

REVISED

Change the "Manager's Recommendation" for Item #6, "Presentation of the Report for the Durham County Justice Building Programming and Pre-Design Project No. DC066-30."

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

Monday, October 7, 2002

9:00 A.M. Worksession

AGENDA

1. Citizen Comments?Jerry McClain

Mr. Jerry McClain has requested time on the agenda to speak to the Commissioners regarding an incident concerning an ABC Police officer.

2. Child Support Follow-Up Program

At the Board of County Commissioners meeting on August 29, 2002, the Board heard citizens' concerns regarding the Child Support unit at the Department of Social Services. The Board requested that the Director, Dan Hudgins, meet with those citizens and other representatives of the Association for Children for Enforcement and Support (ACES) to discuss their concerns.

Mr. Hudgins is also presenting a Child Support Enforcement Plan of Action that the DSS Board approved at its meeting on September 25, 2002.

Resource Person(s): Dan Hudgins, Director of Department of Social Services

County Manager's Recommendation: The Manager recommends that the Board receive the presentation and ask any questions it may have regarding child support services at the Department of Social Services.

3. Draft of Work First Block Grant Plan for 2003-2005

Work First is the primary program in North Carolina for administering the Temporary Assistance for Needy Families (TANF) Program. Since Work First is administered locally in each county, North Carolina law (NCGS 108A-27) requires each county to submit a County Work First Block Grant (WFBG) Plan every two years. This fall, each county began the development of a new WFBG Plan to become effective October 1, 2003.

The first stages of plan development include the appointment of a committee of local leaders (a Work First Planning Committee) to assist in the development of its WFBG plan, and a recommendation to the North Carolina Department of Health & Human Services (DHHS) for the county to be either an electing or standard county.

On August 12, 2002, the Board of County Commissioners approved the list of members for Durham's Work First Planning Committee and also voted to have Durham remain a standard county.

By November 1, 2002, the BOCC must submit its new WFBG to DHHS. The Work First Planning Committee has completed its first draft of the plan and received input and comments from Durham's Department of Social Services Board on September 25, 2002.

The committee is now submitting this draft to the Commissioners for review and comments. The

committee will be prepared to discuss the plan at the BOCC Work Session on October 7, 2002. The plan will then be distributed for public comments during October 8-13, followed by a public hearing on October 14, 2002.

Resource Person(s): Jim Polk, Chair of the Work First Planning Committee; Dan Hudgins, DSS Director

County Manager's Recommendation: The Manager recommends that the Board receive the report, provide comments and input to the Work First Planning Committee, and schedule a public hearing for October 14, 2002.

4. **Presentation of New Elementary School Design**

Durham Public Schools is designing a new elementary school in southwest Durham. When the purchase of land for this school was approved, Commissioners asked that the design of the new school be presented to them. Efforts have been made to be efficient with the use of land and to seek opportunities to co-locate with other public agencies.

Resource Person(s): Mr. Hugh Osteen, Assistant Superintendent for Operational Services, Durham Public Schools, will be present to discuss the request as needed.

5. **Presentation on the Status of the Durham Comprehensive Plan**

The City-County Planning Staff initiated an update on the community's Comprehensive Plan in the fall of 2001. Updating the Comprehensive Plan is a joint effort of Durham County Government, the City of Durham, and the Durham Public Schools. The Plan update will be based on smart growth principles and engages public participation. Staff will update the Board on the status of the Plan update and respond to any questions presented by the Board.

Resource Person(s): Frank M. Duke, AICP, Durham City-County Planning Director.

County Manager's Recommendation: The Manager's recommendation is that the Board receive the staff presentation on the status of the Comprehensive Plan Update.

5a. **Request City of Durham to Initiate Rezoning of Neal Farm**

During the September 30, 2002 Joint City-County Planning Committee (JCCPC) meeting, residents of American Village, Greenway, and Lenox subdivisions expressed concern about the zoning of the adjacent property known as Neal Farm. The property is zoned RM-12, which is inconsistent with the "Low Density Residential" designation of the property in the *West-Northwest Durham Plan*.

Resource Person(s): Commissioner Ellen Reckhow, Chairman, JCCPC; Frank Duke, Director, Durham City-County Planning

County Manager's Recommendation: Suspend the rules and consider a request that the Durham City Council initiate an amendment to the Official Zoning Map to rezone the property to a designation consistent with the *West-Northwest Durham Plan*.

6. **Presentation of the Report for the Durham County Justice Building Programming and Pre-Design Project No: DC066-30**

The Board is requested to provide comments and direction based on the programming and pre-design report for the proposed Durham County Justice Building.

This facility was recommended in the Justice Center Master Plan, completed in 1990, and was identified in the Durham County Facility Master Plan, completed in 2000, as the County's highest priority building need. Based on the occupancy outlined in the Master Plan, a building of approximately 255,000 S.F. was proposed along with a parking deck containing 1200 spaces. Both of these projects were included in the Capital Improvement Plan (CIP). It was estimated that, depending on how the building and parking deck are configured on the site adjacent to the current Detention Facility, the building would be 4 to 6 stories in height.

