

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

Monday, September 13, 2004

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 Joe W. Bowser, and Commissioners Philip R. Cousin Jr., Becky M. Heron, and Mary D. Jacobs

Absent: None

Presider: Chairman Reckhow

Opening of Regular Session—Pledge of Allegiance

Agenda Adjustments

- County Attorney Chuck Kitchen informed the Board that an amended agenda action form for “Auburn Apartments Property Tax Appeal” was placed at their seats prior to the meeting.
- Commissioner Jacobs supplied a copy of “Durham Regional Hospital CEO’s Report on North Carolina Division of Facility Services (DFS) and Centers for Medicare and Medicaid Services (CMS) Update” for each Commissioner.
- Vice-Chairman Bowser added a request by Attorney Keith Bishop to address the Board about employment records of a former Sheriff’s Deputy.
- County Manager Mike Ruffin requested that the Board remove Consent Agenda Item No. 8d, “Durham Public Schools—Declaration of Holton School Facility as Surplus” and re-present it at the September 27 Regular Session.

Minutes

Commissioner Heron moved, seconded by Commissioner Cousin, to approve the August 23, 2004 Regular Session Minutes as submitted.

The motion carried unanimously.

Recognition of Ketner Award Winning “System of Care” Program

Chairman Reckhow briefed the public on the Ralph Ketner Employee Productivity Award Program that honors 10 employees or teams of employees with a \$1,000 cash prize for innovative practices and projects. Mr. Ralph Ketner of Food Lion Inc. generously donates \$10,000 annually to the North Carolina Association of County Commissioners to reward innovative County employees for their successful productivity improvements. Durham's System of Care to reduce court-ordered treatment costs was recognized at the Association's recent Annual Conference in Asheville. The success of the program was made possible through a collective commitment of public and private agencies and community partners. The program is an integrated network of community services and resources realized through collaboration among families, professionals, and the community to assure that children have access to the services and supports they need for success. The Board of County Commissioners decided during the FY04-05 budget process to reinvest savings of \$225,000 to expand the program by hiring additional staff to serve more youth.

Chairman Reckhow recognized MaryAnn Black, former County Commissioner; Daniel Hudgins, retired Social Services Director; and Carolyn Titus, Deputy County Manager, for assisting with initiation of the program. She further acknowledged the following individuals who set policy in support of the program:

Durham Directors:

Superintendent Ann Denlinger; Durham Center Interim Director Ellen Holliman; Interim Social Services Director Chuck Harris; Health Director Brian Letourneau; Assistant County Manager Wendell M. Davis; District Court Judge Marcia Morey; and Chief Court Counselor Donnie Phillips, Department of Juvenile Justice and Delinquency Prevention (DJJDP).

Durham System of Care Council and Community Collaborative members:

Larry Wallace, DJJDP; Susan Guptill, Public Health; Nancy Domick, Durham Public Schools; Bill Hussey, Durham Public Schools; Alisa Huffman, Administrative Office of the Courts; Rob Robinson, The Durham Center; Carla Ivey, Strong Families Durham; Martha Kaufman, The Durham Center; and Adele Spitz Roth, Duke Center for Child and Family Policy

The Board congratulated the participants of System of Care for their award-winning efforts on behalf of the children and families of Durham.

Ms. Ellen Holliman, Mental Health Area Director, commented on the program and thanked the commissioners for the recognition and continuing support.

Chairman Reckhow extended thanks and appreciation to staff.

National Alcohol and Drug Addiction Recovery Month Proclamation

All across the country, organizations and governments are observing the 15th Annual National Alcohol and Drug Addiction Recovery Month. The goal of the program is to raise awareness about addiction treatment issues by helping to articulate the needs of those with alcohol or drug use disorders and acknowledging the courage of persons striving to maintain sobriety. The program is sponsored by the U. S. Department of Health and Human Services, Substance Abuse and Mental Health Services, Administration Center for Substance Abuse Treatment. A proclamation was prepared in support of this initiative.

Chairman Reckhow invited Commissioner Heron to read the following proclamation into the record:

PROCLAMATION

WHEREAS, substance abuse is a major public health issue affecting millions of Americans of all ages, races, and backgrounds; and

WHEREAS, this issue also carries an enormous medical, social, and economic cost; and

WHEREAS, substance abuse disorders are chronic but treatable diseases and everyday, men and women enroll in treatment programs to begin the road to recovery; and

WHEREAS, too often, people in need of recovery have difficulty obtaining the treatment that can help them regain their families, their jobs, and their lives; and

WHEREAS, barriers, such as cost, denial, and stigma associated with alcohol and drug use disorders, and access to appropriate and successful treatment must be overcome; and

WHEREAS, all communities must work to ensure that resources be made available to help whole families begin to break the cycle of addiction by seeking and participating in recovery programs, support programs, and counseling services:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim the month of September 2004 as:

“NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH”

in Durham County, and urge all citizens to promote the benefits of alcohol and drug treatment and recovery and to support community treatment programs.

This the 13th day of September, 2004.

Mr. Doug Wright thanked the Board for the recognition and related facts about alcohol and drug addiction recovery.

Chairman Reckhow presented the proclamation to Mr. Wright.

Proclamation for “Family Day”

The National Center on Addiction and Substance Abuse (CASA) is initiating “Family Day, a Day to Eat Dinner With Your Children”—an initiative to help reduce substance abuse among children and teens throughout America. The day will be honored on September 27. President Bush, 35 governors, and more than 200 cities and counties proclaimed Family Day in 2003.

Chairman Reckhow read the following proclamation into the record:

PROCLAMATION

WHEREAS, the use of illegal drugs and the abuse of alcohol and nicotine constitute the greatest threats to the well-being of America’s children; and

WHEREAS, surveys conducted by the National Center on Addiction and Substance Abuse (CASA) at Columbia University have consistently found that the more often children and teenagers eat dinner with their families the less likely they are to smoke, drink, and use illegal drugs; and

WHEREAS, teenagers who virtually never eat dinner with their families are 72 percent more likely than the average teenager to use illegal drugs, alcohol, and cigarettes; and

WHEREAS, teenagers who almost always eat dinner with their families are 31 percent less likely than the average teenager to use illegal drugs, alcohol and cigarettes; and

WHEREAS, the correlation between family dinners and reduced risk for teen substance abuse are well documented; and

WHEREAS, parental influence is known to be one of the most crucial factors in determining the likelihood of substance abuse by teenagers; and

WHEREAS, family dinners have long constituted a substantial pillar of family in America:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim September 27, 2004, as

“FAMILY DAY”

in Durham County. We further urge all citizens of Durham County to eat dinner with their children, and participate in its observance.

