

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

Monday, February 4, 2002

9:20 A.M. Worksession

MINUTES

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

Present: Chairman MaryAnn E. Black, Vice-Chairman Ellen W. Reckhow, and Commissioners Joe W. Bowser, Philip R. Cousin Jr., and Becky M. Heron

Absent: Chairman MaryAnn E. Black

Presider: Vice-Chairman Ellen W. Reckhow

Chairman Black Excused From Worksession

Commissioner Heron moved, seconded by Commissioner Bowser, to excuse Chairman Black from the February 4, 2002 Worksession.

The motion carried unanimously.

Agenda Adjustment

Vice-Chairman Reckhow said the "Debt Setoff Program to Help Counties and Municipalities Collect Unpaid Debts" would be added to the agenda as item no. 11.

Citizen Comments—Dr. Anita Keith-Foust

Dr. Anita Keith-Foust has requested time on the agenda to make comments to the Commissioners about extending water and sewer connections to the Kentington Heights subdivision.

Dr. Keith-Foust asked the County Commissioners to request an investigation of the Durham County Health Department to ensure the safety of well water in the County of Durham for all of its citizens. Dr. Keith-Foust detailed events she said had occurred since she has been trying to find out why Kentington Heights residents were not issued an Enabling Act letter when evidence of a public health risk exists.

Vice-Chairman Reckhow suggested that the Board refer Dr. Keith-Foust's comments to the Public Health Director and the County Manager for a response.

Commissioner Heron added for the record, that she understood that in 1998 the City of Durham was prepared to put water and sewer in the community, but the community wanted to designate the area as commercial. Therefore it was decided it would be futile to put water and sewer in the area if the residents wanted commercial designation. Also, she questioned that \$84,000 was put in an escrow account for the community to pay for infrastructure and there needed to be some accounting for that \$84,000.

Commissioner Cousin concurred with Commissioners Heron and Reckhow.

Public Health Director Brian Letourneau said the Health Department personnel were in the vicinity of Kentington Heights in year 2000. The Health Department offered well testing to every resident in that community. Some of the wells were contaminated. The residents with the contaminated wells were advised what to do to correct the water quality issues. Public Health has offered and will offer to survey every resident's septic system in that community. If there are any problems, the residents will be advised how to correct the septic problems.

Vice-Chairman Reckhow requested that a report be completed in 30 days for the Commissioners' information.

Initiative to Prevent Juvenile Gang Violence

District Court Judge Craig Brown will make a presentation to inform the Board of County Commissioners of recent initiatives and proposals to address juvenile gang violence, including collaborative efforts with Durham Public Schools, law enforcement, and other agencies. Judge Brown is Chair of the County's Criminal Justice Partnership Board, which recently addressed this issue through the work of a subcommittee. This presentation was previously made to the Youth Coordinating Board (YCB) and the Juvenile Crime Prevention Council (JCPC).

County Manager's Recommendation: The Manager recommended that the Board receive the presentation.

District Court Judge Craig Brown made the presentation.

Vice-Chairman Reckhow and Commissioner Heron made comments and remarks about Judge Brown's presentation.

No official action was required or taken on this agenda item.

Wellness Partnership Report

The Wellness Partnership Steering Committee will present a brief report highlighting the history of the Wellness Partnership and the services it provides to schoolchildren in

Durham County. The partnership helps to support school-based wellness centers that provide primary care for all students, provided written parental permission is first obtained. Wellness centers are located at several schools in Durham County.

Resource Person(s): Donna Smith, Co-Chair; Susan Epstein, Co-Chair; Terris Kennedy; Evelyn Schmidt; Brian Letourneau; and Judy Orser.

County Manager's Recommendation: The Manager recommended that the Board receive the presentation and express its appreciation to the Wellness Partnership for its efforts in Durham County.

Donna Smith, Co-Chair, The Durham Wellness Partnership, began the presentation to the Board of County Commissioners.

The Co-Chair said Durham Wellness Partnership is a voluntary coalition dedicated to improving the health of children in Durham Public Schools. It began in the 1996-1997 school year.

The Durham Wellness Partnership overview included remarks about the goals, membership, current program, and future program efforts.

Ms. Smith discussed the goals of the Wellness Partnership. The goals follow:

1. Remove health-related barriers to learning
2. Minimize absenteeism
3. Reduce risk-taking behaviors
4. Teach healthful living behaviors
5. Improve the quality of life for students and their families
6. Create a cycle of success for students in the Durham Public Schools

Susan Epstein, Co-Chair, discussed the Wellness Partnership Members. She also talked about the school-based wellness centers.

