

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

Wednesday, April 7, 1999

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, and Becky M. Heron

Absent: Commissioner William V. Bell

Presider: Chairman Black

Call to Order

Chairman Black called the Worksession to order.

Agenda Adjustments

County Attorney Chuck Kitchen requested the Order in the Matter of the Appeal of Mitsubishi Semiconductor America Inc. be added to the agenda.

Citizen Comment—Ralph McKinney

Mr. Ralph McKinney, 500 Fairfield Street, requested time on the agenda to make comments to the Commissioners relative to racism and hate by businesses in Durham County.

Chairman Black suggested that Mr. McKinney meet with her and others to discuss his comments that he is conveying to the Commissioners so they will better understand his comments.

Citizen Comment—Jack A. Steer

Mr. Jack Steer, 2416 Dawn Trail, representing the Friends of Durham, addressed the Commissioners on several issues that related to education and the budget, social services, city/county merger, and preservation of the hospital fund.

The Commissioners asked Mr. Steer several questions and made comments about his remarks.

The Commissioners asked Mr. Dan Hudgins, Director of Social Services, for a monthly report on the Work First program.

Adoption of Farmland Preservation Ordinance

The Farmland Preservation Ordinance was last considered by the Board at the November 2, 1998 Worksession. Since that meeting, County Manager David F. Thompson and County Attorney Chuck Kitchen met with Wayne Cash, Chairman of the Farmland Preservation Board. The County Manager recommends that the acquisition of determinable conservation easements and repurchase of conservation easements be deleted from the proposed ordinance.

On March 19, 1999, the Farmland Preservation Board met and voted that the acquisition of determinable conservation easements and repurchase of conservation easements remain in the proposed ordinance.

Also, on March 19, 1999, Farmland Preservation Board approved the guidelines for the Farmland Ranking System.

County Manager's Recommendation: Discuss the ordinance with the Farmland Ranking System. However, the acquisition of determinable conservation easements and repurchase of conservation easements should be deleted from the proposed ordinance.

Deputy County Attorney Lowell Siler made introductory remarks about the Farmland Preservation Ordinance and the work that has been done through a meeting with the County Manager, County Attorney, and Wayne Cash, Chairman of the Farmland Preservation Board. County Manager Thompson recommends that the acquisition of determinable conservation easements and repurchase of conservation easements be deleted from the proposed ordinance.

The Farmland Preservation Board voted on March 19, 1999 to keep the acquisition and repurchase of conservation easements in the proposed ordinance.

The members of the Farmland Preservation Board asked to be put on the Worksession agenda in order to have further discussion about the ordinance.

Mr. Wayne Cash urged the Commissioners to approve the proposed ordinance at an appropriate meeting.

Mr. Talmage Layton, member of the Farmland Preservation Board, does not see much success in the proposed ordinance without a lease agreement that lasts a determinable length of time.

Mr. Ed Harrison, Chairman, Soil and Water Conservation District, said we want to include as many options as we can in the ordinance for the farmers left.

Mr. Howard Moore requested the ordinance permit volunteer placement of farmland in the protection program for ten years.

The Commissioners had a lengthy discussion about the Farmland Protection Program.

Deputy Attorney Siler, Mr. Wayne Cash, County Attorney Chuck Kitchen, and County Manager David F. Thompson responded to the questions and comments from the Commissioners.

Mr. Craven Hudson with the North Carolina Cooperative Extension Service, discussed ways in which to finance the program. He commented the easiest and simplest way to fund a lease program is through a deferred tax program.

Mr. Hudson said we have also looked at outside funding, leverage of donated property to raise funds through private groups, and industrial incentive moneys.

Commissioner Heron said we have not explored the options, such as out-right purchase of development rights and transfer of development rights enough. We need a model to show what it would mean to the farmers financially if they wanted to sell the development rights.

County Manager David F. Thompson made comments and discussed the points that have been brought out during the discussion.

Vice-Chairman Reckhow said the proposal needs to be sent back for rework. The Commissioners need to give direction relative to if we are going to authorize determinable conservation easements. I would consider it if it were longer than ten years. We need to look at transfer of development rights and repurchase of development rights.