This 13th day of September, 2004.

Chairman Reckhow encouraged citizens to recognize every day as “Family Day, a Day to Eat Dinner with Your Children”.

Proclamation for “Car-Free Day”

International Car-Free Day is a worldwide campaign to promote alternative transportation, especially biking, walking, and public transit, as well as "car-lite" activities such as carpooling. Various Durham agencies (DATA, TTA, SmartCommute, County Government) and business owners (Durham Cycle Center, Ninth Street Bakery) have committed time, energy, and/or donations for a local Durham event that will, in conjunction with similar Orange County activities, promote Car-Free Day regionally on Wednesday, September 22, 2004.

Chairman Reckhow read the following proclamation into the record:

PROCLAMATION

WHEREAS, September 22, 2004 marks the celebration of International Car-Free Day by over 150 communities worldwide; and

WHEREAS, we are aware of the necessity to encourage our citizens to use environmentally sound means of urban travel in order to enjoy a healthier and more friendly community; and

WHEREAS, we will continue to provide opportunities for people to walk, cycle, and use public transportation instead of driving alone, and to promote intermodality; and

WHEREAS, the County of Durham encourages people to rediscover their great county, their fellow citizens, and their heritage in a healthier and more livable environment; and

WHEREAS, the Durham Area Transit Authority will offer one-day free bus service and the City of Durham will host a free downtown event to encourage citizen participation in International Car-Free Day:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim Wednesday, September 22, 2004 as

“INTERNATIONAL CAR-FREE DAY”

in Durham County. We urge all Durham County citizens to participate.

This 13th day of September, 2004.

Chairman Reckhow recognized Ms. Alison Carpenter, Bicycle and Pedestrian Coordinator, City of Durham/DCHC MPO, to comment on Car-Free Day in Durham County.

Chairman Reckhow presented the proclamation to Ms. Carpenter.

Consent Agenda

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

- a. EMS—Donation of Injury Prevention Trailer to EMS from Durham SAFE KIDS Coalition (approve the donation);
- b. EMS—Zoll EKG Monitor/Defibrillation Equipment Donation (approve the donation);
- c. Office of the Sheriff—Lease for Northgate Associates Limited Partnerships (authorize execution of the lease);
- *e. Substitution of Trustee (approve and authorize execution of the documents to allow CCB to complete the foreclosure process on the loan to Nancy V. Haskins);
- *f. Budget Ordinance Amendment No. 05BCC0000006—The Durham Center—Housing Trust Funds for Andover Apartments (approve \$57,445 to New Directions for Downtown for completion of ten efficiency apartments for persons with disabilities);
- *g. Budget Ordinance Amendment No. 05BCC0000007—Cooperative Extension—4-H Youth Grant (approve for the purpose of increasing involvement of youth in planning and implementation of alcohol and substance abuse prevention programming);
- *h. Budget Ordinance Amendment No. 05BCC0000008—Cooperative Extension (authorize appropriation of additional funds and the creation of one additional position to deliver the Welcome Baby program for families of newborns and young children);

- *i. Capital Project Amendment No. 05CPA000002—Agricultural Building Renovation Project—DC068 (approve \$53,131, transferring unused 2/3 bond funding from the completed Animal Shelter renovation project to the Agricultural Building renovation project; authorize the Zehia Corporation contract amendment);
- *l. Final Qualifying Bid to Purchase County Property (612 Bingham Street) (accept the \$6,000 offer from Victory Temple Holy Church; authorize that a non-warranty deed be prepared for the Chairman’s signature);
- m. Lease of County-Owned Space at 414 E. Main Street to Area Services and Programs Inc. (ASAP) and SouthLight Inc. (authorize leasing a portion of the second floor for the term September 15, 2004 through June 30, 2005; authorize the Manager to execute the leases);
- n. Auburn Apartments Property Tax Appeal (approve the settlement agreement in regards to Taxpayer’s valuation and taxation of the property for tax year 2003);
- *o. Recommendation for Standard Status for the Durham County Work First Plan and Approval of Members to the Work First Planning Committee (authorize staff to submit the status to the Department of Health and Human Services by September 30, 2004);
- p. Approve the Interlocal Cooperation Agreement for the Collection of Taxes Between Durham County and the City of Durham;
- *q. 2005 Statewide Legislative Issues for NCACC (approve and transmit to Ron Aycock);
- r. Time Warner Cable—Reconsideration of 2003 and 2004 Proposed Rates (adopt the rate orders in accordance with the FCC order); and
- *s. Service Contract With Unique Management Services Inc. for FY 2004-2005 (enter into contract for library patron debt collections with option to renew yearly for five years; fees paid will not exceed \$60,000 annually).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda Item No. e. Substitution of Trustee (approve and authorize execution of the documents to allow CCB to complete the foreclosure process on the loan to Nancy V. Haskins).

STATE OF NORTH CAROLINA

SUSTITUTION OF TRUSTEE

COUNTY OF DURHAM

THIS INSTRUMENT, made and entered into this the 14th day of September, 2004, by and between THE COUNTY OF DURHAM, a Corporation with principal office in Durham, Durham County, North Carolina (hereinafter called "Lender"), and F. KEVIN GORHAM Substitute Trustee, of Guilford County, North Carolina.

WITNESSETH:

THAT WHEREAS, on the 30th day of January, 1998, NANCY V. HASKINS and THE DURHAM COMMUNITY LAND TRUSTEES, INC., executed to DAVID F. THOMPSON, Trustee, and THE COUNTY OF DURHAM, a deed of trust covering certain real estate located in Durham County, North Carolina, which deed of trust is recorded in the Office of the Register of Deeds of Durham County, North Carolina in Book 2416, at Page 462; and

WHEREAS, the said Lender is the owner and holder of the note evidencing the entire indebtedness secured by the aforesaid deed of trust and desires to substitute DAVID F. THOMPSON and any and all substitute trustees pursuant to the authority granted by N.C.G.S. Section 45-10.

NOW THEREFORE, in consideration of the promises and the mutual rights, duties, and obligations of each to the other, Lender hereby substitutes and appoints F. KEVIN GORHAM as Trustee in the place and stead of DAVID F. THOMPSON and any and all substitute trustees under the terms and provisions of the deed of trust, Trustee, and Lender, referred to above, with all rights, powers, interests, duties and obligations conferred or imposed upon the Trustee herein.

