

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

Monday, December 3, 2001

9:00 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 Heron

Absent: None

Presider: Chairman Black

Election of Chairman and Vice-Chairman of the Board of County Commissioners

Chairman Black called on County Attorney Chuck Kitchen to preside over the election of the Board's Chairman.

Attorney Kitchen stated the first item of business was the election of the Chairman and the Vice-Chairman of the Board.

Attorney Kitchen called for a motion to elect the Chairman for the ensuing year.

Vice-Chairman Reckhow moved that the Board elect MaryAnn Black as its Chairman. Commissioner Cousin seconded the motion.

Attorney Kitchen stated that a motion was made and seconded that MaryAnn Black be elected Chairman of the Board of Commissioners. He called for any discussion about the motion and then called for a verbal vote.

The motion carried.

Attorney Kitchen congratulated newly-elected Chairman Black. He turned the meeting over to Chairman Black to preside over the election of the Vice-Chairman of the Board.

Chairman Black thanked the Commissioners for their vote of confidence and for all the hard work they do.

Chairman Black opened the floor for the nomination for Vice-Chairman of the Board.

Commissioner Heron made a motion to appoint
Commissioner Reckhow as Vice-Chairman of the Board.
Commissioner Cousin seconded the motion.

Chairman Black called for a vote.

The motion was approved.

Chairman Black congratulated Vice-Chairman Reckhow.

Vice-Chairman Reckhow said she was looking forward to working with the Chairman and the rest of the Board for another year. She thanked the Board.

Citizen Comments—Jack Steer

Mr. Steer requested time on the agenda to make comments to the Commissioners regarding City use of the Sheriff's Department and the County's nonprofits policy.

Mr. Jack Steer, 2416 Dawn Trail, Durham, NC 27712 and representing the Friends of Durham, spoke to the Commissioners about the expanded use of Sheriff's Deputies for city patrol work.

Mr. Steer opposed the concept due to the increase that it will mandate in the Sheriff's Department budget. This could be viewed as a shift of tax increases from the City budget to the County budget. This could be seen as one of a series of moves to merge the two law enforcement departments.

Mr. Steer also talked to the Commissioners about nonprofit agencies relative to his belief that it is a conflict of interest for a Commissioner to be on a nonprofit agency board.

Chairman Black and Commissioners Reckhow and Heron made general remarks about the points Mr. Steer brought out in his comments.

Commissioner Bowser wanted it made clear for the record that the Friends of Durham were not talking about him when it was said that Commissioners use influence to get budget money for the nonprofit boards on which they sit, because that is absolutely not true.

No official action was taken on this agenda item.

Consideration of Certificate of Need (CON) for North Carolina Specialty Hospital (NCSH)

The Board was asked to consider a request from Durham Regional Hospital to submit a letter of nonsupport for a Certificate of Need application submitted by North Carolina Specialty Hospital (NCSH). NCSH is a for-profit facility owned 50.1 percent by National Specialty Hospitals Inc. (based in Illinois) and 49.9 percent by physicians.

Chairman MaryAnn E. Black advised that she is the representative to the hospital board of trustees from the Board of County Commissioners. The hospital is working very hard to make money and to provide a service. There is a group in town that wants to start another hospital.

Chairman Black asked Mr. Richard J. Liekweg, CEO, Durham Regional Hospital, to present the agenda item to the Commissioners relative to the Certificate of Need for North Carolina Specialty Hospital.

Chairman Black related that Mr. Liekweg wanted the Board of County Commissioners to submit a letter of nonsupport of this application to the Division of Facility Services, Department of Health & Human Services in Raleigh.

Mr. Liekweg made remarks about the Certificate of Need request to the County Commissioners.

The Commissioners asked questions and made remarks about the agenda item to which Mr. Liekweg responded.

Chairman Black stated that the Board of Commissioners would suspend the rules today and vote on this item.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to send a letter of nonsupport to the Division of Facility Services, Department of Health & Human Services concerning the Certificate of Need for the North Carolina Specialty Hospital.

The motion carried unanimously.

Chairman Black asked the staff to write the letter for delivery to Raleigh this afternoon.

School Impact Fees

Impact fees are one-time charges assessed against new development and are designed to recover some of the costs incurred by the County for school construction. If enacted, these fees would be collected before developers receive a certificate of occupancy for the

construction of single-family homes, duplexes, townhomes, condominiums, or apartments. The revenue generated could only be used for improvements necessary to accommodate increases in student population, which over the next ten years are estimated at \$109 million. It should be noted that before impact fees can be adopted, the Board of County Commissioners must first adopt an ordinance that prescribes how these fees would be determined, collected, expended, etc. Obviously, the Board must reach some consensus on specific issues before that ordinance can be prepared. The Manager prepared a presentation of these issues and asked the Board for some direction as to how to proceed.