Commissioner Bowser suggested that Craven Hudson, Wayne Cash meet with Vice-Chairman Reckhow to work out the problem areas before bringing it back to the County Commissioners.

Vice-Chairman Reckhow said the proposed ordinance should be moved forward. She supported the ordinance, but we need to give guidance relative to determinable conservation easements and repurchase of conservation easements.

County Manager Thompson stated he will find ways to finance the program.

Vice-Chairman Reckhow moved to direct staff to finalize this ordinance given the comments with the provision that the acquisition of determinable conservation easements be deleted, but look at a mechanism to allow for repurchase of conservation easements.

Commissioner Heron seconded the motion.

A discussion followed on the proposed ordinance.

Commissioner Bowser urged the Commissioners not to support the motion on the floor.

The motion carried with the following vote:

Ayes: Black, Heron, and Reckhow
Noes: Bowser
Absent: Bell

Chairman Black said this vote moves the proposed ordinance, makes corrections asked for by the Commissioners, and looks at financing the program. The proposed ordinance will come back to the Board for consideration.

Automation Project for Register of Deeds Office

For the past eighteen months, a team from the Register of Deeds Office, along with the Information Technology Department and the Purchasing Department, have been investigating the best means through which to implement a highly successful automated document management and imaging system for the County. This investigation has included an in-depth analysis of technical needs, process overflow, and collection of data. Several site visits were conducted to examine the implementation of automated systems in other jurisdictions.

The Register of Deeds Office is requesting that the following action be taken by the Durham County Board of Commissioners at the April 12th meeting.

- Receive and approve recommendation for an automated software solution.
- Reject all bids submitted for hardware and file conversion for the Register of Deeds automation project.
 - Rejecting the hardware and file conversion portion of the ROD automation project bids will provide very substantial cost savings.
- A recommendation for the purchase of hardware under the State convenience contract and a request to enter into an agreement for file conversion will be made at the April 26th meeting.

Receive report and direct staff.

Mr. Willie L. Covington, Register of Deeds, presented the Commissioners an overview of the automation project for the Register of Deeds office.

The bid tabulation follows:

ROD DOCUMENT MANAGEMENT & IMAGING SYSTEM

	Hart Information Serv. PO Box 80649 Austin, TX 78708	LanData Foresight 6304 Benjamin Rd. Tampa, FL 33634	ECS PO Box 7370 Knoxville, TN 37921	Manatron 2016 Englewood Dr. Apex, NC 27502
Software Cost	\$ 382,587	\$ 208,000	\$ 134,750	\$ 277,412
Hardware Cost	\$ 386,350	\$ 469,093	\$ 200,771	\$ 227,878
Training Cost	\$ 70,000	\$ 17,000	\$ 25,225	\$ 42,000
Other Related Services	\$ 205,400	\$ 126,000	\$ 55,630	\$ 127,000
File Conversion	\$ 468,899	\$ 350,725	\$ 208,750	\$ 225,000
Education Services				\$ 7,000
Bid Bond	5% of the bid amount	5% of the bid amount	5% of the bid amount not to exceed \$20,000	5% of the bid amount
TOTAL AMOUNT	\$1,513,236	\$1,170,818	\$ 625,126	\$ 906,290

Mr. Covington said three bids were valid and one company had a bid bond problem.

Mr. Covington stated the Register of Deeds' completed request was outlined in the first packet you received.

1st Option: Reject all bids submitted for hardware and file conversion. Unbundle the bid. Unbundling the hardware and file conversion will yield the County substantial savings and will allow us to combine the very best elements of hardware, software, and file conversion.

2nd Option: Award software and related services bid to Hart Information Services.

