

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

Monday, March 11, 2002

6:30 P.M.

**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: None

Presider: Chairman Black

**Closed Session**

Vice-Chairman Reckhow moved, seconded by  
Commissioner Bowser, to adjourn into Closed Session  
pursuant to N.C.G.S. § 143-318.11(a)(5).

The Board adjourned to closed session to instruct the staff concerning the position to be  
taken regarding the price or material terms for the purchase of real property pursuant to  
G.S. § 143-318.11(a)(5).

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7:15 P.M.

**Regular Session**

**Opening of Regular Session**

Chairman Black called the Regular Session to order with the Pledge of Allegiance.

**Agenda Adjustments**

Chairman Black advised that an item 8(e) had been added to the agenda (cancellation of  
Public Hearing on School Impact Fee Ordinance originally set for March 25, 2002).

Commissioner Heron added discussion of an email message she received regarding  
bicycles.

**Minutes**

Commissioner Heron moved, seconded by Commissioner Bowser, to approve the December 10, 2001 Regular Session Minutes as submitted.

The motion carried unanimously.

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Commissioner Heron moved, seconded by Commissioner Bowser, to approve the January 28, 2002 Commissioners' Retreat Minutes as submitted.

The motion carried unanimously.

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Vice-Chairman Reckhow moved, seconded by Commissioner Cousin, to approve the November 26, 2001 Regular Session Minutes as submitted.

The motion carried with the following vote:  
Ayes: Black, Cousin, Heron, and Reckhow  
No: Bowser

Commissioner Bowser asked that his comments regarding the Minutes of November 26, 2001 be included in this meeting's minutes. He asked that the record reflect that he could not vote to approve these minutes because they do not indicate, and he could not recall, why he had voted against the adoption of the TIP 2004-2010 Priority List at that meeting.

Commissioner Heron suggested that Commissioner Bowser might have voted against the priority list because the additional traffic lane in front of the Bethesda Christian Academy, although in the TIP list, would not be constructed for several years. She stated that the traffic lane should be a part of the current road improvements to Miami Boulevard and Highway 70. The road improvements required of the academy, including turn lanes, should be a part of the TIP.

**Resolution Recognizing the Herndon Farmland Easement Donation**

The resolution recognizes the Herndon family for their donation of a Conservation Easement to the County of Durham on their 50-acre farm located on Massey Chapel Road in Southwest Durham. The resolution recognizes and thanks the Herndon family for the protection of sustainable family farming and their contributions to the Durham County Farmland Protection Program.

Resource Person(s): Frank Duke, Planning Director, and Mike Giles, Open Space Land Manager

County Manager's Recommendation: Adopt and present the resolution to the Herndon Family with a presentation by staff on the Herndon Farm and donation.

Commissioner Heron stated her pleasure in reading the resolution for this conservation easement. She said she thought this was one of the first for Durham County and that she hoped this would set the stage for more of this to happen.

Mike Giles commented that it was a pleasure and an honor to be involved with the Herndon family in completing this easement. It represents a gift that not many people are either able or willing to do. Future generations of Durham County will be ensured of enjoying its beauty.

Wayne Cash, of the Volunteer Farmland Protection Board, added his appreciation to the Board of Commissioners for helping establish the Durham County Farmland Protection Program, for the work of the board members in establishing the ordinance, and especially to the Herndon family for their willingness to make this contribution.

The Herndon family members in attendance were recognized by staff and the Commissioners. A plaque and resolution were presented and the County's appreciation expressed.

Ms. Faith Herndon spoke representing the family and its legacy to Durham County. She thanked the County Commissioners for their support of this project. She also thanked Mike Giles and Jane Korest of the City-County Planning Department, Lowell Siler of the County Attorney's office, County Manager Mike Ruffin, Clerk to the Board Garry Umstead and his brother, Marlana Davis for notary work, and attorney Tom Worth for their help in accomplishing this easement. She honored her father and other family members for their love of open space and dedication to its preservation.

The Commissioners spoke of their appreciation for the easement as a legacy to Fred Herndon Sr. Many generations will appreciate this family's contribution. Thanks were expressed to the Volunteer Farmland Protection Board for its efforts to establish the ordinance.

The resolution follows:

RECOGNITION OF A CONSERVATION EASEMENT DONATION TO  
THE COUNTY OF DURHAM FROM THE HERNDON FAMILY

WHEREAS, Durham County has adopted goals promoting the preservation of natural areas, wildlife habitat, farmland, and open space in the county; and

WHEREAS, Durham County has enacted the Durham County Farmland Protection Program to preserve and manage these important resources for generations to come; and

WHEREAS, one component of the Farmland Protection Program is the acquisition of conservation easements on lands that contain significant and threatened agricultural lands within important watersheds and identified areas where development threatens the very existence of this resource; and

WHEREAS, the Herndon family has been an exemplary steward of this property by protecting riparian corridors, maintaining healthy woodlands and prime farmland, planting native trees and plant species, being highly judicious in their use of fertilizers and pesticides, and by instilling their land conservation values into their children and grandchildren by their involvement with the Farmland Protection Board; and

WHEREAS, the Herndon family has donated a Conservation Easement on their family farm ensuring the preservation of this land for future generations in the midst of one of the most rapidly developing areas of the county; and

WHEREAS, the Herndon farm is recognized by the State of North Carolina as both a Legacy and North Carolina Century Farm in the same single family ownership since 1780; and,

WHEREAS, the Herndon family farm provides a local working farm experience for the residents of southern Durham County where that resource is rapidly diminishing; and

WHEREAS, the State of North Carolina recognized the strategic value of the Herndon Farm by awarding it a State Farmland Preservation grant to partially offset the cost of protecting the farm for the Herndon family; and

WHEREAS, the County recognizes the efforts of Nannie Mae Herndon and Fred Herndon Sr. in the creation of the Farmland Protection Board and in the protection of Durham County's farmland and open space resources:

NOW, THEREFORE, BE IT RESOLVED that the Durham County Board of Commissioners does hereby recognize the gracious donation of this conservation easement by the Herndon family for the permanent protection of a dwindling valuable resource.