IN WITNESS WHEREOF Lender has caused this instrument to be executed by its duly authorized officers and sealed with its corporate seal, and F. KEVIN GORHAM hereunto sets his hand and seal, the day and year first above written.

(CORPORATE SEAL)

THE COUNTY OF DURHAM
BY: /s/Michael M. Ruffin
County Manager

BY: /s/F. Kevin Gorham
Substitute Trustee

Consent Agenda Item No. f. Budget Ordinance Amendment No. 05BCC0000006—The Durham Center—Housing Trust Funds for Andover Apartments (approve \$57,445 to New Directions for Downtown for completion of ten efficiency apartments for persons with disabilities).

The budget amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000006

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$256,175,475	\$57,445	\$256,232,920

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$316,483,648	\$57,445	\$316,541,093

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

This the 13th day of September, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. g. Budget Ordinance Amendment No. 05BCC000007—Cooperative Extension—4-H Youth Grant (approve for the purpose of increasing involvement of youth in planning and implementation of alcohol and substance abuse prevention programming).

The budget amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000007

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$256,232,920	\$7,500	\$256,240,420

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Economic & Physical Dev.	\$3,057,407	\$7,500	\$3,064,907

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

This the 13th day of September, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. h. Budget Ordinance Amendment No. 05BCC000008—Cooperative Extension (authorize appropriation of additional funds and the creation of one additional position to deliver the Welcome Baby program for families of newborns and young children).

The budget amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000008

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$256,240,420	\$27,814	\$256,268,234

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			

Economic & Physical \$3,064,907 \$27,814 \$3,092,721
Dev.

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

This the 13th day of September, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. i. Capital Project Amendment No. 05CPA000002—
Agricultural Building Renovation Project—DC068 (approve \$53,131, transferring
unused 2/3 bond funding from the completed Animal Shelter renovation project to the
Agricultural Building renovation project; authorize the Zehia Corporation contract
amendment).

The capital project amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Capital Project Ordinance
Amendment No. 04CPA000002

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the
FY 2004-05 Capital Project Ordinance is hereby amended to reflect budget adjustments
for

GENERAL FUND

	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>Revenues</u>			
Agricultural Building Renovation Project	\$748,875	\$53,131	\$802,006
<u>Expenditures</u>			
Animal Shelter Renovation Project	\$1,626,402	(\$53,131)	\$1,573,271

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

This the 13th day of September, 2004.

(Capital Projects Ordinance Amendment recorded in Ordinance Book _____, page
_____.)

Consent Agenda Item No. 1. Final Qualifying Bid to Purchase County Property (612 Bingham Street) (accept the \$6,000 offer from Victory Temple Holy Church; authorize that a non-warranty deed be prepared for the Chairman's signature).

Property Overview for County Surplus Property
612 Bingham Street

Subject Property:

612 Bingham Street, PIN # 0831-20-71-6119, Parcel ID # 114520

Property Description:

- The property is located on the south side of Angier Avenue and the western side of Bingham Street in eastern Durham within the city limits.
- The lot size is approximately 10,800 square feet in size, with 50.5 feet of frontage on Bingham Street, and approximately 151+ feet in depth.
- The zoning is I-2, light industrial. This zone is proposed to be converted to I-L Industrial Light when the Unified Development Ordinance is adopted in the coming months.
- Bingham Street is a 20 foot unpaved right-of-way.
- Water and sewer is available to the property within Bingham Street

Bid:

- Victory Temple Holy Church has submitted a \$6,000 bid. The Church owns four properties near this lot, including the adjacent lot to the north and east.
- The property was advertised for upset bids between August 2, 2004 and August 12, 2004. No upset bids were received.

Property Valuation for Tax Purposes:

\$14,000 land value, \$0.00 building value

Property History:

- The County obtained the property in tax foreclosure in August 1999.
- In June 26, 2000, the Board of County Commissioners approved the sale of the property to Dale Williams for \$14,000 using the upset bid process. Mr. Williams was unable to close on the property, and in September 2001, the Board voted to retain the deposit and return the parcel to the surplus property list.

County/ City Investment / Cost:

- The County's investment totals \$3,679.23, including the \$3,359.52 bid placed during foreclosure and \$319.71 in taxes for 1998 and 1999.
- The City has an old demolition lien on the property which was not included in the bid cost during the foreclosure action on the property in 1999. In accordance with G.S. 105-376, the City's Finance Director has indicated that the City would accept any

funds left after the sale and the County's investments has been recouped as adequate payment towards satisfaction of the lien.

Additional Information:

- Vicinity Map
- Context Map
- Resolution
- Victory Temple Holy Church has submitted documentation regarding other parcels it has recently purchased surrounding this tract which they feel supports the \$6,000 bid they have offered to the County.

Consent Agenda No. o. Recommendation for Standard Status for the Durham County Work First Plan and Approval of Members to the Work First Planning Committee (authorize staff to submit the status to the Department of Health and Human Services by September 30, 2004)

Work First Planning Committee
2005-2007

Jim Polk	-	Chair, Joy Charter School
Micheline Malson	-	Designee for Mary Jacobs
Beth Lewis Sorensen	-	Designee for Ellen Reckhow
Willie Benson	-	Designee for Joe Bowser
Joe Bowser	-	DSS Board
Pamela Glean	-	DSS Board
Glyndola Beasley	-	Durham Regional Financial Center
Lula Harris-Thompson	-	Triangle United Way
Pat Sturdivant	-	Office of Economic and Empl & Dev./City of Durham
Shirley Cole	-	Employment Security Commission
Lorie Lumpkin	-	Durham Public School
Rev. Pebbles Lindsay-Lucas	-	Families First Coordinator
Tim Moore	-	Center for Employment Training
Rob Robinson	-	The Durham Center
Rev. Carl Kenney	-	Faith Community
Delphine Sellars	-	NC Cooperative Extension
Ann Tropiano	-	Genesis Home
Grace Marsh	-	Workforce Development Act
Joy Cunningham	-	Durham Crisis Response
Delores Evans	-	Durham Housing Authority
Wanda Boone	-	Durham Partnership for Children
Tamala McDowell	-	Dept of Juvenile Justice Delinquent Prevention
Ada Gregory	-	Durham Crisis Response Center
Stephanie Alston	-	First Families
Sarina Neal	-	Chamber of Commerce

Representatives from Social Services and the County Manager's Office:

Heidi Duer	-	Assistant Manager, County Manager's Office
Charles Harris	-	Interim Director
Arnold Dennis	-	Director for Family Economic Independence Division
Sharon Hirsch	-	Director for Program Support
Catherine Williamson-Hardy	-	Director, Family Economic Stability
Rhonda Stevens	-	Program Manager, Work First
Gail Angle	-	Program Manager, Child Protective Services
Mary Flounoy	-	Program Manager, Child Support
Karenne Berry	-	Program Manager, DACCA
Sharon Cain-Roane	-	Supervisor, DACCA
Wilda Carter-Neville	-	Supervisor, Immediate Services
Gayle Harris	-	Durham County Department of Health

Former Work First Recipients:

Sherry Johnson	-	Research Triangle Institute, International
Audrey Willis	-	DSS, Child Protective Services
Stephen Hopkins	-	NorthEast Central Durham

Consent Agenda Item No. q. 2005 Statewide Legislative Issues for NCACC (approve and transmit to Ron Aycock).