Dr. Evelyn Schmidt, Director of Lincoln Community Health Center, described the Hillside High School Wellness Center.

Terris Kennedy, representing the Duke School of Nursing, reported on the Southern High School Wellness Center.

Judy Orser, representing the George Watts Elementary School, discussed the wellness centers at George Watts Elementary School and Glenn Elementary School.

Brian Letourneau, Public Health Director, discussed the Tooth Ferry dental program.

Susan Epstein made summary remarks about the Durham Wellness Partnership program.

Donna Smith said the Tooth Ferry's expanded area would include the following: C.C. Spaulding Elementary, Burton Elementary, Watts Elementary, Glenn Elementary, and E.K. Powe Elementary.

Ms. Smith made closing remarks.

The County Commissioners asked questions and made remarks to which the program participants responded.

No official action was required or taken on this agenda item.

Request from Sheriff on County Salaries

Sheriff Worth Hill had requested to speak with the Board of County Commissioners about salaries.

Resource Person(s): Worth Hill, Sheriff

County Manager's Recommendation: Receive the presentation and advise staff if any additional information/action is necessary.

Sheriff Worth Hill made a Salary and Benefit Presentation to the Board of County Commissioners.

The presentation covered the following subjects:

1. City/County benefit comparison
2. Health insurance cost vs. flex dollars
3. Health and dental cost vs. flex dollars
4. Employee out-of-pocket cost for health and dental insurance
5. Statistical charts for graphs
6. Deputy Sheriff salary plot as of 12/31/01
7. Detention Officer salary plot as of 12/31/01

Vice-Chairman Reckhow said the County Commissioners would take these comments under advisement.

The Commissioners asked questions and made comments about the salary presentation to which Sheriff Hill responded.

Human Resources Director Jackye Knight assisted with the Commissioners' questions and comments.

Commissioner Bowser asked Sheriff Hill what the City actually pays toward its family health plan per month. The Sheriff said the amount is \$432.75. That is the family plan for City employees. The City's two-party plan cost is \$108.50 per month.

Commissioner Bowser said he wanted the County employees to know that he has been a strong advocate for them concerning salaries and wages since he has been on the Board. The employees deserve more. He said that he never thought that 2.5% was fair and that he hopes the County salaries can be raised to match the City salaries. He said he hopes the Board can begin the process this year to raise salaries for the County employees. The salary problem is not only in the Sheriff's Department, but also throughout County Government.

Vice-Chairman Reckhow requested that staff investigate the figures thoroughly.

No official action was taken on this agenda item.

Bar Association Presentation

The Durham County Bar Association has requested an opportunity to speak with the Board of County Commissioners about the "progress and scope of plans for a new courthouse."

Resource Person(s): Ruth Cohen Hammer, President, and Julia Borbley-Brown, Executive Director

County Manager's Recommendation: Receive the presentation and advise the staff if any additional information/action is necessary.

President Ruth Cohen Hammer, Durham County Bar Association, made a presentation to the Board of County Commissioners about the "progress and scope of plans for a new courthouse." She told the Commissioners about the educational campaign that is underway to inform voters of the pressing need for adequate judicial facilities in Durham County.

President Cohen said the Durham County Bar Association members want to be an information resource for the County Commissioners.

No official action was required or taken on this agenda item.

Update on American Tobacco Historic District Project

On May 8, 2000, the Board of County Commissioners voted to support the American Tobacco Historic District Project by providing public parking in the amount of \$18,437,300, which represents the provision of 1,870 parking spaces in public parking

decks. Two hundred and fifteen (215) spaces are planned in the County's parking structure to serve the new Judicial Center.

On May 22, 2000, the Board held a public hearing to determine the need for public parking in the aforementioned area and voted to direct staff to prepare a resolution based upon the evidence presented. As a result, on June 12, 2000, the Board of County Commissioners passed a resolution establishing the need for public parking, which laid the foundation for entering into agreements to provide public parking in this area. The Board directed staff to begin drafting documents which would provide for the construction and financing of the parking structures, as well as delineate the relationship between the City and County relating to this project. Since that time, staff has been working with officials from Capitol Broadcasting Company and the City of Durham to draft the documents; however, final negotiations have not been completed due to the slower than anticipated progress of the American Tobacco Historic District Project.

Mike Hill, Vice President and General Counsel of Capitol Broadcasting Company, will make a presentation to inform the Board of County Commissioners of the recent progress made on the project, including an updated design and timeline.