Resource Persons: Mike Ruffin, County Manager, and Chuck Kitchen, County Attorney

County Manager's Recommendation: Receive the presentation, discuss the issues cited, and provide direction to the staff regarding the development of an impact fee ordinance.

Chairman Black asked County Attorney Chuck Kitchen if he had a copy of the letter the Board of County Commissioners had received from the HomeBuilders Association. The Chairman asked Attorney Kitchen to talk to the Commissioners about the letter and what it contains as the Board moves through the discussion. A discussion is needed as to what the Board should do. The Board should proceed with the impact fees and address the legal issues raised by the HomeBuilders Association and the Realtors.

Chairman Black called on County Manager Ruffin to proceed with the discussion and County Attorney Kitchen to address the issues in the letter.

County Manager Mike Ruffin made the following opening comments:

In May of this year, the Board of County Commissioners awarded a contract to Tischler & Associates of Bethesda, Maryland, to prepare a School Impact Fee Study. Tischler & Associates is one of the pre-eminent consultants in the country for impact fee analysis, having prepared over 400 impact fee studies for cities and counties. We have involved the home-building industry with the development of this study. Their representatives sit on and faithfully attend Adequate Public Facility Task Force meetings, have been reviewing the study for several months, and have been instrumental in making several changes.

Impact fees have been used since the 1920s and started to regain their popularity when Proposition 13 emerged in the State of California in the late 1970s. Today, hundreds of communities across the country, including the City of Durham, are using impact fees to help fund future infrastructure needs.

The premise on which impact fees are based is that development should pay for the cost of providing the facilities necessary to accommodate growth. In theory, the cost of projects needed to support growth is

financed with impact fees based on some measurement of a development's impact on future needs. It is this calculation that Tischler & Associates will briefly explain tonight prior to listening to your comments.

Durham County is investigating the feasibility of impact fees for public school construction. Why? Because over the next 10 years, \$225 million in public school improvements will be required—\$109 million of which is directly due to growth. The property taxpayer cannot continue to shoulder the burden for new school construction, which is exactly why this Board is seeking to find another way to help pay for those improvements.

The last several days have prompted the need for some clarifications:

- First of all, while you will learn tonight that the study justifies a maximum fee of almost \$4,936 for single-family construction and \$2,851 for all other forms of residential construction, no such fee is likely to win this board's approval. In fact, this board hasn't even formally discussed whether to impose impact fees, not to mention how much. They opted to seek public comment first.
- Second, the availability of affordable housing is a problem, and our board is very sensitive to it. Interestingly, I received a report this morning that indicated that the median price of a new home in Durham last year was \$170,000. And in that same year, when around 1,400 permits for the construction of single-family homes was issued, only 62 permits were issued for affordable homes. In other words, only four out of every 100 homes built would qualify as affordable homes, meaning most of what is being sold as affordable has already been built. We need to do more to ensure that an affordable supply of new and existing housing is available in Durham County. I can't imagine any impact fee recommendation without some provision to address affordable housing.
- Finally, I've asked the County Attorney to briefly outline what North Carolina law has to say about impact fee authority. Obviously, tonight is not a public hearing to argue the legality of imposing impact fees, but since so many have been told that it's illegal in North Carolina without direct legislative authority, which is not the case, some clarification might be helpful.

County Manager Mike Ruffin asked County Attorney Chuck Kitchen to respond to some of the legal issues raised in the letter from the HomeBuilders Association.

County Attorney Kitchen discussed with the Commissioners the letter from Womble Carlyle Sandridge & Rice, PLLC dated November 16, 2001 and addressed to David Morris, President, HomeBuilders Association of Durham & Orange Counties. The letter

was in reference to the legal opinion in regard to Durham County imposing impact fees on residential construction without specific legislative authority from the North Carolina General Assembly.

Attorney Kitchen explained in detail the various points that were brought out in the letter. The various cases discussed in the letter were highlighted in the review.

Attorney Kitchen also discussed with the Commissioners the letter he wrote dated September 26, 2001 in reference to the authority the County has to impose impact fees.

After Attorney Kitchen's presentation, the Commissioners asked questions and made remarks about impact fees to which the County Manager and County Attorney responded.

The Commissioners had a lengthy discussion about impact fees.

Chairman Black said the next step would be to ask the County Manager and the County Attorney to draft an ordinance. It would include all the issues raised at this meeting, and raised before today having to do with affordable housing for the elderly, as well as other things that should be in the ordinance.

County Attorney Kitchen was advised he should prepare to defend the Commissioners in court if someone files litigation against the Board.

