She then reiterated several key components of the company's future business expansion and the importance of the investment funds.

Ms. Victoria Peterson questioned the number of students hired by bioMerieux from the science department at North Carolina Central University, the estimated salaries referenced, if there was any environmental impact from the manufacturing, if had staff visited the business site and if there was information available regarding the diversity of Durham bioMerieux employees.

Chairman Foster closed the public hearing. Chairman Foster assured Ms. Peterson that her questions would be researched and responded to in a timely manner.

Commissioner Reckhow moved, seconded by Vice Chair Howerton to approve allocating economic development investment funds to bioMerieux, Inc.

The motion passed unanimously.

FY 2013-2014 Annual Action Plan "Needs" Public Hearing

Chairman Foster recognized Ms. Wilmur Conyers, City of Durham, who introduced the item. Ms. Conyers stated the purpose of the public hearing, provided an overview of the annual action plan and the anticipated uses for the City-County HOME Consortium funds.

Chairman Foster opened the public hearing and recognized citizens who signed up to speak.

Ms. April Johnson, Citizens Advisory Committee, read a prepared statement regarding housing issues and economic opportunities for low-and-moderate income families in Durham County.

Chairman Foster closed the public hearing.

Commissioner Reckhow questioned if the funding amount anticipated to be received this year was based on the amount received during the previous fiscal period. Ms. Conyers replied in the affirmative and stated that an anticipated fifteen percent reduction in funding had been taken in to account.

Vice-Chair Howerton asked Ms. Conyers to again review the financial portion of the presentation.

Vice-Chair Howerton moved, seconded by Commissioner Page to receive the public comments on the FY 2013-2014 Annual Action Plan "Needs" related to community development needs.

The motion passed unanimously.

Public Hearing - New Durham County Courthouse Financing

Chairman Foster recognized Mr. George Quick, Finance Director, who introduced the item.

Mr. Quick stated the purpose of the public hearing and provided an overview the issuance of Limited Obligation Bonds in connection with the financing of the New Durham County Courthouse financing. Mr. Quick then reviewed the new financing terms, as well as the projects that the funds will cover.

Chairman Foster opened the public hearing and recognized citizens who signed up to speak.

Ms. Victoria Peterson questioned the cost of the new courthouse, detention center and fiber backbone. She also questioned the number of African-American companies involved with the courthouse construction.

Chairman Foster closed the public hearing. Chairman Foster assured Ms. Petersen that her questions would be addressed in a timely manner.

Commissioner Reckhow thanked Mr. Quick for obtaining good financing options on the behalf of the County.

Commissioner Reckhow moved, seconded by Vice-Chair Howerton to approve the resolution and authorize the Manager and the Chief Financial Officer to execute the necessary related documents.

The motion passed unanimously

Discussion of 2013 Federal Legislative Agenda

Chairman Foster recognized Ms. Deborah Craig-Ray, Assistant County Manager, who introduced the item.

Ms. Craig-Ray reviewed the suggested ideas from the Board for inclusion in the 2013 Federal legislative agenda.

Commissioners Reckhow and Page suggested either eliminating the item “increasing education funding” or rewording the item as “maintain education and workforce development funding.” Commissioner Reckhow then suggested broader wording of the “gun control” item to include “gun control and funding for mental health services.”

Vice-Chair Howerton questioned the inclusion of workforce development funding language because such funding is requested by the City of Durham. She stated her desire to submit the items regarding the opposition of unfunded mandates, gun control and increasing education funding.

The Board then engaged in a discussion to determine which two items to submit to the North Carolina Association of County Commissioners. The Board agreed to submit the items regarding the opposition of unfunded mandates, gun safety and maintaining education and workforce development funding.

Commissioner Reckhow moved, seconded by Commissioner Page approve Federal priority items regarding the opposition of unfunded mandates, gun safety and maintaining education and workforce development funding to be sent to NCACC for presentation to the North Carolina Congressional Delegation.

The motion passed unanimously

Item Removed from Consent Agenda for Discussion

Consent Agenda Item No. e.

Commissioner Page asked if it were too late to add items to the 2013 agenda. Ms. Craig-Ray stated that there was still time, as local bills were not due until March 20th. Commissioner Page commented that an issue surrounding grandparent adoption and foster care rights had recently been brought to his attention.

Commissioner Reckhow then commented on the deer hunting issue that would be placed on the agenda. Ms. Craig-Ray provided a brief update on the status of that issue. County Attorney Lowell Siler commented that wildlife experts and personnel from the Sheriff's Office would be brought in for collaboration before submitting the item for legislative consideration.

Attorney Siler continued to say that the matter previously discussed regarding the deferral of court fees would be addressed internally, therefore they would not be forwarded to the Board.

Commissioner Reckhow moved, seconded by Vice-Chair Howerton approve the final 2013 Durham County Legislative Agenda with the exception of item No. 3.

The motion carried unanimously.

Closed Session

Commissioner Reckhow moved, seconded by Commissioner Page, to adjourn into closed session pursuant to G.S. 143-318.11(a)(5) to instruct staff on the position to be taken concerning the acquisition of real property for open space at 1003 Santee Road owned by Capital Bank N.A., and the acquisition of conservation easements on two farm properties located at 8848 Roxboro Road owned by George P. and Elizabeth Tilley, and 12459 Hampton Road owned by Douglas Daye.

The motion carried unanimously.

Reconvene to Open Session

Chairman Foster announced that the Board met in closed session; directives were given to staff.

Commissioner Reckhow moved, seconded by Vice-Chair Howerton, to approve the acquisition of conservation easements on two farm properties located at 8848 Roxboro Road owned by George P. and Elizabeth Tilley, and 12459 Hampton Road owned by Douglas Daye.

The motion carried unanimously.

Adjournment

Vice-Chairman Howerton moved, seconded by Commissioner Page, to adjourn the regular session meeting.

The motion carried unanimously.

Respectfully Submitted,



James N. Jackson
Deputy Clerk to the Board