BE IT FURTHER RESOLVED that the Board thanks and commends the Herndon family for their civic-minded interest in pursuing a conservation easement, and for enhancing the County's Farmland Protection Program.

This the 11<sup>th</sup> day of March, 2002.

/s/Five Commissioners

**Commissioner Comment—Becky Heron**

Commissioner Heron read an email she received regarding the total absence of bike racks for parking bicycles at the new South Pointe Mall. Vice-Chairman Reckhow requested the City-County Planning Department to explain this omission in connection with the requirement for bike racks in the County's Code of Ordinances.

Steve Medlin, City-County Planning Department, explained that the site plan for the mall was approved in June 1999. The Board adopted the bicycle parking facility requirements in March 2001. As such, the mall was built in compliance with the site plan.

Vice-Chairman Reckhow requested a letter be sent to the owner or manager of the mall with the current ordinance attached. The letter should state that the American Tobacco Trail, which runs through the mall project, will be the longest in the state when complete. The letter should encourage the mall to make a good faith voluntary effort to install bike racks in compliance with the current ordinance. A copy should be sent to the City.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to draft the letter to the owner or manager of the mall with the details included as stated above.

The motion carried unanimously.

**Commissioner Comment—MaryAnn Black**

Chairman Black noted a correspondence received from a disappointed out-of-county citizen who could not access South Pointe Mall on Saturday due to traffic congestion and the closing of some mall entrances. She asked that a letter be sent addressing Durham's other attractions and encouraging his attendance.

Vice-Chairman Reckhow offered that if the mall would accommodate other forms of transportation, some traffic congestion might be avoided. In answer to her question regarding setting aside Park-and-Ride parking spaces, Mr. Medlin advised that the mall had set aside the required percentage of spaces as a condition of the development plan.

Chairman Black said she looked forward to citizens from Durham and surrounding counties utilizing the mall and generating tax dollars to the County and City.

**Introduction of the New Youth Home Director—Angela Nunn**

The Board will have an opportunity to meet Ms. Angela Nunn, the newly appointed Youth Home Director. She served as the Interim Director during the fall of 2001.

Ms. Nunn joined Durham County's Youth Home in 1994 as a Detention Counselor III, during which time she performed resident care, custodial, administrative, and supervisory duties. In addition, she provided leadership in the absence of the Director. Prior to joining Durham County, she worked in a variety of progressively responsible correction positions serving at the North Carolina Correctional Institution for Women from 1989-1994.

She is a 1981 graduate of North Carolina Central University where she received a B. A. degree in Criminal Justice and has also done coursework towards a Master's degree in Criminal Justice/Correctional Administration. Ms. Nunn also holds an Associate's degree in Police Science from Durham Technical Community College.

Resource Person(s): Carolyn P. Titus, Deputy County Manager

County Manager's Recommendation: The Manager's recommendation is that the Board welcome Ms. Angela Nunn as the new Durham County Youth Home Director.

Ms. Titus introduced Ms. Nunn and referenced her educational and professional background.

Ms. Nunn addressed the Board. She thanked the County Manager's office for its support and confidence in her stamina and endurance for the position. Ms. Nunn spoke highly of the Youth Home team. She stated she looks forward to the future and its changes and challenges.

The Commissioners welcomed Ms. Nunn to her new position.

### **Introduction of the New Veterans Services Officer—Louis Washington**

Mr. Louis Washington has joined Durham County Government as the new Veterans Services Officer. He began work on February 4, 2002. Mr. Washington is a U.S. Army veteran and has more than 21 years of experience in Veterans Affairs primarily performing case management, research, marketing, and educational counseling. From 1980 to 1998, he served as National Service Officer for Disabled Americans, Department of Military and Veterans Affairs, Regional Office in Newark, New Jersey.

The role of the Veterans Services Officer is to advise veterans and their dependents on their rights and eligibility for veterans' benefits. Mr. Washington will also assist them in completing the appropriate applications for the benefits and will submit the paperwork to the appropriate federal or state agencies.

The Veterans Services office is located at 200 N. Mangum Street on the corner of Parrish Street. Regular office hours are 10:00 a.m. until 2:00 p.m., Monday through Friday. Mr. Washington can be reached at 560-VETS (8387).

The Veterans Services office had been closed since 1998. Durham County Commissioners voted to reopen the office on a part-time basis during last summer's budget deliberations.

Resource Person(s): Wendell M. Davis, Deputy County Manager

County Manager's Recommendation: The Manager's recommendation is that the Board welcome Mr. Washington as the new Veterans Services Officer.

Mr. Davis introduced Mr. Washington and referenced his professional career background.

Mr. Washington thanked Mr. Davis for the warm welcome and the Commissioners for their confidence in his selection. He stated his commitment to serve the men and women coming back from duty and accommodating them as they deserve.

The Commissioners welcomed Mr. Washington and wished him well in his new position.

### **Introduction of the New City-County Planning Director**

Chairman Black advised Mr. Frank Duke, the newly appointed Joint City-County Planning Director, was unable to attend due to illness. This item will be rescheduled for another meeting.