During the (CIP) development and approval process in 2001, the Board directed that the size of the building be evaluated and possibly reduced by locating some agencies associated with the court system in other buildings. During programming, the current and future space needs of each potential building occupant were determined and used as the basis for the building design. This also allowed various occupancy scenarios to be evaluated.

On November 26, 2001, the Board of County Commissioners authorized the County Manager to enter into a contract with O'Brien/Atkins Associates, P.A., to provide professional services for programming and pre-design of the proposed Durham County Justice Building. The report has been completed and will be reviewed with the Board.

Resource Person(s): Wendell M. Davis, Deputy County Manager; Glen Whisler, P.E., County Engineer, Engineering Department. Design Team: Kevin Montgomery, O'Brien/Atkins; Doug Kleppin, HLM Design; Howard Geisler, GSA; Patricia Harris, New Synergy

County Manager's Recommendation: The County Manager recommends that the Board receive the report.

7. **Adoption of Third One-Half Cent Local Option Sales Tax**

The Board of Commissioners is requested to adopt the third one-half cent local option sales tax in Durham County. The County has lost \$9,740,135 from the reimbursements that have been withheld this fiscal year. The one-half cent sales tax would replace approximately \$3,964,648 of this amount; leaving a deficit of \$5,775,487. Fortunately, the County only budgeted \$2,900,000 for the Inventory Tax reimbursement, which was not expected to be withheld.

Notice of the intent to adopt this resolution has been properly given at least 48 hours in advance of the meeting. A copy of a proposed resolution which would make the tax effective on December 1, 2002 in Durham County is attached.

Resource Person(s): Chuck Kitchen, County Attorney; Mike Ruffin, County Manager.

County Manager's Recommendation: Adopt the attached resolution in order to replace a portion of the reimbursements from the State.

8. **Quasi-Judicial Appeal-Helen Bass v. County of Durham**

The Sedimentation and Erosion Control Division of the County Engineer's Office has assessed a civil penalty against Steven and Helen Bass, the registered owners of property located at 4310 Bennett Memorial Road. The amount of the civil penalty assessed is \$67,041.50. Mrs. Bass filed a petition for a contested case with the Office of Administrative Hearings (OAH), challenging the penalty, and then moved the OAH to dismiss the penalty assessed, on the grounds that she was not personally served with the Notice of Civil Penalty Assessment (Assessment). Durham County filed a motion to dismiss Mrs. Bass' appeal on the grounds that it was untimely, having been filed almost a year after service of the Assessment. Both of these pre-hearing motions before the OAH were grounded in the fact that the Assessment sent to Mrs. Bass via certified mail was signed for by her husband but differed as to the legal effect of that fact. The OAH held it was not legally sufficient to establish service of the Assessment on Mrs. Bass and entered a recommended decision dismissing

the civil penalty assessed. The OAH then forwarded its recommended decision to the Board for entry of a final decision. The motions of both parties were supported by affidavits and the deposition testimony of Mrs. Bass.

Durham County has filed exceptions and objections to the recommended decision asserting that the OAH decision is not supported by the evidence in the record and is affected by errors of law. It requests that you reverse the decisions of the OAH which (1) granted Mrs. Bass' motion dismissing the civil penalty assessed and (2) denied Durham County's motion to dismiss Mrs. Bass' petition for a contested case on the grounds it was untimely. Mrs. Bass has filed a motion requesting you dismiss the exceptions and objections filed by Durham County under the theory that the decision of the OAH was a final decision over which you do not have authority. Durham County filed a response to the motion asserting both that the Board does have authority to render a final decision in this matter and that Mrs. Bass' motion is an untimely exception and objection to the recommended decision. Mrs. Bass has also filed a document entitled "Helen Bass Response and Plea for Justice," contending that the decision of the OAH should be upheld.

The Board is required to review this matter based on the record produced at OAH. The Board must first make a determination on Mrs. Bass' motion regarding whether or not it has jurisdiction to review this matter. Should the Board decide that it does have that authority, it must either (1) accept the decision of the OAH, or (2) enter a decision rejecting the recommended decision and dismissing Mrs. Bass's petition for a contested case.

This is a quasi-judicial proceeding in which the Board sits as an appellate body and determines the matter without hearing additional evidence. The entire record of the proceedings, including all previously filed briefs, motions, affidavits and the deposition of Mrs. Bass, is available to the Board, if desired, but was not reproduced due to its size and the fact that the filings of both parties do not appear to require a reading of the record. The attachments to this Agenda Action Form are:

- (1) Recommended Decision of OAH
- (2) Respondent's Submission of Exceptions and Objections to the Decision of the Office of Administrative Hearings
- (3) Helen Bass Response and Plea for Justice
- (4) Mrs. Bass' Motion to Dismiss
- (5) Response to Petitioner's Motion to Dismiss

The County Attorney cannot make a recommendation to the Board because one of the Assistant County Attorneys represented the County in this matter before the OAH.

Resource Person(s): Mike Ruffin, County Manager

County Manager's Recommendation: Select from the above options based on the Board's review of the OAH's Decision and filings of the parties.

9. **Closed Session**

The Board of Commissioners is requested to adjourn to closed session to consider the performance of public officers pursuant to G.S. § 143-318.11(a)(6).