Proposed 2005 Statewide Legislative Issues for NCACC

1. Seek legislation to impose an Impact Tax to fund School Construction.
Modeled after 2001 House and Senate Bills. "An Act to authorize Counties to Levy a Tax on Land Development to Pay Part of the Costs of School Capital Facilities"
2. Seek legislation to eliminate the so-called Second Primary.
Request is for legislation to eliminate run-off election and the 40% plus one requirement (substantial plurality).
3. Seek legislation to enable Counties to limit jail inmate healthcare costs by requiring any provider to charge county jails the same reimbursement rates that it receives from the Workers Compensation program.
4. Seek legislation to allow all counties to enact any or all of several revenue options from among those that have already been authorized for any other county.

5. Seek legislation to create a new funding stream to provide Mental Health/Development Disabilities/Substance Abuse Services to indigent citizens.
6. Seek legislation to allow the County to enter into public—private partnerships in the development of land and sale of properties.
7. Seek educational reimbursement from counties sending youth to County Youth Homes or group homes at rate equal to our educational per capita cost.

Consent Agenda Item No. s. Service Contract With Unique Management Services Inc. for FY 2004-2005 (enter into contract for library patron debt collections with option to renew yearly for five years; fees paid will not exceed \$60,000 annually).

SERVICE CONTRACT

NORTH CAROLINA
DURHAM COUNTY

THIS CONTRACT is made, and entered into this the _____ day of June, 2004, by and between the COUNTY of DURHAM, a political subdivision of the State of North Carolina, (hereinafter referred to as “COUNTY”), and UNIQUE MANAGEMENT SERVICES, INC., a corporation duly authorized to do business in the state of North Carolina, SS/EID# 61-1267077, (hereinafter referred to as “CONTRACTOR”).

1. SCOPE OF SERVICES

CONTRACTOR hereby agrees to provide services and/or materials under this contract pursuant to the provisions and specifications identified in “Attachment 1” (hereinafter referred to collectively as “SERVICES”). Attachment 1, is hereby incorporated herein and made a part hereof.

2. TERM OF CONTRACT

The term of this CONTRACT for services is from 7/01/2004 to 6/30/2005.

This contract is subject to the availability of funds to purchase the specified services and may be terminated at any time during the Term upon thirty (30) days notice if such funds become unavailable.

3. PAYMENT TO CONTRACTOR

CONTRACTOR shall receive from COUNTY an amount not to exceed \$32,000.00 as full compensation for the provision of services. COUNTY agrees to pay CONTRACTOR at the rates specified for Services, performed to the satisfaction of the

COUNTY, in accordance with this Contract, and Attachment 1. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to COUNTY by the end of the month during which services are performed. Payment will be processed promptly upon receipt and approval of the invoice by COUNTY.

4. INDEPENDENT CONTRACTOR

COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR'S duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR'S activities in accordance with this Contract. For purposes of this Contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

5. INSURANCE AND INDEMNITY

To the fullest extent permitted by laws and regulations, the CONTRACTOR shall indemnify and hold harmless the COUNTY and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from the Contractor's performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or contractors under this Contract or under contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In addition, CONTRACTOR shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. Additionally, CONTRACTOR shall maintain, at its expense, the following minimum insurance coverage:

\$1,000,000 per occurrence /\$2,000,000 aggregate --- Bodily Injury Liability, and
\$ 100,000 --- Property Damage Liability, or
\$1,000,000 per occurrence /\$2,000,000 aggregate---Combined Single Limit Bodily Injury and Property Damage

CONTRACTOR, upon execution of this Contract, shall furnish to the COUNTY a Certificate of Insurance from an insurance company, authorized to do business in the

State of North Carolina and acceptable to COUNTY, verifying the existence of any insurance coverage required by COUNTY. The Certificate shall provide for a thirty-day advance written notice in the event of a decrease, termination, or cancellation of coverage.

6. HEALTH AND SAFETY

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing services under this Contract.

7. NON-DISCRIMINATION IN EMPLOYMENT

CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONTRACTOR may be declared ineligible for further COUNTY contracts.

8. LIVING WAGE

Unless otherwise exempt, CONTRACTOR shall comply with the COUNTY's Living Wage Policy, effective July 1, 2004 (the "Policy"). Pursuant to the Policy, CONTRACTOR agrees to pay all employees, providing services in connection with this Contract, at least a Living Wage, as herein defined. Living Wage is defined to be a wage paid at an hourly rate of not less than 7.5% above the Federal Poverty Guidelines, as defined by the Bureau of Census, for a family of four. The hourly rate shall be made available by the County Manager.

CONTRACTOR shall furnish to the COUNTY a copy of the CONTRACTOR's payroll on at least a quarterly basis showing the wages paid to the CONTRACTOR's employees who perform work pursuant to this Contract. Failure to comply with the Policy may, in addition to all other remedies available for breach of contract, result in CONTRACTOR being barred from receiving any other contracts with the COUNTY for a period of up to three years.

9. GOVERNING LAW

This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

10. TERMINATION OF AGREEMENT

This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the notice of termination. Such a termination does not bar either party from pursuing a claim for damages for breach of the contract.

This Contract may be terminated, for cause, by the non-breaching party notifying the breaching party of a substantial failure to perform in accordance with the provisions of this Contract and if the failure is not corrected within ten (10) days of the receipt of the notification. Upon such termination, the parties shall be entitled to such additional rights and remedies as may be allowed by relevant law.

Termination of this Contract, either with or without cause, shall not form the basis of any claim for loss of anticipated profits by either party.

11. SUCCESSORS AND ASSIGNS

CONTRACTOR shall not assign its interest in this contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.

12. COMPLIANCE WITH LAWS

CONTRACTOR represents that it complies with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this contract will be carried out in strict compliance with all Federal, State, or local laws.