### **Consent Agenda**

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

- \*(a) Budget Ordinance Amendment No. 02BCC000054—  
The Durham Center—Recognize One-Time Medicaid Settlement in the Amount of \$514,862 (approve the Durham Center's Budget Ordinance Amendment No. 02BCC000054 in the amount of \$514,862);
- (b) Appointment of the Chairman and Vice Chairman for the 2002 E & R Board (appoint Mr. George Scott as Chairman and Ms. Kelly Matherly as Vice Chairman of the Board of Equalization and Review);
- (c) Approval of Federal Grant Offer to the Raleigh-Durham International Airport (accept the \$7,900,000 grant offer to construct a new cross-field taxiway, linking the east and west sides of the airfield on the north end);
- (d) Approve Grant Application from the Criminal Justice Resource Center to the NC Department of Correction, Division of Community Corrections, for Criminal

- Justice Partnership Program Funds (approve the application for Continuation of Implementation Funding to the Criminal Justice Partnership Program; this has been placed on the consent agenda as it is a reoccurring grant application and approval process the County participates in each year); and
- (e) Cancellation of Public Hearing on School Impact Fee Ordinance (cancel the March 25, 2002 public hearing).

The motion carried unanimously.

\*Documents related to these items follow:

Consent Agenda 8(a). Budget Ordinance Amendment No. 02BCC000054—The Durham Center—Recognize one-time Medicaid settlement in the amount of \$514,862 (approve the Durham Center's Budget Ordinance Amendment No. 02BCC000054 in the amount of \$514,862).

DURHAM COUNTY, NORTH CAROLINA  
FY 2001-02 Budget Ordinance  
Amendment No. 02BCC000054

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2001-02 Budget Ordinance is hereby amended to reflect budget adjustments for The Durham Center (Mental Health)

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
Human Services	\$276,825,447	\$514,862		\$277,340,309
<u>Revenues</u>				
Charge for Services	\$ 18,614,383	\$514,862		\$ 19,129,245

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

This the 11<sup>th</sup> day of March 2002.

(Budget Ordinance Amendment recorded in Ordinance Book \_\_\_\_\_, page \_\_\_\_\_.)

**Added Consent Agenda Item—Library Site in Eastern Durham County**

Consent Agenda 8(f). Land purchase for a new library site in the eastern region of Durham County. The Board, during its Closed Session tonight, discussed several sites



for constructing a library in eastern Durham County. The four-acre site on the east side of NC Highway 98, offered by Torrey Homes was submitted to the Board for approval. The site, if not purchased by the County for the library, would be divided and developed as home sites. Torrey Homes' asking price was \$130,000 per acre, based on its value for home sites. The site meets all library siting criteria and is in conformance with the City, County, and Durham Public Schools Joint Use Resolution. The developer will absorb the cost of required stormwater improvement and share in road construction cost. The land cost is considerably less than that approved in the November 2001 bond referendum. The developer, Torrey Homes, required a decision from the County by March 15, 2002.

Deputy County Manager Wendell Davis stated the proposal and asked the Board, to approve purchase of the four-acre site.

Vice-Chairman Reckhow moved, seconded Commissioner Cousin, to authorize the County Manager to enter into a contract to purchase the Torrey Homes sites on the basis of the information presented to the Board in Closed Session.

The motion carried with the following vote:  
Ayes: Black, Cousin, Heron, and Reckhow  
No: Bowser

Commissioner Bowser asked that the record reflect that he, as the Commissioner liaison to the Library, was a strong supporter for a library in east Durham. But he could not vote for the purchase price of \$130,000 per acre considering that he had been told that the assessed value is about \$15,000 per acre. Concerning the bond referendum, he stated that \$1 million was allotted to this particular project. The land cost of about \$500,000 would take half of that amount, and the cost of the library building and infrastructure would likely exceed the balance. It would not be fair to the taxpayers.

He thanked Priscilla Lewis, Library Director Dale Gaddis, Library staff, and the Library Board for their dedication and hard work done in finding and negotiating a site. He stated they had done their best possible with this particular property. It is a perfect site.

Commissioner Cousin, in support of the motion, reasoned that the high cost was because potential home sites, rather than acreage, were being purchased. Land is at a premium in Durham County, and we are running out of sites. He stated that the Board cannot wait. It should pass the matter and let the County proceed.

Vice-Chairman Reckhow stated that the staff researched and considered a variety of sites in eastern Durham County before this site was chosen. It meets all the criteria placed before staff. Regarding joint use, the site will be co-developed with the City—a fire station will be adjacent to the Library. The developer will share in the cost of infrastructure. She stated she supported this site for these reasons and felt the project would come in under the budget relating to the bond referendum.

Commissioner Heron stated she had a preference for another site, but it was too close to an existing library. Considering all, the citizens passed the bond referendum, and the library should proceed.

Chairman Black thanked staff for researching, as requested, the other pieces of property and seeking less expensive options. She stated she would, however, support the recommendation as a result of reading the materials presented in Closed Session. She asked that the backup material included in the minutes. This would help future readers to understand the decision made to purchase the property.

The requested backup memorandum "Negotiations on Eastern Library Site with Torrey Homes" from Deputy County Manager Wendell Davis and Library Director Dale Gaddis to the Board of County Commissioners follows:

The purpose of this correspondence is to provide the Board with a follow-up to a directive, which staff received on February 11, 2002 while discussing the proposed eastern library site, and to bring to your attention a recent development with regard to the proposed Torrey Homes site.

During our last discussion with the Board of County Commissioners, the Board requested staff to go back and determine if Torrey Homes was willing to lower the asking price from \$130,000 an acre. We are taking this opportunity to apprise the Board that staff pursued that discussion and that Torrey Homes also has given the County a deadline of March 15, 2002 to make a decision regarding purchase of the property.

