

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

Monday, March 13, 2006

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

Absent: None

Presider: Chairman Reckhow

Opening of Regular Session—Pledge of Allegiance

Agenda Adjustments

Chairman Reckhow acknowledged revised agenda action forms for Consent Agenda Item No. 5c, Budget Ordinance Amendment No. 06BCC000047—Durham Public Schools Supplemental Funding Request, and Regular Agenda Item No. 9, Closed Session.

Announcements

Chairman Reckhow announced that the Unified Development Ordinance Workshop on Environmental Protection would be held on Tuesday, March 28, 2006, from 6:00 to 8:00 p.m., at 101 City Hall Plaza.

Chairman Reckhow also informed the public that free tax preparation by certified volunteers is available for low/moderate income taxpayers. Citizens may call MoneyWi\$e Durham Coalition at 682-5788 or visit www.durhamtech.edu for site locations and hours.

Minutes

Vice-Chairman Heron moved, seconded by Commissioner Cheek, to approve as submitted the February 16 and February 20, 2006 Community Conversations Minutes and the February 27, 2006 Regular Session Minutes of the Board.

The motion carried unanimously.

Consent Agenda

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

- *a. Budget Ordinance Amendment No. 06BCC000045— Sheriff's Office—Governor's Crime Commission Grant (recognize \$26,784 in revenue from the Governor's Crime Commission supporting the Sheriff's Office initiative to continue access to the national database, Justice Xchange);
- *b. Budget Ordinance Amendment No. 06BCC000046— NC Helping Neighbors Fund (approve receipt of \$16,401 from the state to assist in meeting current needs of Hurricane Katrina Victims in Durham);
- *c. Budget Ordinance Amendment No. 06BCC000047— Durham Public Schools Supplemental Funding Request (appropriate \$900,000 in additional sales tax revenue in the General Fund to increase the 2005-2006 Durham Public Schools Current Expense appropriation from \$83,227,705 to \$84,127,705; General Fund fund balance is expected to be replenished at the end of the fiscal year by higher than budgeted property tax collection);
- d. County Tax Services Inc.—Contract Amendment (approve for an additional \$70,000; funds exist in the Tax Department's current budget);
- e. FY 2006 Audit Contract (approve contract with Cherry, Bekaert & Holland, LLP for FY 2006 for \$91,000 plus \$15,000 for preparation of financial statements);
- *f. Designating Ordinance Changes for the Flood Hazard Protection Ordinance (TC05-04) (approve the request for an expedited hearing based on the request meeting the requirement of Sec. 3.5.20.B.3a and c of the Unified Development Ordinance); and
- g. Approve Grant Application from the Criminal Justice Resource Center to the NC Department of Corrections, Division of Community Corrections, for Criminal Justice Partnership Program Funds (this is a recurring grant application and approval process the County participates in each year).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda Item No. a. Budget Ordinance Amendment No. 06BCC000045—
Sheriff's Office—Governor's Crime Commission Grant (recognize \$26,784 in revenue
from the Governor's Crime Commission supporting the Sheriff's Office initiative to
continue access to the national database, Justice Xchange).

DURHAM COUNTY, NORTH CAROLINA
FY 2005-06 Budget Ordinance
Amendment No. 06BCC000045

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the
FY 2005-06 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	\$297,346,555	\$26,784	\$297,373,339

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$43,116,664	\$26,784	\$43,143,448

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

This the 13th day of March, 2006.

Consent Agenda Item No. b. Budget Ordinance Amendment No. 06BCC000046—NC
Helping Neighbors Fund (approve receipt of \$16,401 from the state to assist in meeting
current needs of Hurricane Katrina Victims in Durham).

DURHAM COUNTY, NORTH CAROLINA
FY 2005-06 Budget Ordinance
Amendment No. 06BCC000046

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the
FY 2005-06 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	\$297,373,339	\$16,401	\$297,389,740

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$364,345,076	\$16,401	\$364,361,477

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

This the 13th day of March, 2006.