13. NOTICES

All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

COUNTY OF DURHAM	CONTRACTOR
ATTN: PURCHASING DEPARTMENT	UNIQUE MANAGEMENT SERVICES, INC.
4TH FLOOR, 200 EAST MAIN STREET	119 E MAPLE ST
DURHAM, NORTH CAROLINA, 27701	JEFFERSONVILLE, IN 47130

14. AUDIT RIGHTS

For all Services being provided hereunder, COUNTY shall have the right to inspect, examine, and make copies of all books, accounts, invoices, records, and other writings relating to the performance of said Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing,

CONTRACTOR must make the materials to be audited available within one (1) week of the request for them.

15. COUNTY NOT RESPONSIBLE FOR EXPENSES

COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR unless otherwise agreed in writing.

16. EQUIPMENT

CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.

17. ENTIRE AGREEMENT

This Agreement and the attached document labeled “Attachment 1” shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

18. HEADINGS

The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.

Consent Agenda Items Removed for Discussion

Consent Agenda Item No. j. Board Appointment—Operation Breakthrough Inc. (appoint Deputy County Manager Wendell M. Davis).

Chairman Ellen Reckhow requested that the Board of Commissioners appoint Mr. Davis to the Operation Breakthrough Board of Directors to fill the position previously held by Ms. Wanda Wagstaff who has relocated to Eastern North Carolina.

Vice-Chairman Bowser removed this item to discuss the possibility of appointing a non-County official to the board. He expressed the concern of having two County officials on the Operation Breakthrough Board of Directors, which would eliminate an available seat for the public.

Chairman Reckhow stated two reasons for establishing two county commissioner-appointed seats on the board: 1) considering the Board of County Commissioners’

financial investment in the YMCA facility renovation, the BOCC should hold two seats two seats on the 17-member board; and 2) to have an official appointed when Vice-Chairman Bowser's term ends in November.

Vice-Chairman Bowser opined that minimal time is needed to appoint an official to the board. He restated his concern of denying an extra seat to the public.

Commissioner Jacobs inquired about the specific seat held by Ms. Wagstaff. She further queried on whose responsibility of making the appointment: Chair of the BOCC or the Board.

Chairman Reckhow replied that there is no written rule stating who makes the appointment.

To clarify, County Attorney Chuck Kitchen informed the Board that the Chairman of the Board has general authority and conducts the meetings. Pertaining to appointments, the Board is to make the appointment. The Chairman would generate a list of potential appointees, of which the Board would make the appointment.

Commissioner Heron supported having two seats designated for County officials, given the County's substantial investment.

Vice-Chairman Bowser continued to express disagreement of the County occupying two seats.

Commissioner Jacobs suggested that nominations be made at a later meeting.

Chairman Reckhow reminded the Board that board vacancies are conventionally advertised before appointments are made. She asked for the Board's recommendation.

With the Board's approval, action was deferred until after the board vacancy is advertised.

Consent Agenda Item No. k. Resolution to Designate the NC 147 Corridor in Durham County Between I-40 and I-85 as the "Innovation Highway" (approve and forward to the North Carolina Department of Transportation).

Although not opposed to renaming NC 147 to "Innovation Highway", Vice-Chairman Bowser pulled this item to emphasize rewording the name to read "Welcome to the Innovation Highway, Durham, NC" and that the font size remains consistent throughout the name.

Attorney George Miller, 5201 Chapel Hill Blvd., Durham, NC 27715, representing American Tobacco Historical District, stated that the signage request was presented at a meeting with NCDOT. To ensure State and Federal guidelines, NCDOT required an approved resolution designating the NC 147 Corridor as the "Innovation Highway". The resolution would be submitted to NCDOT along with the rewording proposal.

Chairman Reckhow directed the County Manager to include Vice-Chairman Bowser's request to print the reworded name on one sign in a consistent font size in the cover letter to NCDOT.

Chairman Reckhow recognized the following signed speaker to comment:

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, representing the Durham Committee on the Affairs of Black People, spoke in support of including "Durham" in the signage.

Chairman Reckhow reiterated the Board's support of signage rewording.

Commissioner Jacobs moved, seconded by Commissioner Cousin, to approve the resolution designating the NC 147 Corridor as the "Innovation Highway"; request that gateway signage at both ends of NC 147 include the words "Welcome to the Innovation Highway, Durham, NC"; and forward a cover letter to NCDOT, emphasizing the Board's support of the aforesaid wording and suggested font size.

The motion carried unanimously.

The resolution follows:

RESOLUTION TO DESIGNATE THE NC 147 CORRIDOR IN DURHAM COUNTY
BETWEEN I-40 AND I-85 AS THE "INNOVATION HIGHWAY"
IN ORDER TO HIGHLIGHT THE "*COUNTY WITH M.E.R.I.T.'S*" CRITICAL ATTRIBUTES
OF MEDICINE, EDUCATION, RESEARCH, INDUSTRY, AND TECHNOLOGY AND TO
HELP FOCUS ADDITIONAL ECONOMIC DEVELOPMENT OPPORTUNITIES ALONG
AND ADJACENT TO THE INNOVATION HIGHWAY CORRIDOR

WHEREAS, the Triangle region continues to receive many national accolades, including being among the best places to live, start a business, and raise a family; and

WHEREAS, the Triangle's economic heart, Research Triangle Park, which lies predominantly within Durham County, will have almost 90,000 employees engaged in research, innovation, and related fields by build-out; and

WHEREAS, Downtown Durham itself has over 12,000 employees today and is undergoing a dramatic transformation, fueled by projects such as the Durham Bulls Athletic Park, American Tobacco Historic District, Measurement, Inc.'s expansion, the Parrish Street National Heritage Area, the Liggett renovation, and improvements to City Center Plaza; and

WHEREAS, forty percent of North Carolina's biotechnology organizations are in Durham County; and

WHEREAS, the NC 147 corridor, which traverses the spine of Research Triangle Park and the heart of Downtown Durham, connects Interstate 40 – the Triangle's main street – with Interstate 85 – the Triangle's connection to the New York, Washington, Charlotte, and Atlanta markets; and

WHEREAS, the Innovation Highway links Research Triangle Park to Durham's outstanding institutions of higher learning – North Carolina Central University, Durham Technical Community College, and Duke University; and

WHEREAS, the designation "Innovation Highway" effectively highlights the NC 147 freeway corridor's attributes of medicine, education, research, industry, and technology employment; and

WHEREAS, the designation "Innovation Highway" creates a highly identifiable brand that will encourage additional development beyond the limits of Research Triangle Park, including undeveloped land along N.C. 147 immediately north of Research Triangle Park, Durham's downtown core, Northeast Central Durham, and the Fayetteville Street corridor – further enhancing economic growth and employment opportunities for Durham County and Triangle area residents; and

WHEREAS, the portion of NC 147 currently designated as the I.L. "Buck" Dean Freeway will be unaffected and signage commemorating Mr. Dean will remain untouched:

BE IT THEREFORE RESOLVED that the Board of Durham County Commissioners requests that the NC 147 corridor in Durham County be officially named as the "Innovation Highway" – with the simple phrase "Innovation Highway" being used on both overhead and ground-mounted signs throughout the corridor.