In speaking with Britt Spivey of Torrey Homes, he explained that initially in negotiating with the City, his asking price was \$150,000 per acre. He has since reduced the price to \$130,000 per acre. He further explained that the \$130,000 figure was consistent with the profit margins that Torrey Homes would make by developing the site with residential units. His rationale for not reducing the price is as follows:

- The library estimated needing a minimum of five acres to develop a library site
- Without the library, Torrey Homes would develop the land with four residential units per acre
- The estimated selling price of each unit is \$165,000
- A 20% profit margin on each unit is \$33,000, or \$132,000 per acre
- The cost of amenities (trails, greenways, club house, etc.) is estimated at an additional \$12,000 per unit, or \$48,000 per acre
- The land and the cost of stormwater facilities (estimated at \$25,000) required for the library would be provided by the developer (thus reducing the library's required acreage to 4 acres)

Another directive given to staff by the Board during the last discussion was to determine the cost for the right-of-way and to get the developer's rationale for requiring that the County share the cost of the road into the site.

In speaking with Dan Jewell of Coulter Jewell Thames, PA, the proposed library site has approximately 600 feet of street frontage within the development. At \$225 per linear foot, total road construction costs for this section of road would be \$135,000. These costs include clearing, grading, drainage, curb and gutter, paving, sidewalks, water, sewer and storm sewer. Another \$15,000 would be necessary for design and a 10% contingency budget, bringing the total cost to \$163,500. The developer is offering to cover 50% of this cost, with the County's liability being an estimated \$81,750.

The developer's reasons for having the County pay 50% of the road improvement are as follows:

- Without the library in the development, the required road width is 26 feet.
- With the library, the road width has to be expanded to 33 feet to accommodate the additional trips generated by the library.
- The expanded road will be required throughout this part of the development, from the entrance off of Highway 98 to its termination onto Nichols Farm Road.
- The developer is assuming the costs for basic road improvements on Highway 98 for ingress into the site. However, it is important to note that the siting of a library on this site will require a turn lane off of Highway 98, costs which the County will have to pay (estimated at \$60,000).

In summary, staff would like to reiterate the following:

1. The Torrey Homes site is in conformance with the City, County, and Durham Public Schools Joint Use Resolution.
2. The Torrey Homes site meets all of the siting criteria of the Library.
3. Because the site is located within an approved development, less acreage is required to accommodate the library's needs.
4. The land cost is considerably less than what was approved in the November 2001 bond referendum.
5. The Torrey Homes site would connect the library to 1,100 neighborhood residences by sidewalks and trails provided by the developer.
6. The developer will absorb the cost of the required stormwater improvement and share in the cost of road construction.

The developer will need a decision from the County by March 15, 2002. On this date Torrey Homes will begin to prepare construction documents for the residential development. While the Board asked staff to conduct a cost comparison for alternative sites, time has only permitted staff to begin identifying other potential sites in the east. We estimate that it will take several months to identify and properly evaluate alternative sites. The evaluation entails:

- Finding willing sellers
- Conducting feasibility analyses
- Performing appraisals
- Conducting environmental assessments

We now seek your further direction regarding the site for the eastern library facility.

The chart of library site considerations follows:

Durham County Library site considerations	location	owner	price	appraised value	zoning	notes
<b>North</b> * co-locate with DPS school bus lot #832 -01-001A- PIN 0825-0330-9794	school bus lot  w/s milton rd.	Durham Public Schools	market	\$25,000/ac  \$125,000	RD	alternative site for buses would be necessary
* Royall property--5 acres #843 -06-012A- PIN 0825-04-62-9645	front along s/s Goodwin Rd.	Royall Commercial Properties Inc.	\$70,000/ac	\$18,000/ac	RD	owner would adjust price down if County assisted with development costs rezoning corner might be preferred to optimize this site
<b>East</b> * Torrey Homes property #668B-01-004A- PIN 0851-04-61-2073	front along s/s Wake Forest Hwy and common drive/road shared with City	D R Horton - Torrey	\$130,000/ac	\$15,000/ac  \$45,000/ac	PDR	City fire station would be co-located adjacent appraiser determined market value to be \$15,000 per acre also considered that this site was not subject to the 24% impervious surface restriction – considered that the effect of the exemption would roughly triple the value of the land - at another site - 3 times as much land would have to be purchased in order to have the same amount of improvements as allowed by the subject (considering that, value could be \$225,000)
* Carolina Preferred Properties listing(s) #633 -02-006 – PIN 0851-03-32-4264 #633 -02-008 – PIN 0851-03-32-7303	n/s Wake Forest Hwy  across from Oak Grove School	W. Currin -- 1.51+/- acres J. M. Hall -- 3.35+/- acres	\$225,000  \$390,000  reduced 9-Nov	---  ---	NC front  RD rear	two single-family residential homes three tax parcels homes would have to be removed/relocated substantial ditch between lots Currin parcel was sold 12/17/01 (\$221,000) This is no longer a viable solution.
<b>South</b> * Lowes Grove School site	n/s hwy 54 // e/s S. Alston Ave	DPS		\$2,300,000 (\$143,195/ac)	OI-2	building demolition ??