Consent Agenda Item No. c. Budget Ordinance Amendment No. 06BCC000047—Durham Public Schools Supplemental Funding Request (appropriate \$900,000 in additional sales tax revenue in the General Fund to increase the 2005-2006 Durham Public Schools Current Expense appropriation from \$83,227,705 to \$84,127,705; General Fund fund balance is expected to be replenished at the end of the fiscal year by higher than budgeted property tax collection).

DURHAM COUNTY, NORTH CAROLINA
FY 2005-06 Budget Ordinance
Amendment No. 06BCC000047

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2005-06 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	\$24,210,228	\$900,000	\$25,110,228

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Education	\$88,685,342	\$900,000	\$89,585,342

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

This the 13th day of March, 2006.

Vice-Chairman Heron complimented the County Manager for preserving the fund balance.

Consent Agenda Item No. f. Designating Ordinance Changes for the Flood Hazard Protection Ordinance (TC05-04) (approve the request for an expedited hearing based on the request meeting the requirement of Sec. 3.5.20.B.3a and c of the Unified Development Ordinance)

Vice-Chairman Heron commented on the Flood Hazard Protection Ordinance.

Planning Director Frank Duke addressed Vice-Chairman Heron's comments, stating that the City and County received a Final Letter of Determination from the Federal

Emergency Management Agency (FEMA) late last year. The letter informed both entities that their floodplain management regulations must be revised in order to remain in compliance with Section 60.3(d) of the National Flood Insurance Program regulations. The revisions must be adopted by May 2, 2006 in order to qualify for flood insurance.

Preliminary Plat—Keeneland Manor Subdivision (D05-287)

Planning Director Frank M. Duke introduced the request by the John R. McAdams Co. Inc. on behalf of Teague-Hankins Development Corp. for the Board to approve a Preliminary Plat for “Keeneland Manor Subdivision”, a 21 single-family-lot cluster subdivision on a 60.12-acre site zoned RR and F/J-A. The property is located south of Stagecoach Road, east of Farrington Road, and west of NC 751. PIN 0707-02-85-3924.

Mr. Duke stated that staff recommended approval.

Chairman Reckhow called Tom Hankins, applicant, Teague-Hankins Development Corporation, 7124 Trenton Ridge Court, Raleigh 27613, and James Caldwell, the engineer representing John R. McAdams Company, PO Box 14005, Durham 27709, forward for comments.

County Attorney Chuck Kitchen recommended an alternative to the three-way agreement between Durham County Health Department, the Keeneland Manor Homeowners’ Association, and Teague-Hankins Development Corp.: that the conditions provided by Teague-Hankins be included in the permits issued for septic supply line installation. Attorney Kitchen explained that a three-way agreement would waive the County’s immunity, and liability would be shifted from the State to Local Government.

Mr. Hankins responded in agreement.

In response to a question by Commissioner Cheek, County Attorney Kitchen replied that the Minutes should reflect his recommendation that the conditions be met via the permit process in lieu of a three-way agreement.

Mr. Duke advised the County Attorney to review Condition No. 6, pertaining to proposed recreational use or modification of the common areas, which must be approved in writing by the Durham County Health Department and the City-County Planning Department prior to implementation. He recommended that the condition be added to the plat.

Based upon the recommendations of Attorney Kitchen and Mr. Duke, Chairman Reckhow suggested that the motion include that condition Nos. 1 – 6 be included in the permits issued for septic supply line installation; Condition No. 6 will also be included in the preliminary plat.

Robert Brown, Environmental Health Director, Durham County Health Department, further explicated the conditions.

Vice-Chairman Heron inquired about the community water system. She expressed concern about potential well-water droughts for homeowners.

Mr. Brown explained that community water supply is generally operated by a contracted utility. If a drought occurs, additional wells would be drilled. The State requires a 24-hour drawdown on wells used for community water supply.