BE IT FURTHER RESOLVED that the Board of Durham County Commissioners requests that gateway signage at both ends of NC 147 include the words

"Welcome to the Innovation Highway
Durham, North Carolina"

Public Hearing—2003-2004 Consolidated Annual Performance Evaluation Report

Ms. Katherine Simmons, Associate Director, City of Durham Department of Housing and Community Development, introduced the Consolidated Annual Performance and Evaluation Report (CAPER) public hearing, which is held annually in September to receive citizen comments on the previous year's Community Development Block Grant (CDBG) and City-County HOME Consortium Investment Partnership (HOME) programs. Annual progress and performance detailed in the CAPER must be submitted to the U.S. Department of Housing and Urban Development (HUD) no later than September 30, 2004. The FY 2003-2004 CAPER is available (in draft form) to the public for review from August 16, 2004 through September 16, 2004.

The City of Durham receives an annual CDBG award and a HOME Consortium grant award from HUD. These funds have been a primary funding source for city neighborhood revitalization activities. The FY 2003-2004 HUD entitlement allocation was \$2,348,000 in CDBG funds and \$1,389,626 in HOME funds. The FY 2003-2004 Consolidated Action Plan allocated these funds primarily for housing, infrastructure, and public service activities in Durham with focus in target neighborhoods. Major accomplishments made (as highlighted in the draft CAPER) during the 2003-2004 program year include:

- 54 households received first-time homebuyer's assistance;
- 418 households were served by community homebuyer education seminars;
- over \$137,000 was expended on Next Step Housing project; and
- \$254,000 was expended on public service activities.

The FY 2003-2004 Draft CAPER shows an unexpended CDBG balance for \$3,584,948 and an unexpended HOME balance for \$3,866,666, both the CDBG and HOME Programs. These funds are earmarked for eligible projects and activities. These proposed projects and activities are brought before the City Council for CDBG and HOME approval and the Board of County Commissioners for HOME approval.

Constance Stancil, Interim Director of the City of Durham Department of Housing and Community Development, reviewed this request and recommended that the Board of County Commissioners hold the 2003-2004 Consolidated Annual Performance and Evaluation Report Public Hearing.

In relation to CDBG and HOME unexpended balances, Chairman Reckhow voiced concern for the superfluousness, with HOME balance representing over two years of grant funding. She questioned staff about projects underway to expend excess funding.

Ms. Simmons responded that despite the high balances, Department of Housing has produced considerably within the last fiscal year, expending \$2.8 million in HOME. Housing is prepared to reprogram projects and hire additional staff to increase productivity.

Commissioner Heron asked Ms. Simmons to retrieve total number of homebuyers, including total number that actually occupied the housing, outside the City that used HOME funds supplied by the County and submit to the Board at the next meeting.

Commissioner Jacobs inquired if the 418 households served by community homebuyer education seminars were an increase, decrease, or constant from the previous year.

Due to her unfamiliarity with the seminars, Ms. Simmons offered to provide a reply for Commissioner Jacobs at a later time.

Chairman Reckhow opened the public hearing that was properly advertised and called signed speaker Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, forward.

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

Chairman Reckhow directed Ms. Simmons to relay her and Dr. Allison's emphasis on homeownership to the housing director and submit a draft report on expenditures to date and projected unexpended balance by Friday, September 17. She restated her concern that little initiative is being taken to expend allocated funds, considering the need in the community.

Ms. Simmons clarified that \$1.5 million plus \$1.3 million have been expended in HOME last year, resulting in a significant decrease in the aforementioned unexpended HOME balance.

Chairman Reckhow further directed Ms. Simmons to prepare an updated report to indicate how much allocated funding would remain at the end of this fiscal year.

Commissioner Heron stressed the importance of citizens occupying HUD-built homes in Durham County.

Chairman Reckhow reminded Housing staff that additional housing for the special needs and mentally ill populations are needed, given the order from the State to incorporate more people into the community due to deinstitutionalization.

Doc Nichols Road Tract (P04-09)—Rezoning Request

Frank Duke, City-County Planning Director, introduced a revised request to rezone a 288.13-acre site located on the east side of Doc Nichols Road between Olive Branch Road and Leesville Road from RD to PDR 3.21. PIN 0769-01-19-6484; 0860-03-11-5310; and --32-3006.

The original rezoning request for PDR 3.39 with 826 single-family lots and 150 townhomes was presented to the Commissioners on August 9, 2004. The Board suggested changes to the rezoning. The proposal is in conformance with the small area plan. Staff recommends approval based on consistency with the adopted plan and conformity with technical requirements. The Zoning Committee of the Durham Planning Commission conducted a public hearing on June 8, 2004 and voted 7-0 to recommend denial, based primarily on the density requested.

Chairman Reckhow expressed disappointment and concern that the unsupported request and motion, made at the August 9 Regular Session, to reduce number of townhome units from 150 to 100 is being resubmitted.

The following individuals were available to address questions and concerns about the rezoning:

Mr. Drew Marsh, 616 Nantahala Drive, Durham, NC 27713, representing R.L. Horvath Associates Inc.

Mr. Lee Lambent, 522 Oak Crest Drive, Chapel Hill, NC 27516, representing R.L. Horvath Associates Inc., Consultant and Land Planner.

The following individuals spoke against the rezoning:

Mr. Bruce and Ms. Sue Harris, 245 Bandoek Drive, Durham, NC 27703, representing Shaw Hills Neighborhood Association.

Mr. Billy Sparks, 248 Bandoek Drive, Durham, NC, representing Shaw Hills Neighborhood Association.

Mr. Ray Corns, 241 Bandoek Drive, Durham, NC 27703, representing Shaw Hills Neighborhood Association

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, representing the Durham Committee on the Affairs of Black People

Ms. Liz Pullman, 1114 Scott King Road, Durham, NC

Ms. Carol Young, 5808 Williamsburg Way, Durham, NC 27713

Mr. Bill Patrick, 427 Olive Branch Road, Durham, NC 27703

Chairman Reckhow referenced site maps of Doc Nichols Road and concurred with several speakers on environmental hazards associated with the plan. She also raised a concern about constructing townhomes in a rural, hilly area.