Resource Person(s): Mike Hill, Vice President and General Counsel, Capitol Broadcasting Company; Carolyn P. Titus, Deputy County Manager; and Chuck Kitchen, County Attorney

County Manager's Recommendation: The Manager recommends that the Board receive the presentation, ask questions, and provide direction to staff on proceeding with the project.

Mike Hill, Vice President and General Counsel of Capitol Broadcasting Company, made a presentation to inform the Board of County Commissioners of the recent progress made on the project, including an updated design and timeline. The good news is that the project has begun.

The environmental work has begun; it will take four to five months to complete that part of the project. The second piece of news is that Capitol Broadcasting has exercised the option and will buy the property. There has been tremendous success in obtaining tenants for the buildings. The schedule has progressed to the point that it was time for the project to move forward. There are three tenants committed to move into the project. That is the status of the project today.

Mr. Hill also talked to the Commissioners about the current plan. The same plan you have seen in the past is being moved forward. He reviewed the total project with the Commissioners. The plan is to have people moving into the building during the second quarter of 2003. The construction period is seven to nine months. The parking deck is trailing us at this point. There has been no design work done on the parking deck. The

final arrangement with the City and County on the parking deck needs to be documented, signed, and finalized.

The Commissioners asked questions and made comments to which Mr. Hill responded.

County Manager Mike Ruffin and Deputy County Manager Carolyn Titus assisted with the questions and answers.

The County Manager discussed privatizing the operation of the parking deck. Negotiations are moving forward on the parking deck operation.

The County Manager said the final agreement with the City is also being worked out to stay within the time frame referred to by Mr. Hill.

No official action was required or taken on this agenda item.

Report to the Board on Franchising Discussions with Local Solid Waste Collectors and the Status of Local Recycling Programs Associated with Construction Debris

The General Services Director will provide a brief report to the Board on franchising discussions with local solid waste collectors serving the unincorporated areas of Durham County and the current status of local recycling programs associated with construction debris.

At a regular meeting of the Board on February 26, 2001, the Board directed staff to investigate the feasibility of (1) franchising solid waste collection outside the City limits; and (2) considering recycling programs associated with construction debris.

1. Franchising Discussions with Local Solid Waste Collectors: On March 22, 2001, individual interviews were conducted with the following companies previously identified as waste collectors in the unincorporated areas of Durham County:

Tim Fadul	Waste Management	10411 Globe Road, Morrisville, NC
Rick Prather	BFI	5111 Chin Page Road, Durham, NC
Lee Bodenhamer	Waste Industries, Inc.	148 Stone Park Court, Durham, NC
Brent Kirchhoff	Republic Waste Services	825 Purser Drive, Raleigh, NC

In addition, on March 23, 2001, a telephone interview was conducted with the following company that was unavailable the previous day:

Mike Hurdle	Clayton and Hurdle Disposal Services, Inc.	Hurdle Mills, NC
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Each solid waste collector was asked 15 questions relating to: the number of households served, current levels of service, number of staff employed by the company, current rate charges per household, service capabilities, how franchising the unincorporated areas of

Durham County would affect their business, etc. The Commissioners were sent a copy of the questions and responses for review.

In summary, three of the five firms interviewed currently serve Durham County residents. One is a “mom and pop” operation with 500 customers in Northern Durham County. The ages of all firms range from 10 to 20 years of service to the Durham area. Residents currently being served are on a weekly pick-up schedule. All firms interviewed were interested in increasing the number of customers served. While the three larger companies can provide a countywide service, the two smaller firms were interested in a sectional approach. Each firm interviewed has received a summary of the conducted survey and was informed of the scheduled report to the Board at today’s Worksession.

2. Update on Recycling Programs Associated with Construction Debris: Since the February 26, 2001 Board meeting, several discussions have taken place with both the Durham City Transfer Station and Orange County Solid Waste representatives in reference to current options for recycling Construction and Demolition (C&D) waste.

According to David McCary, Solid Waste Director for the City of Durham’s Solid Waste Transfer Station, recycling construction and demolition materials is currently available through five private deconstruction service companies in the Triangle area.

In April 2001, Blair Pollock, Orange County Solid Waste Program Manager, advised “Orange County is not even close to getting their ordinance approved because they have a lot of details to work out.” He estimated it would be June 2001 before the Orange County BOCC would approve the proposed Ordinance Regulating Recyclable Materials and Licensing the Collection of Regulated Recyclable Material with projected implementation in March 2002.