The revised bid tabulation follows:

BID TABULATION

	Hart Information Serv. PO Box 80649 Austin, TX 78708	Revised	LanData Foresight 6304 Benjamin Rd. Tampa, FL 33634	Revised
Software Cost	\$ 382,587	\$ 271,742	\$ 208,000	\$ 177,000
Hardware Cost	\$ 386,350	\$ 355,345	\$ 469,093	\$ 368,678
Training Cost	\$ 70,000	\$ 70,000	\$ 17,000	\$ 17,000
Other Related Services	\$ 205,400	\$ 205,000	\$ 126,000	\$ 126,000
File Conversion	\$ 468,899	\$ 390,221	\$ 350,723	\$ 350,725
TOTAL AMOUNT	\$1,513,236	\$1,292,308	\$1,170,818	\$1,039,403

HART SOFTWARE COST

(Includes Training and Other Related Services)

Software	\$271,742
Training Cost	\$ 70,000
Project Management	\$154,502
Scanners	<u>\$ 36,000</u> (not on state contract)
TOTAL SW/TC/PM	\$532,244

April 12, 1999 Approval Request from Board \$532,244

TOTAL ESTIMATED PROJECT COST

Software+	\$ 532,244
Hardware and scanners (est.)	\$ 350,000
File Conversion (est.)	<u>\$ 300,000</u>
Total Projected System Cost	\$ 1,182,244

The Commissioners asked several questions about the automation project to which Mr. Covington responded.

Chairman Black proposed that we move the item to the consent agenda for the April 26, 1999 Regular Session with the two options you requested and approve the bid from Hart Information Services.

County Manager David F. Thompson said a budget amendment needs to be brought forward in the amount of \$182,244 + \$40,000 to \$50,000 to this project from the pay-as-you-go fund to complete the total project.

Discussion of the Chamber of Commerce Request

Patrick Byker, Vice President of Government Relations from the Chamber of Commerce will ask the Board to join in hosting a reception for members of the North Carolina General Assembly on May 4th, along with the City of Durham. The total cost for hosting the event is to be split evenly between the County, the City and the Chamber. Durham County is asked to contribute \$1500. The last such event was held in November 1997 and the County contributed \$1,448.47 to that effort.

Discuss and direct staff.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve a contribution of \$1,500 from Durham County contingency for a reception for members of the North Carolina General Assembly on May 4, 1999.

The motion carried with the following vote:

Ayes: Black, Bowser, Heron, and Reckhow
Noes: None
Absent: Bell

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
1998-99 Budget Ordinance
Amendment Number 99BCC000052

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the 1998-99 budget ordinance is hereby amended to reflect budget adjustments for the Clerk to the Board.

GENERAL FUND

	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>				
General Government	\$18,216,286	\$1,500		\$18,217,786
Nondepartmental	\$15,382,109		(\$1,500)	\$15,380,609

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

This the 7th day of April, 1999.

Discussion of Support for NACo 2000 Fund

Mecklenburg County will host the 2000 Annual Conference for the National Association of Counties. The president of the North Carolina Association of County Commissioners has written a letter asking all North Carolina counties seeking support for the conference in the form of a contribution to the NACo 200 Fund. The contributions can be through special fundraising, appropriations from budgets, or in-kind donations for example. A response is due by June 1st.

Discuss and direct staff.

County Manager David F. Thompson suggested that Deborah Craig-Ray, Public Information/Governmental Affairs Director, work with Patrick Byker, V.P. Government Relations, Chamber of Commerce to solicit support for the statewide conference.

Chairman Black and Vice-Chairman Reckhow thought about giving a \$1,000 donation from County funds to support the NACo 2000 Fund.

After some discussion, the Commissioners decided to bring the request back to the Commissioners in May for consideration.

This deferment will give Ms. Craig-Ray and Mr. Byker an opportunity to see how much support (gifts and inkind services) they can get for the state annual Commissioners' meeting in 2000.

Commissioner Heron suggested that the Durham Convention and Visitors Bureau set up a Durham promotional booth at the NACo 2000 Conference in Charlotte, NC. Vice-Chairman Reckhow will discuss this with the Convention and Visitors Bureau since she is on its Board of Directors.

Commissioner Heron suggested that we have a table at the North Carolina Association of County Commissioners Annual Conference in August to promote Durham since the meeting will be held in Durham next year.