Commissioner Heron agreed with Chairman Reckhow and expressed nonsupport for the rezoning request.

Vice-Chairman Bowser asked Mr. Ronald L. Horvath, P.E., Principal President, R.L. Horvath Associates Inc., to address Mr. Patrick's concern relating to Earthquake Creek

overflowing onto his property. Continuing from Chairman Reckhow and Commissioner Heron's concerns, he also asked questions about the lot size.

Chairman Reckhow inquired about regular maintenance to the 33 detention ponds. She voiced that excessive construction is occurring for a property to need 33 detention ponds.

Commissioner Jacobs asked questions related to average square feet for all single-family lots, with a minimum being 6,000 square feet.

Mr. Horvath replied that the average would be 7,500 to 8,000 square feet, ranging from a minimum of 6,000 to a maximum of 12,000 to 14,000 square feet. He stated that approximately 10-20 percent of homes would have a minimum of 6,000 square feet.

Chairman Reckhow reminded the Board that although "all single-family lots to be a minimum of 6,000 square feet" is a committed element, the average and maximum square feet for single-family homes are not part of the Development Plan Committed Elements. She stated that since the plan does not indicate a specific size for each lot, R.L. Horvath Associates could construct homes no larger than 6,000 square feet, making it legal.

Mr. Duke affirmed Chairman Reckhow's interpretation of the plan.

Vice-Chairman Bowser asked Mr. Horvath about local residents' responses when contacted about the project.

Mr. Horvath responded that after reviewing the project thoroughly with residents before the August 9 public hearing, no contacted resident contested the plan. For clarification, Vice-Chairman Bowser rehashed Chairman Reckhow's concern for presenting the request to reduce the number of town-home units from 150 to 100, which did not meet the expectations of the Board at the August 9 meeting.

Mr. Horvath preferred to review a tape of the meeting to refresh his memory of the Board's desire.

Chairman Reckhow recapped the motion made from the August 9 meeting minutes, paraphrasing that the request was to reduce the number of townhomes from 150 to 100. The motion failed for the lack of a second. Discussion was held about further reduction in density, indicating that the 50-unit reduction would be insufficient.

Mr. Horvath explained that to his understanding, more than a 50-unit reduction would require revisiting the Planning Commission. By agreeing to a 50-unit reduction, R.L. Horvath Associates would be in compliance with the new UDO from density and cul-de-sac designs. The revision was then to be presented to the Board.

Chairman Reckhow reiterated from the August 9 meeting that 10- to 20-percent reductions were discussed.

Mr. Duke responded to Commissioner Jacobs, stating that the site plan is in conformance with the Southeast Durham Plan and the UDO.

Per Chairman Reckhow's request, Mr. Duke discussed the appropriateness of the site design. Although advised by the City and County attorneys of his protection from liability, Mr. Duke expressed concern about location of the site townhouse units, which was previously conveyed to Mr. Horvath.

Commissioner Heron stressed concern of constructing a mass of townhomes on rural property.

Commissioner Heron moved, seconded by Chairman Reckhow, to deny Rezoning Request—Doc Nichols Road Tract (P04-09).

Vice-Chairman Bowser offered a substitute motion, seconded by Commissioner Jacobs, to approve the rezoning request with a 50-unit reduction.

The motion carried with the following vote:

Ayes: Bowser, Cousin, Jacobs

Noes: Heron, Reckhow

Commissioner Heron expressed disappointment in the final vote.

Major Site Plan—Merck Vaccine Manufacturing Facility (Case D04-378)

Frank Duke, City-County Planning Director, synopsised a request by the John R. McAdams Company Inc., on behalf of Merck & Company Inc., to submit a major site plan for a 165,997-square-foot manufacturing facility consisting of a 30,129-square-foot administration building, 38,624-square-foot manufacturing building, 56,913-square-foot warehouse, and other support structures on a 109.51-acre portion of a 261-acre tract, zoned I-2 and F/J-B. The proposed project will be located on the west side of Old Oxford Highway, north of Red Mill Road, and south of Stagville Road. (PIN 0845-02-58-7341; County Atlas Page 30, Blocks B-1 thru 3 and C-1 thru 3 [portions]). A traffic impact analysis was required for this site.

Chairman Reckhow called the following signed speakers to comment:

Mr. William H. Derks, 2905 Meridian Parkway, Durham, NC 27713, Land Development Director, The John R. McAdams Company, Inc.

Mr. Ted Conner, 3305 Park Overlook Drive, Durham, NC 27712, representing the Durham Chamber of Commerce, advocated the site plan.

Commissioner Cousin moved, seconded by Commissioner Jacobs, to approve Major Site Plan (Merck Vaccine Manufacturing Facility—Case D04-378).

Commissioner Heron queried Ms. Mary Bierman, The John R. McAdams Company Inc., about protection for Catawba Indian Trading Path.

Mr. Duke addressed Commissioner Heron's concerns about accusations made in a letter from A. Batttle Whitley, IV, P.E., District Engineer, NCDOT, to H. Wesley Parham, P.E., City of Durham, of discrepancies between the Traffic Impact Analysis (TIA) and related site plans and in traffic counts. He explained that despite the letter, both the TIA and related site plans provide corresponding information.

Mr. Derks added that regarding the traffic counts typo, the counts were performed in 2004, not 2003.

Commissioner Heron emphasized that installation of an additional traffic signal is essential to prevent traffic congestion.

The motion carried unanimously.

Hearing on Refund of Excise Tax

County Attorney Chuck Kitchen recognized a request from the Law Offices of Moore & Alphin, PLLC for the County to refund \$621 in tax stamps paid (of which \$310.50 was retained by the County) on a deed recorded in Durham County. As shown by the request, the property is alleged to have been in Orange County instead of Durham County. The remainder of the taxes must be requested to be refunded by the State. Moore & Alphin, PLLC was notified of the hearing on the requested refund.

Clerk to the Board Garry E. Umstead administered the oath to Mr. G. Mark Teague, Moore & Alphin, to give a sworn testimony at the meeting.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve the order for the refund.

The motion carried unanimously.