#546 -05-001 – PIN 0738-03-33-2352	16.062+/- acres			\$1,749,000 (\$108,890/ac)		
* May Day Associates property active listing with The Ron Strom Co. #537 -01-004D- PIN 0728-04-54-7507	n/s Hwy 54  4-acre site	MAYDAY Assoc.	\$100,000/ac	---	OI-2	4-acre site  size & topography may be an issue
<b>SW</b> * Watson property  #434 -01-004 – PIN 0810-14-33-4686	e/s Shannon Rd.  2.238+/- acre parcel	James A. Watson, Jr & wife Pattie		\$460,000 (\$200,000/ac)	R-10 Library is OI-1	owner indicated willingness to consider proposals to convey something less than the entire tax parcel

**Public Hearing—Daiko Construction Inc., Applicant (Rezoning Case P01-79)**

Daiko Construction Inc. will present to the Board of County Commissioners a request to rezone 10.9 acres on the west side of Fayetteville Road north of the intersection of Fayetteville Road with Scott King Road, PIN 0717-02-55-1392 (Tax Map 530, Block 2, Lot 1) Request: RD (Rural District) to PDR 2.47 (Planned Density Residential-2.47 units/acre) (Falls/Jordan Watershed Protection Area B). The proposal is in general conformance with the small area plan. Staff recommends approval. The Zoning Committee of the Durham Planning Commission conducted a public hearing on February 12, 2002 and voted 7-0 to recommend denial.

The public hearing for this request was advertised on February 22 and March 1, 2002 in the Durham Herald-Sun.

Resource Person(s): Dick Hails, Assistant Planning Director and Sheila Stains-Ramp, Planning Supervisor

County Manager's Recommendation: The Manager's recommendation is that the Board hold the public hearing and approve the rezoning, if appropriate, based on public comment. The Planning Commission recommended denial due to school capacity issues and the varying interpretation of the NC 54/I-40 Corridor Plan as it relates to the inconsistency in the size of the lots in the various sections.

Ms. Stains-Ramp gave the background of the request and added that the proposal is for 27 single-family lots.

Vice-Chairman Reckhow and Dick Hails, Assistant Planning Director addressed the density issue. Vice-Chairman Reckhow posed that the rezoning request appears to go against the NC 54/I-40 Corridor Plan. The development needs to be in the 1.5 to 2 unit per acre range to be consistent. Otherwise it contradicts the plan approved a year ago. The adjoining Chancellor's Ridge development was approved before passage of the 54/I-40 Corridor Plan.

Mr. Hails said that the Planning Department sought Board guidance on its interpretation of the adopted plan. The Board must make its decision based either on approved and existing development immediately adjacent to this property or on the large lots that are there historically.

Commissioner Heron asked if the proposed development was declaring the same area for stream buffers and open space.

Ms. Stains-Ramp explained that the ordinance is drawn to encourage people to protect those sensitive areas. They can claim the same area where it meets the ordinance criteria. The ordinance is not set up to require separate area for open space, tree coverage, or stream buffer. Some have to be active, some passive.

Vice-Chairman Reckhow asked for an explanation since the staff report stated open space is in excess of the requirements, but the excess provision is not a committed element.

Ms. Stains-Ramp explained that the open space shown on the plan is illustrated. It is shown as more acreage than required. There is an overlap of land used for tree coverage and open space.

Vice-Chairman Reckhow said the open space could shrink considerably with a later amendment of this plan. She wanted to discuss this further.

Chairman Black opened the Public Hearing, which was properly advertised.

Signed speakers on this item follow:

Steve Bocchino, 7340 Abron Drive, Durham, NC 27713, Durham Planning Commission member, spoke against the rezoning due to current crowding in the area schools. Classroom trailers accommodate the current overflow. Durham has no school impact fees, no adequate public facilities ordinance, or other mechanism to keep pace with school growth. He asked that the Board look carefully at each rezoning case for impacts on already overcrowded schools. If the rezoning request should add more children to an overcrowded school, the Commissioners should deny it.

Keith Downing, representing Daiko Construction Inc., PO Box 51965, Durham, NC 27717, spoke in favor of the rezoning. He explained that the lots are configured such that they do not back up to Fayetteville Road. The density proposed is considerably less than the adjoining Chancellors Ridge development (10 units per acre for town homes). The proposed range of 2.47 units per acre is within the range defined by the ordinance. With the approval of bonds to build schools in this area, the crowding concern should disappear. Regarding the concern for open space and tree coverage, the development proposes more than the required tree coverage and open space. The amount is illustrative because structural or environmental factors may necessitate shifting the actual area when grading is done for the development. The committed numbers are 20% for tree coverage and 5% for open space as mandated by ordinance.

Stephen Thomson, 8321 Fayetteville Road, Durham, NC 27713, neighbor to the proposed site, spoke against the rezoning, as this is the last open land before the Chatham County line. He stated that the adjoining development is high density and was a mistake. The proposed development would ruin the character of this area which still has open land with landowners holding 20-40 acres each.

Robert Jentsch, 3906 Springstop Lane, Durham, NC 27705, Durham Planning Commission member, spoke against the rezoning for several reasons. The proposed development has three lots that encroach on the stream buffer. It lacks a children's play area, adds 91 auto trips above existing zoning, and doesn't provide an adequately complete pedestrian/bike trail system to serve existing and future residents as required by the subdivision regulation of the zoning ordinance. He said the development should be limited to 19 single-family units due to the burden it would otherwise place on the school system.

Alice A. Markunas, 8311 Fayetteville Road, Durham, NC 27713, neighbor to the proposed development, spoke against the rezoning due to its proposed density, addition to traffic congestion, and impact on already crowded area schools. A lower density development would be preferred.

There being no other speakers, the Chairman closed the public hearing. The Commissioners continued their discussion.

Vice-Chairman Reckhow asked the petitioner if he would be interested in a deferral to reduce the density to under 2 units per acre and commit to provision of open space as opposed to having it illustrative on the proposal.

Mr. Downing consulted with the petitioner.

Vice-Chairman Reckhow commented that there should be a precise commitment on open space. She asked Planning staff to come back with a suggestion on how to tie that down in the future. She also wanted the development designed in a manner sensitive to the neighborhood with a tree buffer along Fayetteville Road.