Update on FY 1999-2000 Budget Preparation

Claudia Odom, Budget Director, will give the Commissioners an update on the 1999-2000 Fiscal Year budget preparation.

Receive the report.

Ms. Odom said the budget process is on target in meeting our goal to have the budget to the Commissioners on May 24, 1999. The nonprofit Board applications will be submitted to you on Friday, April 16, 1999. The nonprofit application presentations will be heard at the Monday, May 3, 1999 Worksession.

Update on the Legislative Proposal

Deborah Craig-Ray, Public Information and Governmental Affairs Director, will present the Commissions an update on the Legislative Proposal.

Receive the report.

Three memorandums have been sent to the Commissioners concerning the bills that have been introduced in the General Assembly. The bills are as follows:

- (a) Durham County Trust Fund Investment
- (b) Spade Neuter Bill
- (c) Durham County Zoning Notices
- (d) Increase Flexibility in Financing School Construction
- (e) Criminal Penalties for Fraudulently Obtaining Ambulance Services

The Commissioners requested a status report on legislation every two weeks. The update can be provided at each Commissioner meeting. The Board members asked that a meeting be scheduled with the Durham Delegation in Raleigh.

Deborah Craig-Ray was asked to reaffirm with the Durham Delegation the importance of children with special needs.

Order in the Matter of the Appeal of Mitsubishi Semiconductor America Inc.

The Board of Commissioners held a special hearing to consider the above-referenced matter on Thursday, March 25, 1999. The Board voted on the issues and announced its decision in open session at the close of the hearing. Legal staff has prepared an order which is presented to the Board for adoption.

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to adopt the prepared Order in the Matter of the Appeal of Mitsubishi Semiconductor America Inc. as presented.

The motion carried with the following vote:

Ayes: Black, Bowser, and Reckhow
Noes: None
Absent: Bell
Not Voting: Commissioner Heron did not attend the special hearing.

The order follows:

STATE OF NORTH CAROLINA
COUNTY

COUNTY OF DURHAM

BEFORE THE DURHAM

BOARD OF COMMISSIONERS

IN THE MATTER OF:
APPEAL OF **MITSUBISHI SEMICONDUCTOR
AMERICA, INC.** concerning the assessment and
appraisal of certain business personal property for
tax year 1996

ORDER

This matter came on for hearing before the Durham County Board of Commissioners (hereinafter "Board"), in the City of Durham, Durham County, North Carolina, on March 25, 1999, pursuant to an order of the North Carolina Property Tax Commission remanding the case back to the Board for the consideration of the Taxpayer's appeal of the assessment and appraisal of its business personal property for tax year 1996. Taxpayer was represented at the hearing by C. B. McLean, Jr., attorney at law, Raleigh, North Carolina, and the County's case was presented by Charles A. Clark, Tax Administrator, Durham County, North Carolina.

ISSUES

The Board considered the following issues at the hearing:

1. Did the Taxpayer timely file an appeal of its 1996 business personal property assessment?
2. Did the National Bureau of Property Administration, Inc., have the authority to file an appeal on behalf of Taxpayer, and, if so, was an appeal properly filed?
3. Did the County fairly and lawfully assess Taxpayer's property using state-approved standard trending schedules?

FINDINGS OF FACT

Having considered presentations made by the County Tax Administration Office and by Taxpayer's attorney, submitted documents, and witnesses' testimony, the Board makes the following findings of fact:

1. Mitsubishi Semiconductor America, Inc., listed its personal property in Durham County for 1996.
2. On May 30, 1996, the County mailed to Taxpayer an appraisal notice for its business personal property.
3. The appraisal notice stated that the appraisal would become final unless Taxpayer filed written exception to the appraisal within thirty (30) days from the date of the notice.
4. Bill Hayes, Taxpayer's tax representative from the National Bureau of Property Administration, Inc., noted an assessment error in the appraisal notice and requested that the assessment be corrected and the appraised amount reduced.
5. On July 24, 1996, the County mailed Taxpayer a corrected valuation sheet with a reduced appraisal value. A new tax bill was sent for the corrected value.