The order follows:

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

BEFORE THE BOARD OF
COMMISSIONERS

IN RE: Andrew W. Ingham and Rachel Ingham

THIS matter coming on to be heard and being heard before the Board of Commissioners for the County of Durham at its September 13, 2004 meeting upon petition for a refund of excise taxes paid to the Register of Deeds of Durham County. Base on the testimony presented at the hearing and on evidence presented, the Board makes the following FINDINGS OF FACTS:

1. On or about April 5, 2004, the Petitioner caused a deed to be recorded in the Register of Deeds Office on which excise taxes were paid in the amount of \$621.00.
2. The excise tax was paid in error as the deed should have properly been recorded in Orange County and not Durham County.
3. The amount of the excise taxes which were retained by the County as its share of the excise taxes was in the amount of \$310.50.
4. A document has been recorded in the Durham County Register of Deeds Office showing that the deed should have been recorded in Orange County.

Based on the foregoing findings of fact, the Board makes the following CONCLUSIONS OF LAW:

1. The Board of Commissioners has jurisdiction over this matter.
2. The Petitioner is entitled pursuant to G.S. § 105-228.37 to a refund of the County's share of the excise stamp tax in the amount of \$310.50.

IT IS THEREFORE ORDERED:

1. The Finance Officer for the County of Durham shall pay to the Petitioner the sum of \$310.50 as a refund of the excise stamp tax erroneously paid.
2. The Clerk to the Board of Commissioners shall send a copy of this Order to the Secretary of Revenue for the State of North Carolina.

This the 13th day of September, 2004.

Durham Public Schools—Acquisition of Properties for Improved Bus Access at New Elementary “D”

Mr. Hugh Osteen, Assistant Superintendent of Operational Services, Durham Public Schools, informed the public that on July 29, 2004, the Board of Education approved the purchase of two properties to improve vehicular/bus access to the new W. G. Pearson (New “D”) Elementary School. The additional parcels will ensure safe access for buses, cars, and pedestrians, as well as the public trail system. The properties are 3225 Fayetteville Street for \$118,000 and 600 E. Cornwallis Road for \$30,000.

Vice-Chairman Bowser inquired detailed locations of the properties.

Chairman Reckhow recognized signed speaker Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, for comment.

Mr. Osteen addressed new sidewalks and DATA bus service in the area for Chairman Reckhow.

Commissioner Heron thanked herself and Chairman Reckhow for being present in the early ‘90s during the purchase of the land for Hillside High School and New Elementary “D”.

Commissioner Jacobs asked for an explanation in the price differences between the Fayetteville Street and Cornwallis Road properties.

Mr. Osteen responded that the Fayetteville Street property is a developed parcel that requires removal of a rental home; the Cornwallis property is vacant.

In response to Vice-Chairman Bowser’s question, Mr. Osteen stated that the plan has been reviewed with the pastor and members of Mt. Zion Christian Church and has been well received.

Commissioner Jacobs moved, seconded by Vice-Chairman Bowser, to approve acquisition of properties for improved bus access at New Elementary “D”.

The motion carried unanimously.

Police Officer Case

Attorney Keith Bishop, Keith A. Bishop, PLLC, 1802 Martin Luther King Parkway, Durham, NC, addressed the Board about a legal case concerning a current Durham Police Department employee whose employment record with the Sheriff’s Department from

February 4, 1975 to October 28, 1977 is irretrievable. The record is essential for accurate retirement to be granted in November 2004.

County Attorney Chuck Kitchen further explained that during the client's initial visit, he indicated that he was employed with Durham Police Department prior to working in the Sheriff's Department for two years. Upon terminating his employment with the Durham Police Department, he withdrew his retirement. After leaving the Sheriff's Department in 1977, he resumed employment with the Durham Police Department. Unfortunately, the client's employment record with the Sheriff's Department has yet to be recovered. Attorney Kitchen offered the possibility that the client worked as a "special deputy"- a former police officer or sheriff deputy, being a non-employee of the County, would be compensated by the Sheriff for assigned duties. As a non-employee of the County, a "special deputy" does not contribute to the County's retirement system. Therefore, the County cannot legally pay him or the retirement system. However, other deputies have worked during the same period and have had no problems with retirement.

Chairman Reckhow asked about the poor organization of the Sheriff's Department personnel records from 27 years ago.

Attorney Kitchen recognized Chief Deputy Wes Crabtree, Durham County Sheriff's Department, for additional information on locating the client's employment record.

Chief Crabtree responded that to his knowledge, inactive (former employees of the County that began employment before 1978) personnel files are located in the vault in the Sheriff's office, of which the client's record cannot be located. Although, aware of the client's extended employment with the Durham Police Department, Chief Crabtree could not vouch for the client's employment with the Sheriff's Department, as it was before his tenure. Due to lack of computer technology and poor file organization, inactive personnel records are searched by name, not by year of employment.

Commissioner Heron commented that the State would have record of the client's alleged contributions to the State Retirement System.

Chief Crabtree expressed perplexity as to how the State and Local governments and County employment files have no record of the client's employment.

Attorney Bishop stated that the client possess records of his earnings with the Social Security Administration. The State informed the client of costs to purchase service credits.

Vice-Chairman Bowser asked Chief Crabtree about individuals to attest the client's employment with the Sheriff's Department.

Chief Crabtree responded that he has not been asked to contact such individuals and is unaware of others being asked. He added that the department could verify the client's service with the Sheriff's Department; however, his status from 1975 to 1977 is yet to be determined.

In response to Vice-Chairman Bowser's question, Attorney Bishop replied that the Social Security Administration does not have record of Durham County's contribution for the client from '75 to '77. He included that possibly two individuals employed with the Sheriff's Department during that time and a picture of the client with other deputies would corroborate the client's claim.

Chief Crabtree informed Attorney Bishop that the picture verifies the client's service with the Sheriff's Department, not his contributing to the retirement system in Raleigh.

Chairman Reckhow agreed with Chief Crabtree and encouraged Attorney Bishop to fully investigate with the retirement system in Raleigh. She also directed Chief Crabtree to attempt to locate coworkers of the client that could verify his employment.

Closed Session

Commissioner Cousin moved, seconded by Commissioner Heron, to adjourn to closed session to instruct staff concerning the position to be taken in negotiating the material terms for the acquisition of two real properties pursuant to G.S. § 143-318.11(a)(5). The two properties are 247 S. Mangum Street owned by U-Haul Real Estate Company and 306 S. Roxboro Street owned by Scarborough and Hargett Funeral Home.

The motion carried unanimously.

Adjournment

There being no further business, the meeting was adjourned at 10:40 p.m.

Respectfully submitted,

Vonda C. Sessoms
Deputy Clerk to the Board