In an update on January 2002, Dave Ghiradelli, Orange County Solid Waste Management, advised that the Orange County BOCC voted to enact the proposed “Regulated Recyclable Material” (RRM) ordinance on July 1, 2002—four months later than first anticipated. The new ordinance creates a list of materials that cannot be landfilled including unpainted, untreated lumber and plywood (called “clean waste”), scrap metal, pallets, and corrugated cardboard. Generators would be required to separate the material for recycling or deliver it mixed to “Certified Commingled Recycling facilities.” Other provisions in the Orange County ordinance would require: licenses of anyone who hauls RRM in vehicles larger than 9,000 pounds; recyclable material permits before zoning and building permits are issued; delaying some demolition projects to assess the recyclability of the materials; enforcing tip fee surcharges at the Landfill; and issuing civil penalties at job sites for non-compliant disposal.

Resource Person(s): Mike Turner, Director of General Services

County Manager's Recommendation: The Manager recommended that the Board receive the report and instruct staff as to any additional action that may need to be taken.

Mike Turner, General Services Director, presented the Commissioners a report on the subject under consideration.

The County Commissioners asked questions and made remarks about the franchising to which Mr. Turner responded.

Commissioner Heron wanted Mr. Turner to ask the contract haulers if they would be willing to return something to the community by picking up the recycle items at the Eno Festival without charging for the service. Vice-Chairman Reckhow and Commissioner Heron supported the concept of franchising. They agreed franchising should be considered, as it has its advantages. The Board can set criteria and goals for the contract haulers.

The second section of Mr. Turner's report dealt with the status of local recycling programs associated with construction debris. Mr. Turner said he would return to the Commissioners at a later date with a staff recommendation relating to construction debris.

Vice-Chairman Reckhow suggested that Durham County monitor Orange County's efforts and come back to the Commissioners in a year with an updated report on the construction debris-recycling project.

No official action was required or taken on this agenda item.

Quasi-Judicial Appeal—Terry Peterson Residential Twenty, LLC v. County of Durham

The Sedimentation and Erosion Control Division of the County Engineer's Office has assessed a civil penalty against Terry Peterson Residential Twenty, LLC in the amount of \$30,160. The Administrative Law Judge, following a trial of the matter, affirmed the civil penalty but reduced it to \$22,620. The decision is a recommended decision to the Board of Commissioners. The developer, Terry Peterson Residential Twenty, LLC, and Durham County have filed exceptions to the findings of the Administrative Law Judge.

The Board is requested to review the matter on the record produced and make a determination to either 1) accept the decision of the Administrative Law Judge; 2) reduce the civil penalty to \$6,032 as requested by the developer; or 3) reinstate the entire civil penalty of \$30,160. 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 transcript of the proceedings is available to the Board, if desired, but was not reproduced due to its size and the fact that both parties provided written exceptions that did not appear to require a reading of the transcript.

The County Attorney cannot make a recommendation to the Board, as one of the Assistant County Attorneys represented the County in the proceeding before the Administrative Law Judge.

County Manager's Recommendation: Select one of the options listed above based upon the Board's review of the ruling.

Vice-Chairman Reckhow called on County Manager Ruffin to give the Board instruction on this agenda item. The Manager is doing this because the County Attorney must excuse himself and his office from advising the Commissioners regarding this appeal. The Commissioners are sitting before three different judgements. The Board must decide which is the preferred option to take. This is in accordance with the Durham City/County Sedimentation & Erosion Control Ordinance. The Manager read into the record a part of Section 14-69-(b) 2 of the ordinance. The evidentiary record is closed on this case.

The Administrative Law Judge hearing the matter shall make a recommended decision to the Board of County Commissioners. If either party wishes to challenge the recommended decision they must file with the Clerk to the Board, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within thirty (30) days after the issuance of same. . . . The recommended decision will be reviewed by the Board of County Commissioners within ninety (90) days after the official record in this matter is served upon the Clerk to the Board by the Office of Administrative Hearings. The Board of County Commissioners shall adopt or modify the recommended decision consistent with the provisions of N.C.G.S. § 150B-36. Appeal of the decision of the Board of County Commissioners shall be in accordance with Article 4 of Chapter 150B of the General Statutes.

The County Manager stated that the Commissioners must review the Administrative Law Judge's recommendation. The issue before the Board is which one of those three options the Board believes, as a matter of law, should be applied in this case.

The County Manager's recommendation was to affirm the opinion of judgement by the Administrative Law Judge and assess the civil penalty in the amount of \$22,620.

The Commissioners asked questions and made comments to which County Manager Ruffin responded.

Commissioner Cousin moved, seconded by Commissioner Bowser, to suspend the rules.

The motion carried unanimously.

Commissioner Bowser moved, seconded by Commissioner Cousin, to affirm the opinion of judgement by the Administrative Law Judge and access the civil penalty in the amount of \$22,620.