6. On November 14, 1996, the County received a letter from National Bureau of Property Administration, Inc., Taxpayer's tax representative, stating that Mitsubishi was aware that the County had applied a different set of depreciation schedules to another taxpayer also involved in the semiconductor industry.
7. National Bureau requested in the November 14, 1996 letter that the County apply the different depreciation schedules to Mitsubishi. The letter did not indicate that Mitsubishi was appealing the appraisal value stated in the July 24, 1996, tax notice and bill. The letter did not state that the Taxpayer was appealing the appraisal of its 1996 business personal property, nor did it request an appearance or hearing before the Board of Commissioners.
8. The other taxpayer involved in the semiconductor industry had received the application of the different depreciation schedules pursuant to the settlement of a timely filed appeal.
9. The trending and depreciation schedules actually used in formulating the appraisal for Mitsubishi's personal property were uniformly applied to the semiconductor industry in appraising personal property for the 1996 tax year.
10. On November 22, 1996, David F. Thompson, Durham County Manager, replied to National Bureau's letter of November 14, 1996, stating that Mitsubishi's request to have schedules due in 1997 used for 1996 could not be honored because Mitsubishi had not timely filed an appeal of its 1996 property tax appraisal.
11. On December 23, 1996, Mitsubishi through its legal counsel, filed a notice of appeal with the North Carolina Property Tax Commission. Subsequent litigation resulted in this matter being remanded to the Board of Commissioners for hearing.
12. The Taxpayer paid in full its 1996 tax bill for business personal property on January 3, 1997.

CONCLUSIONS OF LAW

BASED UPON THE FOREGOING findings of fact, the Board concludes as a matter of law:

1. The November 14, 1996, letter submitted to the Board of County Commissioners by National Bureau of Property Administration, Inc., did not constitute an appeal of the appraisal of Taxpayer's business personal property for the 1996 tax year. The letter neither indicated that the Taxpayer was appealing the appraised value,

nor did it request that Taxpayer be heard by the Board.

2. Even assuming that the November 14, 1996, letter could be construed as an appeal of the appraised value of Taxpayer's property, the appeal was not valid because it was not submitted or signed by the Taxpayer, or legal counsel authorized to practice in the State of North Carolina on behalf of the Taxpayer. Thus, no person with standing to appeal the property tax appraisal filed an appeal.
3. Even assuming that the November 14, 1996, letter could be construed as an appeal and that National Bureau had the legal authority to pursue the appeal on Taxpayer's behalf, the appeal was not timely filed.
4. The application of a different set of depreciation schedules for another taxpayer as a result of settling a timely filed appeal does not create for Mitsubishi a legal entitlement to have those same schedules applied. The County must only use a uniform system of taxation that does not treat taxpayers arbitrarily or capriciously. Mitsubishi has not demonstrated that the County used an arbitrary or capricious method of appraising its personal property.

BASED UPON THE ABOVE-STATED FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED THAT:

1. The appraisal of Taxpayer's business personal property for tax year 1996 is upheld.
2. Taxpayer is not entitled to an adjustment of its 1996 business personal property valuation.
3. Taxpayer is not entitled to a refund of any taxes paid on its 1996 business personal property listing.

This decision was rendered by the Board on March 25, 1999 and announced to the parties in open session.

DURHAM COUNTY BOARD OF COMMISSIONERS
/s/ Mary Ann Black, Chairman

Commissioners Bell, Bowser and Reckhow concurred in this decision

Entered: April 7, 1999

Attest:

/s/ Garry E. Umstead

Noise Ordinance

The current Durham County NOISE Ordinance does not comply with the applicable case law in NC. Attached, please find a copy of State v. Garren, a 1994 North Carolina Court of Appeals case which is the leading case on noise enforcement in NC.

Chairman Black asked the Commissioners to contact Deputy County Attorney Lowell Siler in reference to comments and concerns about the noise ordinance.

The agenda item can be put on one of the Regular Session agendas.

Adjournment

Chairman Black adjourned the meeting at approximately 11:45 a.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board