Mr. Hails advised that City-County Planning encourages applicants to commit to as many specifics as they can and not to leave it all conceptual. He said Planning would be glad to make that a specific thing to remind them of establishing minimum acreage for open space just they are asked to advise Planning of minimum and average lot sizes.

Mr. Downing, the Daiko representative, having spoken with the applicant, asked to defer this item so they could meet with staff to assess what is required and what the decrease in units would mean, given the high cost of development. He said that meeting open space numbers was not a problem.

Commissioner Bowser commented regarding the burden that development, this one in particular, places on the school system. Without an impact fee on development, the tax burden to provide for the extra students generated by development would be placed on the taxpayer. Some of the responsibility should be placed on the developer. He stated he could not support the rezoning because of the schools and the impact by development on them.

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to deny the rezoning request.

The motion carried unanimously.



**Public Hearing—Edisto Group, LTD, Applicant (Rezoning Case P01-77)**

Edisto Group, LTD will present the Board of Commissioners with a request to rezone 20.352 acres on the west side of Herndon Road, which is south of State Road 1105. The PIN numbers for the parcels are as follows: 0717-02-99-5164, 0717-02-98-6723, 0727-01-08-4942 (Tax Map 529, Block 01, Lots 004,003,003A).

The specific request is that the parcel be rezoned from RD (Rural District) to PDR (Planned Density Residential), 2.27 units per acre (44 units total). The parcel is located in the F/J6–B Watershed Protection Overlay and is in general conformance with the Small Area Plan. Staff is recommending approval. The Zoning Committee of the Durham Planning Commission conducted a public hearing on February 12, 2002 and voted 7-0 to recommend denial.

The public hearing for this rezoning request was advertised on February 22 and March 1, 2002 in the Durham Herald-Sun.

Resource Person(s): Dick Hails, Assistant Planning Director and Sheila Stains-Ramp, Planning Supervisor

County Manager's Recommendation: The Manager's recommendation is that the Board hold the public hearing and approve the rezoning, if appropriate, based on public comment.

Ms. Stains-Ramp gave the background of the request and added corrections to the backup material. The total number of units is 44; PDR is 2.2 units per acre. The trip generation table should reflect 507 trips.

Ms. Stains-Ramp commented that the Board was given additional backup. At the applicant's request, the public comments made at a Planning Commission meeting were provided to give a more complete accounting of what was said.

Chairman Black opened the Public Hearing, which was properly advertised.

Speakers signed to speak follow:

Steve Bocckino, 7340 Abron Drive, Durham, NC 27713, Durham Planning Commission member, spoke against approval of the proposed rezoning. The development would impact the same overcrowded area schools as the previous rezoning request (Case P01-79) on Fayetteville Road.

C. W. Mendenhall, 7420 Herndon Road, Durham, NC 27713, spoke in favor of the rezoning. His mother wished to sell this 20-acre portion of her property to decrease the taxes she had difficulty paying in her retirement. He commented that the \$2,000 tax paid on the land would multiply to about \$2,200 from each of the 44 lots. Durham County would gain tax dollars to offset the impact on area schools. He said the development

would enhance the Herndon Road property. The development appears to be in line with or exceed all regulations.

Bill Ripley, 4203 Settlement Drive, Durham, NC 27713, the applicant, addressed citizen concerns and answered Commissioner questions. He pointed out that density gradient should reflect 2.16 PDR. The minimum lot size has increased to 9,200 square feet, with an average lot size of 11,000 square feet.

Bob Jentsch, 3906 Springstop Lane, Durham, NC 27705, Durham Planning Commission member, advocated a reduction in density to 29 single-family units to comply with existing zoning, or that the applicant offer to provide the \$126,000 to offset the added school facilities cost. He also recommended adding a fence to the play area and incorporating a bike/pedestrian trail system.

Mr. Ripley clarified that there is pedestrian access to the tree save area in the northwest quadrant of the site. He advised Vice-Chairman Reckhow that he would investigate adding width to lot #44 to provide screening or buffering to the entryway onto Herndon Road. Tree save space commitment will be a little over 20 percent, and open space will be 5 percent. The percentage was larger until the lot sizes were increased.

Commissioners Cousin and Bowser discussed their concern regarding the impact of this development on area schools. Commissioner Bowser stated he must vote against this development just as the previous development for the same reason. He said his guiding principle would be to vote against these developments until impact fees or something are in place to help offset the cost that we are bearing.

Mr. Ripley addressed the concern and stated that the developer has agreed to try to accommodate some costs of the schools. Regarding the impact of this neighborhood on the school system, the earliest it will present children to the school system is August 2003. The earliest it will present children above the current zoning (five) could be as late as August 2004.

Commissioner Heron asked if Crooked Creek ran across the property and if there was a flood plain associated with the property. Mr. Ripley answered that Crooked Creek is on the adjoining property to the west. Crooked Creek in no way runs across this property. There is, however, a small intermittent stream that starts on this property that feeds another stream that does go into Crooked Creek.

Vice-Chairman Reckhow stated that this case is totally consistent with the land use plan. She stated she could approve this request because there will be schools coming on line resulting from the November bond approval.

Vice-Chairman Reckhow added that the Board of Commissioners should discuss adequacy of public facilities. To be fair to the development community, there should be something in place—policy or ordinance—to guide them regarding impact on public facilities such as schools. The County's draft ordinance had the provision to give credit

for facilities that are on line and funded. The slowdown on impact fees approval, as noted by Commissioner Bowser, should be cause to meet to discuss adequacy of facilities to help developers.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to approve the rezoning request.