Vice-Chairman Heron commented that her concern relates to attempting to relieve the County of financial responsibility if the well fails. She solicited advice from the County Attorney.

County Attorney Kitchen explained that the utility is contractually obligated to furnish the water, not the County.

Vice-Chairman Heron reiterated her concern about the possibility of the County having to take responsibility for failed water supply if the utility defaults on its contract.

Mr. Brown informed Vice-Chairman Heron that the County has no role in community water supply.

County Manager Ruffin added that failure of community water systems is a rare occurrence and that the State's rules are in place to enforce a satisfactory yield.

Vice-Chairman Heron commented that aside from her water supply concerns, she was pleased with the plan.

Chairman Reckhow concurred with Vice-Chairman Heron's compliments regarding the plan.

Commissioner Cheek made a motion to approve the Preliminary Plat for Keeneland Manor Subdivision with Item Nos. 1 – 6 of the March 12, 2006 letter from Teague-Hankins Development Corp. as conditions of the septic system permits; Item No. 6 will also be included in the preliminary plat.

Vice-Chairman Heron seconded the motion.

The motion carried unanimously.

Discussion of Federal Legislative Agenda

On March 28-29, 2006, Chairman Reckhow will be attending a Chamber of Commerce meeting in Washington, DC with Durham County's Congressional Delegation. She desired to finalize the Board's agenda concerning federal legislative issues and requested earmarks in order to present the information to Senators Elizabeth Dole and Richard Burr and Congressman David Price.

Assistant County Manager Deborah Craig-Ray reported on the National Association of Counties (NACo) Legislative Conference in Washington, D.C. on March 4–8, 2006, which she and County Attorney Chuck Kitchen both attended along with other county officials from across the country to discuss critical issues of importance to county government.

County Attorney shared his participation in a Justice and Public Safety Steering Committee workshop regarding Section 1983 liability and how to avoid and handle inmate claims.

Ms. Craig-Ray reviewed a memo she and County Attorney Kitchen submitted to the Board addressing the following federal legislative priorities:

- Career Launch
- Behind Closed Doors
- Durham Center for Senior Life
- Lincoln Community Health Center Inc.
- Support for TTA Regional Rail Project
 - Chairman Reckhow outlined a letter from M. Carter Worthy, Chair of TTA Board of Trustees, supporting the Triangle Transit Authority Regional Rail Project.
- Edward Byrne Memorial Justice Assistance Grant (JAG) Program (42 U.S.C. 3750)
 - County Attorney Kitchen discussed the JAG Program, whose funding is expected to be eliminated in the Bush Administration's FY 2007 budget request. Durham County has received JAG funds in the past, which have been used for law enforcement programs; prosecution and court programs; prevention and educational programs; corrections and community corrections programs; drug treatment and planning programs; and evaluation and technology programs. NACo urged commissioners to contact their local congressional delegations to support JAG funding in six increments of \$50 million (\$300 million total).
- Second Chance Act of 2005: Community Safety Through Recidivism Prevention

Ms. Craig-Ray reported on the following 2006 Congressional Priorities about which the North Carolina Association of County Commissioners (NCACC) provided information at the NACo Legislative Conference:

- Support Remote Sales Tax Collection
- Protect Emergency Communications and Local Franchising in 1996 Telecommunications Rewrite
 - County Attorney Kitchen offered additional insight on BITS (Broadband/IP data) III legislation. BITS III would preempt local government's franchise authority of traditional telephone providers entering the local video market by having the FCC, not counties, grant franchises to phone companies to provide cable-like service. BITS III is expected to be the final bill which will be "marked up" and voted on by Congress. NCACC is urging commissioners to support protection of PEG access channels, E-911, and franchise fees in the rewrite of the 1996 Telecommunications Act.