Vice-Chairman Reckhow suggested the County Manager should meet with the HomeBuilders Association since they wrote the Commissioners a letter about impact fees. Attorney Kitchen should attend the meeting also to assist with answering questions.

Chairman Black asked Mr. Kitchen to write a letter on her behalf to the Durham Association of Realtors in response to their letter.

County Funding of Nonprofit Agencies

At the conclusion of the FY 2001-2002 budget preparation process, the Board of County Commissioners requested that staff explore alternative methods to fund nonprofit agencies. The staff has reviewed the current process, met with the County's nonprofit agencies, consulted with the United Way, and explored alternative funding mechanisms utilized by other jurisdictions across the state. Staff presented ideas and options for the Board to consider in realigning Durham County's nonprofit funding.

Resource Person(s): Carolyn P. Titus, Deputy County Manager, and Heidi Duer, Assistant to the County Manager

County Manager's Recommendation: The Manager recommended that the Board receive the presentation and provide guidance and direction to staff regarding Durham County's

funding of nonprofit agencies.

Deputy County Manager Carolyn P. Titus introduced the presentation to the County Commissioners regarding County funding of nonprofit agencies. She related that the major goal for today's session was to bring this information before the Board so that it would have a list of options and ideas from which to select how it might want to consider Durham County's nonprofit funding. Ms. Titus asked the Board for direction and guidance for incorporation prior to the budget planning process beginning in early 2002.

Ms. Titus called on Ms. Heidi Duer, Assistant to the County Manager, to make her presentation. Ms. Duer presented her findings regarding other jurisdictions and how they conduct their nonprofit funding, as well as some information she received from the Institute of Government on its recommendations regarding county nonprofit funding.

The County Commissioners asked questions and made remarks about nonprofit funding, to which Ms. Titus responded. Mr. Bill Renfrow, Nonprofit Agencies Budget Coordinator, assisted with the questions and answers.

Following Ms. Duer's presentation, Ms. Titus walked the Commissioners through an analysis of the County's current funding and examined some of the current funding by the City of Durham.

Ms. Titus reviewed for the Commissioners the recommendations and options for nonprofit agency funding including a draft policy. They are as listed:

- a) Adopt formal policy
- b) Board sets goals to guide priorities in the allocation process
- c) Establish criteria for County funding
- d) Specify types of funding
- e) Maintain an accountable funding system
- f) Procedure and Responsibility

Vice-Chairman Reckhow requested that each nonprofit agency requesting funding have a cover sheet with a checklist to indicate that all requirements have been met. The Commissioners should be given a report on each agency to advise whether the goals and objectives have been met the previous year.

Ms. Titus briefly reviewed the draft of the nonprofit agency funding policy.

Vice-Chairman Reckhow commented that meeting the goals and objectives should be added in Section 2.1 B as required information.

Chairman Black said staff should consider the requirement that someone from each nonprofit agency would attend the annual nonprofit orientation. Durham County Commissioners should get a copy of the annual audit when the funding application is submitted.

Chairman Black said if the funding is for a first-time grant to the agency, the organization should be informed of that when the payment is made.

Vice-Chairman Reckhow requested that an item 3.4 should be added to read, "This review, by a related County agency, is to determine that the agency is providing an essential service that the County would have to provide at a potential greater expense."

Commissioner Bowser said the Commissioners should review these nonprofits to determine if there is a present need. We shouldn't change the way we are operating just because one organization requests a change in the procedure. It should be done very objectively. We need to look at the big picture.

County Attorney Chuck Kitchen said the Commissioners could not be excused from voting unless there is a conflict of financial interest or official conduct.

Chairman Black instructed Deputy County Manager Carolyn Titus to move forward on the project based on the directions of the Board.

Review of Memorandum of Understanding with the Durham Public Schools

The Durham County Board of Commissioners and the Board of Education for the Durham Public Schools have agreed to develop annual Memoranda of Understanding (MOU) in order to strategically identify issues/initiatives of mutual interest. The agreement is largely an effort to ensure strong channels of communication between both boards while working to improve the quality of education for students attending the Durham Public Schools.

The Superintendent and County Manager agreed upon the language for an MOU for the 2001-2002 Fiscal Year. The Board of County Commissioners reviewed that language on August 6, 2001. Several changes were proposed, and the revised MOU was transmitted to the Durham Public Schools. The Manager was to present any concerns that were expressed and seek the Board's direction.

Resource Persons: MaryAnn E. Black, Chairman, and Mike Ruffin, County Manager

County Manager's Recommendation: Review the MOU with the Manager and discuss any additional modifications that may be desired.

Chairman Black told the Commissioners that the underlined portions of the (MOU) were added by the Commissioners.