County Manager Ruffin said, for the record, that to adopt the order signed by the Administrative Law Judge in the matter would be imposing a penalty of \$22,620.

The motion carried unanimously.

Ethics Policy

It has been suggested that the Planning Commission, and some or all of the other boards which are staffed by the Planning Department, be required to submit a disclosure statement as is required of the Board of Health, Board of Adjustment, and Board of Equalization and Review.

Resource Person(s): Ellen Reckhow, Vice Chairman; Chuck Kitchen, County Attorney

County Manager's Recommendation: Select which additional boards the Board of Commissioners desire to have the members file a disclosure statement. The staff will then bring back an amended ethics policy for the Board's adoption at the next meeting.

Vice-Chairman Reckhow introduced the agenda item and made opening remarks to the Board of County Commissioners.

Vice-Chairman Reckhow said she requested this item be put on the agenda after two Planning Commission members approached her with a concern. They feel since they deal with property matters and make advisory recommendations to the Board that there is a public interest in having disclosure of any conflict that may be perceived as it relates to property they own in the community. Currently the policy applies to the Board of County Commissioners, lead management staff, department heads, and a few of the boards and commissions (Board of Health, Board of Adjustment, and Board of Equalization and Review). There are several other boards not covered under the Ethics Policy whose members make final decisions.

Vice-Chairman Reckhow suggested that staff review the boards and commissions that are advisory or have final decision powers relating to business contracts and real estate matters. The policy should be revised to be more inclusive.

Commissioner Heron said the Planning staff should come under the County's Ethics Policy.

Attorney Chuck Kitchen said one solution would be for the City to place the Planning Department employees under the City's Ethics Policy.

Vice-Chairman Reckhow said she placed the ethics policy on the agenda for the Joint City/County Planning Committee meeting on Wednesday.

Vice-Chairman Reckhow requested that the Board direct staff to research the appropriate bodies that should be covered. Staff should consider the Mental Health and ABC Boards.

The Commissioners concurred with Vice-Chairman Reckhow to review the Ethics Policy.

The Ethics Policy will come back to the Commissioners at the March 6, Worksession.

Impact Fee Ordinance

The County Attorney has prepared a draft Impact Fee Ordinance and will review the applicable provisions of the Ordinance with the Board. The Board is requested to provide staff with directions as to any changes to be made in the Ordinance.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: Review the Ordinance with the County Attorney and give direction as to changes desired. Following review, direct that the Ordinance be sent to the Planning Commission for comment.

Vice-Chairman Reckhow said the County Attorney had prepared a draft impact fee ordinance through which he would walk the Commissioners. The Commissioners should ask questions and provide any directions to staff about changes. A public hearing could be held on March 11, or March 25, 2002.

County Attorney Chuck Kitchen recommended the document be sent to the Planning Commission for comment. The public hearing date would be set when the document is returned to the Board.

The Vice-Chairman asked the County Attorney to review the high points of the ordinance and provide the Board a quick overview.

The Commissioners asked questions and made comments about the ordinance throughout the overview presentation; the County Attorney responded. The Commissioners gave directives to the staff.

Vice-Chairman Reckhow asked the County Manager to review his recommendations regarding how to deal with the affordable housing issue.

The Vice-Chairman asked the County Attorney to make the requested changes and move forward to the public hearing.

Debt Setoff Program to Help Counties and Municipalities Collect Unpaid Debts

Vice-Chairman Reckhow made a presentation to the Board of County Commissioners about the Debt Setoff Program to help counties and municipalities collect unpaid debts and bills.

The North Carolina Association of County Commissioners and the North Carolina League of Municipalities have established a joint clearinghouse through the North Carolina Department of Revenue that allows local governments to submit outstanding debts of at least \$50. The debts can range from water/sewer bills, property taxes, or even parking tickets, as long as each individual debt totals to \$50 or more.

The Vice-Chairman said she thought this was a program that the Board should consider unless staff had a problem with it.

Kimberly Simpson, representing the Tax Administration Department, made comments about the program. Ms. Simpson said the department has been researching the program to see whether implementation would be feasible cost-wise. One additional employee would be needed to handle the administrative duties associated with the program.

Vice-Chairman Reckhow requested that much consideration be given the program since this would be another method to collect taxes.

The Commissioners had a lengthy discussion about the Debt Setoff Program.

The Vice-Chairman asked staff to look at the program and come back to the Commissioners in a month with a recommendation.

Adjournment

Vice-Chairman Reckhow adjourned the Worksession at 2:35 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board