- County Attorney Kitchen explained for Vice-Chairman Heron that telephone services, video services, and data services have merged into an Internet-based service. The County may be allowed to charge “right-of-way” fees but not separate fees for E-911 because franchising would be either on a state (government) or national (FCC) level.
- Vice-Chairman Heron expressed concern about the County not being allowed to charge E-911 fees.
- Chairman Reckhow suggested that Ms. Craig-Ray draft a concise statement to present to the senators at the Chamber of Commerce meeting.

Chairman Reckhow asked for the Board’s position on adding requests for an increase in funds for childcare subsidy payments and for additional support for indigent health care at Lincoln Community Health Center (LCHC).

Commissioner Page inquired about financing for LCHC facility upgrades.

Ms. Craig-Ray responded that the funding is for upgrades (i.e. the lobby, several restrooms that are not ADA compliant) that has been needed for several years.

In response to a question posed by Commissioner Page, County Manager Ruffin responded that Durham County and Duke University Medical Center adopted a five-year improvement program in 2003 or 2004 whereby maintenance and upkeep of LCHC is a shared responsibility. Manager Ruffin offered to send information about the five-year schedule and improvements made thus far to Commissioners Cheek and Page.

Chairman Reckhow asked if the space currently being occupied by EMS will be upgraded once EMS moves into its new facility near Hayti.

County Manager Ruffin responded that upgrading the facility is Duke’s responsibility. However, EMS is planning to remodel the space for clinical use. Manager Ruffin offered to forward information on the proposed usage of the space to the Commissioners.

Chairman Reckhow further explained her recommendation to include the childcare subsidies and indigent care requests. She suggested submitting capital items separately to Congressman David Price’s staff. The operational budget items, including requests for childcare subsidy and indigent health care funding enhancements, should be structured with short background and the County’s position.

Ms. Craig-Ray stated that the items would be restructured and distributed to the Board.

Appointments to the Durham-Wake Counties Research and Production Service District

Angela McIver, Staff Specialist, Clerk to the Board, distributed ballots to the Commissioners to make appointments to the Durham-Wake Counties Research and Production Service District.

Commissioner Page inquired about the absence of Durham County residents applying for the Durham-Wake Counties Research and Production Service District.

Liz Rooks, Vice President of Planning and Development, Research Triangle Foundation of North Carolina, responded that four of the seven Durham-Wake Counties Research and Production Service District members are Durham County residents.

The Board made the following appointments:

Dave Gouveia (primary recommendation)
Sally Johnson (primary recommendation)
William Parker Jr. (primary recommendation)

Closed Session

Commissioner Cousin, seconded by Commissioner Page, to adjourn to closed session to discuss matters relating to the location or expansion of business or industry pursuant to G. S. 143-318.11(a)(4); and to adjourn to closed session to instruct the staff concerning the position to be taken in negotiating the material terms for the acquisition of a real property pursuant to G.S. § 143-318.11(a)(5). The property is and 306 S. Roxboro Street owned by Scarborough and Hargett Funeral Home.

Reconvene to Open Session

Chairman Reckhow announced that in Closed Session the Board discussed a proposed settlement agreement and purchase contract between Scarborough and Hargett Funeral Home Inc. and Durham County.

County Attorney outlined the agreement as follows: 1) purchase price for the funeral home will be \$3.75 million (\$603,500 for the land and \$3,146,500 for the building, all improvements located on the land, including without limitation, costs for additional expenses, complying with the new Unified Development Ordinance, other expenses such as the time the business may be closed before a new business may be opened, and all costs related to physical relocation of all personal property; 2) all taxes will be paid on closing; 3) closing is anticipated to occur on or before March 24, 2006; and 4) Scarborough and Hargett will be allowed to continue to operate on the property until September 6, 2007.

Commissioner Cousin made the motion to approve the agreement between Scarborough and Hargett Funeral Home Inc. and Durham County as highlighted above.

Commissioner Cheek seconded the motion.

The motion carried unanimously.

Adjournment

There being no further business, Chairman Reckhow adjourned the meeting at 8:45 p.m.

Respectfully submitted,

Yvonne R. Gordon
Deputy Clerk to the Board