Chairman Black said the Board of County Commissioners was scheduled to talk about the property the Board of Education wants to purchase on December 10, 2001. The Memorandum of Understanding would be sent to the Board of Education before

December 10, 2001. The Chairman wished to have the Memorandum of Understanding signed before the Board votes on the property.

County Manager Ruffin stated he is of the opinion that the Commissioners are satisfied with the language finalized on August 6, 2001. He would let the Durham Public Schools Superintendent know that the Board is satisfied with the document and to move forward with having it adopted.

Vice-Chairman Reckhow requested the Memorandum of Understanding be reviewed for corrections and adjustments before it is sent to the Schools Administration's office.

The Commissioners made several adjustments to the wording of the document.

Commissioner Bowser stated he was of the opinion that the Board of County Commissioners should have discussions with the Durham Public Schools Board of Education when land is being purchased for various school purposes. That should be stipulated in the Memorandum of Understanding.

Chairman Black said that all five Commissioners think that too much land is being considered for the Southwest School site. We would like to see things done in a different way.

Commissioner Bowser said he would like to see the public facilities (soccer fields, gymnasiums, and baseball fields) open to the community so youth will have a place to socialize and have a place to play sports.

Vice-Chairman Reckhow asked the County Manager to come back to this Board with recommendations as to how to put into operation the first and last sentence of Section 8. The County Manager should seek a way that the Commissioners and school would be involved in Section 8 without holding up the school system unduly in that review. This cannot be overlooked; it is very important.

Chairman Black said the Commissioners would have to look at the Hillside High School land as we proceed and look at other projects.

Chairman Black said she would ask the County Manager to have the document retyped.

Commissioner Bowser asked the County Manager to replace the word Hispanic with Latino in the Memorandum of Understanding.

The County Manager said the ranking would be changed to put African-American first, Latino second, and other minorities, third.

Chairman Black asked the County Manager to capture all of the Commissioners' remarks so that the School Board will have answers for all the questions raised by the Commissioners when they come to the December 10, 2001 meeting.

Vice-Chairman Reckhow said land purchases have been made without appropriate background information. A thorough planning analysis of this site should be prepared. This should be the beginning of a process that would be the norm for this Board before it makes any capital decisions in the future.

Commissioner Bowser wanted to know the size of the land purchase, the proposed size of the facility to be built compared to an existing facility, and if the property would be annexed any time soon.

Occupancy Tax

County Attorney Chuck Kitchen distributed to the Commissioners the latest version of the bill he received on Friday. He said there have been substantial changes in the bill as it has gone through the process. The House of Representative voted not to concur with Durham County in the amendments that put it into the conference committee. We are seeing the changes as they come out of the conference committee. The first of three votes was going to be taken today because it involved money.

Mr. Kitchen reviewed for the Commissioners the two main changes that have been made to the bill.

The Commissioners asked questions and made remarks about the Occupancy Tax Bill, to which Mr. Kitchen responded.

County Attorney Kitchen was instructed to contact Senator Jeanne Lucas today concerning the sections of the bill with which the Commissioners do not agree.

Convene Into Closed Session—Personnel Matters

Vice-Chairman Reckhow requested the Commissioners talk to Steve Crysel in reference to the revaluation process.

Closed Session--Personnel Matters

The Board of County Commissioners was requested to adjourn into Closed Session to evaluate the County Manager pursuant to North Carolina General Statute § 143-318.11(a)(6). The Board would also discuss the location or expansion of industries or other businesses and consider economic development incentives pursuant to North Carolina General Statute § 143-318.11(a)(4).

Commissioner Heron moved, seconded by Commissioner Cousin, to adjourn into Closed Session to evaluate the County Manager pursuant to North Carolina General Statute 143-318.11(a)(6). The Board would also discuss the location or expansion of industries or other businesses and consider economic development incentives pursuant to North Carolina General Statute 143-318.11(a)(4).

The motion carried unanimously.

Chairman Black said that members of the Chamber of Commerce were here to give the Commissioners information about AW. They will be permitted to go into the Closed Session to present the information. They cannot attend the deliberation by the Commissioners.

Reconvene into Public Session

Vice-Chairman Reckhow said the Board of County Commissioners met in Closed Session. The Board gave direction to the staff on an economic development item. The County Manager was also evaluated for his performance during the first year in Durham.

Vice-Chairman Reckhow said the Commissioners were pleased with the County Manager's performance. He has done an excellent job during his first year in Durham.

Commissioner Bowser moved, seconded by Commissioner Cousin, to set the County Manager's salary at \$131,250.

The motion carried with the following vote:

Ayes: Commissioners Bowser, Cousin, Heron, and Reckhow

Noes: None

Absent: Chairman Black (left early)

Adjournment

Vice-Chairman Reckhow adjourned the meeting at 2:15 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board