The motion carried with the following vote:  
Ayes: Black, Cousin, Heron, and Reckhow  
No: Bowser

**Preliminary Plat/Site Plan Approval for Summer Meadows (D01-711)**

Tony M. Tate, Landscape Architecture, P.A., on behalf of Homes by Huff and Crossman Communities of N.C. Inc., has submitted a plan for 214 single-family and 72 townhouse lots on a ±86.47 acre site. The property is located on the north side of Hebron Road, east of Denfield Street, and west of Felicia Street. (Tax reference 780-1-1D, 2, 3A; PINs 0834-03-11-8946, 0834-03-21-8453, 0834-03-32-3783; Durham County Street Atlas Page 42, Blocks A-3, B-3, A-4, B-4). Governing Body approval is required for subdivisions of land into greater than 49 lots. A Traffic Impact Analysis was submitted and approved at the time of rezoning. Improvements to be made as a result of that study are reflected on the site plan.

Resource Person(s): Steve Medlin, Planning Supervisor, and Teri Danner, Senior Planner

County Manager's Recommendation: The Manager's recommendation is that the Board hold the necessary discussion and approve the site plan as recommended by the Planning Staff.

Commissioner Heron asked questions concerning open space, protection of the wetland areas and stream buffers, and access streets. Mr. Medlin answered and advised that the applicant had met or exceeded requirements for these. The development will be accessed by Hebron Road, Denfield Road, and Felicia Street. The developer will not be required to do any resurfacing of Felicia Street, only to tie in to Felicia Street, as it is not a primary means of access to the property.

Regarding filling of potholes on Felicia Street, the applicant advised he would listen to the citizens' concerns and any reasonable proposal put to them to repair a pothole. They would take a look at it. The applicant said access to the development from Felicia Street would be awkward, and he did not anticipate Felicia Street being widely used by Summer Meadows homeowners.

Concerning runoff control and the existing area problem, Mr. Medlin replied that the applicant has submitted the necessary stormwater calculations for both standard stormwater as well as Neuse stormwater runoff. The calculations have been reviewed, and the applicant's proposal is currently sufficient. A more detailed analysis will be

available as soon as the construction plan is designed. The City stormwater section will ensure that the applicant is not increasing the stormwater runoff. This developer cannot be held subject to improving the existing flooding situation of adjoining property, as it is an existing condition.

Commissioner Heron was concerned that off-street parking spaces may be too close to the street. Mr. Medlin stated that any pad parking must meet the dimensional standards and not encroach into rights-of-way or easements. The applicant stated that their self-imposed setback is 20 feet instead of the required 8 feet. Houses will have garages which, combined with the parking pad, will accommodate several cars.

Commissioners Heron and Bowser addressed their concern over density and impact on the neighborhood.

In answer to Chairman Black's questions, County Attorney Chuck Kitchen advised that the proposed density is not an issue in this proceeding as it complies with the current ordinance.

Chairman Black opened the item for public comments.

Lillie Izi, 702 Felicia Street, stated that her house is less than 600 feet from the edge of the proposed development. Her concern was runoff and flooding. She said the area has always flooded. Felicia Street has never been paved like others in the area. Over the years, the road that was once smooth has become rutted and is sinking. New development, in her opinion, would only cause more flooding on her street.

Keith Downing, with Tony Tate Landscape Architecture, 1912 East NC Hwy 54, spoke representing Crossman Community Homes by Huff. He offered to answer any questions for the Board. He stated that the project met all the ordinances and requirements, having gone through a rigid review over the past three months and had extensively addressed stormwater runoff, traffic, pedestrian access, open space, tree coverage, and recreation.

Kirby R. Bell Jr. and David Dunn of Bass, Nixon & Kennedy, the engineers of record for the site, addressed the flooding and runoff comments. The FEMA map shows the 100-year flood plain from the Eno River backs up behind the houses on Felicia Street. Mr. Bell added that Felicia Street residents had placed some pipes in the swell behind homes on the street, which are now undersized.

Mr. Medlin advised that Planning would watch the process to ensure that the runoff concern is addressed. He offered to be available to residents having any questions or concerns.

David Dunn of Bass, Nixon & Kennedy, the engineering firm, advised that the process has begun to design six (five near Felicia Street) water detention basins for Summer Meadows to meet and exceed the standards for stormwater runoff.

The Commissioners held a lengthy discussion with City-County Planning staff, the applicant, and the County Attorney regarding citizen concerns that new development adjacent to Felicia Street would add to the already extensive problems the street has with flooding.

Chairman Black commented that Planning Department would talk to the landowners and make recommendations to better protect their property concerning the flooding situation. Anything the City or County can do to help the situation would be investigated.

It was noted that Felicia Street is not maintained by the state. It is a public right-of-way and would be up to the residents to maintain it. The County Attorney stated that the Commissioners could request the state to make it passable, by grading. The County Manager advised it must be brought up to state standards before citizens can request that it be added to the state's secondary road system.

The Chairman directed the County Manager to send a letter to the state requesting the review and doing whatever possible to give help to the Felicia Street area residents.

The Chairman asked Planning to make sure that construction traffic gets diverted away from Felicia Street to a better-maintained access road. Mr. Medlin said this could be made a condition of approval that access to the site must be via Denfield or Hebron Road only. The site plan can have a note to that effect.

Vice Chairman Reckhow moved, seconded by Commissioner Cousin, to approve the Preliminary Plat/Site Plan with the conditions stated regarding prohibiting construction traffic on Felicia Street, contacting the State regarding possible improvements to Felicia Street, and having the City and County investigate the property for possible ways to help.

The motion carried unanimously.

### **Renewal of Ambulance Franchise for Johnston Ambulance Service**

All public and private providers of ambulance service wishing to operate in Durham County must be franchised by the Durham County Board of Commissioners to assure adherence to local and State regulations, insurance requirements, and to monitor their ability to provide quality service to the citizens of Durham County. After the initial franchise is awarded, they must reapply for that franchise every three years. Currently, nine providers are franchised to operate within the County. Six are scheduled for renewal in April 2002, one in February 2003, one in March 2003, and one in February 2002. This request is to renew the franchise for Johnston Ambulance Service, one of two private services currently operating within the county.

Johnston's application has been reviewed by J. M. Tezai, EMS Director, and has been found to meet all legal and operational requirements as stipulated by the Franchise Ordinance. As a result, it is recommended that Johnston Ambulance Service be approved for the requested franchise renewal.

This will be the first of two required approvals by the Board of County Commissioners. A public hearing is not required for a franchise renewal.

Resource Person(s): J. M. Tezai, EMS Director, and Jeff White, Operations Manager, Johnston Ambulance Service

County Manager's Recommendation: The Manager's recommendation is that the Board approve the franchise renewal as requested.

Mr. Tezai presented the item and asked the Board to review and approve the ambulance franchise renewal for Johnston Ambulance Service. The service has met all and exceeded most of the requirements of the local franchise ordinance. It has provided exemplary service to Durham County.

Commissioner Heron moved, seconded by Commissioner Bowser, to approve renewal of the ambulance franchise for Johnston Ambulance Service.

The motion carried unanimously.

**Resolution Requesting Reimbursements from the State or Advancing the Sales Tax Effective Date**

At the Board's direction, a resolution has been prepared requesting that the State pay the Beer and Wine Excise Taxes and reimbursements which have been withheld by the Governor for the current and ensuing fiscal years. In the alternative, the Legislative Delegation is requested to advance the effective date of the new ½-cent local option sales tax to July 1, 2002.

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

County Manager's Recommendation: Make any changes desired by the Board and adopt the resolution.

The County Attorney presented the resolution for approval. The resolution will be presented to the members of the local delegation at the Board's meeting with them on March 14.

Commissioner Cousin moved, seconded by Vice-Chairman Reckhow, to approve the resolution.

The motion carried unanimously.

The resolution follows:

RESOLUTION REQUESTING THE STATE  
TO PAY THE REIMBURSEMENTS OWED TO THE  
COUNTIES OR ADVANCE THE DATE OF  
THE NEW ½-CENT SALES TAX

WHEREAS, the current economic slowdown not only has caused a decline in county sales tax collections, but has also increased the need for county services to unemployed and economically disadvantaged citizens, including Social Services, Mental Health Services, and Public Health Services; and

WHEREAS, there exists an expected overage in Medicaid costs to the County of Durham in the amount of \$469,710 for the current fiscal year; and

WHEREAS, the failure of the State to comply with its obligation to pay Beer and Wine Excise Taxes, reimbursements from the State's repeal of the Inventory Tax, and Elderly Homestead Reimbursements for the current fiscal year totals \$3,534,887 in lost revenue for Durham County; and

WHEREAS, the failure of the State to make its payments has resulted in the County having to take measures to balance the current year's budget including freezing hiring for vacant positions, terminating temporary workers, halting major purchases, and elimination of travel; and

WHEREAS, should the State fail to comply with its obligation to pay Beer and Wine Excise Taxes, reimbursements from the State's repeal of the Inventory Tax, and Elderly Homestead Reimbursements for the ensuing fiscal year, the County of Durham will face severe economic pressures which will result in a sizable property tax increase or a reduction of services to the citizens of the County, or both, which will disproportionately affect its most economically disadvantaged citizens.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH RESOLVE:

1. The Legislative Delegation representing the citizens of the County of Durham are called on to require the Governor to pay the Beer and Wine Excise Taxes, reimbursements from the State's repeal of the Inventory Tax, and Elderly Homestead Reimbursements to the counties in the State for the current fiscal year and for the ensuing fiscal year.
2. In the event that moneys are unavailable to make the payments to the counties for Beer and Wine Excise Taxes, reimbursements from the State's repeal of the Inventory Tax, and Elderly Homestead Reimbursements, then the Legislative Delegation is called on to advance the effective date of the new one-half cent sales tax for local governments, which is scheduled to replace these revenues for the 2004 fiscal year, to July 1, 2002.
3. The Clerk to the Board shall send a copy of this Resolution to the Governor, Lieutenant Governor, President Pro Tem of the Senate, Speaker of the House, the members of the

legislative delegation representing Durham County, Clerks to the Boards of Commissioners for the other ninety-nine counties, and to the North Carolina Association of County Commissioners.

This the 11<sup>th</sup> day of March, 2002.

/s/Five Commissioners

### **Ethics Policy Amendment**

The Board of Commissioners requested staff to consider adding boards, committees, and commissions appointed by the Board to the list of boards which currently are required to file yearly disclosure statements. The following four boards or commissions are recommended for inclusion: Durham Historic Preservation Commission, Durham Open Space & Trails Commission, Durham Planning Commission, and Farmland Protection Advisory Board.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: Receive the recommendation from the County Attorney, and approve the inclusion of the listed boards to the Ethics Policy disclosure requirement.

Vice-Chairman Reckhow stated that this was a good step in the right direction. She suggested it would be appropriate also to consider some of the other boards that issue contracts. This is because the Ethics Policy has two areas of disclosure—one related to property ownership and the other related to business ownership.

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to approve the amendment.

The motion carried unanimously.

### **Adjournment**

There being no further business, the Chairman adjourned the meeting at 10:00 p.m.

Respectfully submitted,

Garry E. Umstead, CMC  
Clerk to the Board

GEU:SBP