

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

Tuesday, May 27, 2003

7:00 P.M. Regular Session

MINUTES

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

Present: Chairman Ellen W. Reckhow, Vice-Chairman Joe W. Bowser, and Commissioners Philip R. Cousin Jr., Becky M. Heron, and Mary D. Jacobs

Absent: None

Presider: Chairman Reckhow

Opening of Regular Session

Chairman Reckhow called the meeting to order with the Pledge of Allegiance.

Agenda Adjustments

There were no agenda adjustments; however, Attorney Kitchen called attention to House Bill 124 which he had placed at each Commissioner's station. The Board of County Commissioners had asked the Durham Legislative Delegation to introduce this bill regarding protest petitions; it has been ratified by the General Assembly.

Minutes

Commissioner Heron moved, seconded by Vice-Chairman Bowser, to approve the March 3, 2003 Worksession Minutes as corrected and the March 10, 2003 Regular Session Minutes as submitted.

The motion carried unanimously.

Donation of the "Tooth Ferry" Dental Van from Duke University Medical Center

In August 2001, the "Tooth Ferry" dental van was launched following a generous donation of grant funds from the Duke Endowment. A portion (\$198,000) of the grant was used to purchase and equip the van, and the Durham County Board of Commissioners provided \$15,000 to equip the van with supplies.

The program has operated as a collaborative effort between the Durham County Health Department, Durham Public Schools, and Duke's Division of Community and Family Medicine to deliver dental services to low-income children at the following elementary schools: W. G. Pearson, Eastway, Fayetteville Street, Y. E. Smith, Burton, Holt, George Watts, Lakewood, Glenn, E. K. Powe, C. C. Spaulding, and Oak Grove.

In addition, the Dental Division of the Health Department furnishes a dentist and a dental assistant to render dental treatment. Through March 2003, some 7,053 dental procedures have been provided during 1,544 encounters.

Duke University Medical Center is donating the dental van to Durham County to be used by the Public Health Department.

Resource Person(s): Brian Letourneau, Public Health Director, and Susan Yaggy, MPA Chief for the Division of Community Health, Duke University Medical Center

County Manager's Recommendation: Receive the donation of the "Tooth Ferry" dental van from Duke University.

Chairman Reckhow called on Gayle Harris, Assistant Director, Durham County Public Health Department, to make comments.

Ms. Harris, on behalf of Public Health Department staff, expressed appreciation to the Board of Commissioners for its continued support for this project and for taking on the responsibility of the dental van in the upcoming years. Thank you for helping keep our children in school and pain free. Our children in the community thank you, also. This has helped make the difference in the lives of our children.

Commissioner Heron asked Ms. Harris to tell our citizens about the Tooth Ferry van.

Ms. Harris said that the Tooth Fairy is a 40-foot vehicle that weighs 32,000 pounds. It is the equivalent of a large recreational vehicle that has been outfitted with 2 dental stations. High-risk children from 12 designated schools comprising a large number of free- and reduced-lunch recipients receive Tooth Ferry services. The van travels from school to school on a scheduled rotation based on screenings by dental staff to identify children with obvious decay. We have been providing comprehensive on-site services to these children. Designated coordinators bring the children to the van for services and make sure they return safely to their classrooms. The van has been operating four days a week but, with additional volunteers from the private sector, will operate five days a week in the upcoming school year. This has been a real win-win situation.

Ms. Yaggy spoke of the collaborative effort that resulted in the funding of the Tooth Ferry dental van. It was specifically planned to provide access to dental care for children

who did not have private dentists. The Health Department hired the dental staff, who has been wonderful. Durham Public Schools provided the labor to install outside water and electricity plugs so the van could hookup to each school from the outside. The schools also arranged for the children to be escorted to and from the van. A commitment was made in the proposal to serve eight schools, but nine have been served. Twelve schools will be served in the upcoming year. The children served attend schools that the Health Department assessed as having a minimum of 20 percent of the children, (one school as high as 33 percent), as acute. This means that they were in pain, infected, and/or visibly in need of dental care. In 1,520 visits, 6,948 procedures were provided for 770 individual children, an average of nine procedures per child. This has proven to be a highly efficient way of serving our children. Public/private partnerships such as this greatly benefit communities. The Duke Endowment, when they make grants, seeks to make sure that the services continue. We are glad to take a part in making Durham the City of Health.

Ms. Harris and Ms. Yaggy presented Chairman Reckhow with large, laminated keys to symbolize the donation of the Tooth Ferry dental van.

Chairman Reckhow thanked Duke for this wonderful donation. She recognized former Commission Chairman MaryAnn Black who is now Director of Community Affairs at Duke. This is a wonderful example of working together to get a job done for the citizens in our community. We appreciate all of the efforts that Duke has made to make this possible.

The County Attorney advised that a vote be taken to accept the donation of the van.

Commissioner Cousin moved, seconded by Commissioner Jacobs, to receive the donation of the "Tooth Ferry" dental van from Duke University Medical Center.

The motion carried unanimously.

Consent Agenda

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the following consent agenda items:

- * (a) Property Tax Releases and Refunds for Fiscal Year 02-03 (April 2003) (accept the property tax release and refund report as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
- * (b) Budget Ordinance Amendment No. 03BCC000063—DSS—Accept Child Support Incentive Settlement Adjustment (approve the budget ordinance amendment

in the amount of \$96,826 accepting the Child Support Incentive Settlement Adjustment);

- * (c) Budget Ordinance Amendment No. 03BCC000064—Mental Health—Allocation of State Mental Health Emergency Services Funds (approve the budget ordinance amendment in the amount of \$66,141);
- * (d) Budget Ordinance Amendment No. 03BCC000065—Sheriff's Office—2003 G.R.E.A.T. Grant for Gang Resistance Education (approve the budget ordinance amendment not to exceed the amount of the grant award [\$43,695]);
- * (e) Budget Ordinance Amendment No. 03BCC000066—Request to Appropriate \$90,000 from Bahama Volunteer Fire Department's Fund Balance (approve the budget ordinance amendment to appropriate \$90,000 from Bahama Volunteer Fire Department's fund balance to its FY 2002-2003 operating budget to purchase a Duplex fire apparatus);
- * (f) Adoption of Resolution to be Sent to NACo for Adoption (approve the resolution to urge Congress to enact an exemption for counties from the False Claims Act [including its treble damages provision] for transmittal to NACo for adoption at the Annual Convention);
- * (g) Offer to Purchase County Property (2001 Brocton Place) (pursue the upset bid process at this time; the Board has the authority to accept or reject any offer at the conclusion of the upset bid process);
- (h) Closed Session Minutes—Approval of Minutes to be Opened (approve that the closed session minutes be opened as public record);
- (i) Appointment to Durham Workforce Development Board (approve the appointment of Mr. Warren Herndon to the Durham Workforce Development Board);
- (j) Request to Increase Stipend for DPS Board of Education Members (approve an increase in the Board of Education's monthly stipend from \$400 to \$500 for board members and from \$450 to \$550 for the board's chairman);
- (k) Request Abandonment of a Portion of SR 1812 from the State Road System (approve the request of the petitioners and, pursuant to G.S. § 136-63, request the

- Board of Transportation to abandon the portion of SR 1812 from the State system); and
- * (1) Farmland Protection Advisory Board Revised Ordinance and Update (approve the proposed revisions).

The motion carried unanimously.

Commissioner Heron commented that she wanted to make sure the Commissioners receive quarterly reports from the Workforce Development Board. She had requested these reports at a previous Commissioner meeting.

*Documents related to these items follow:

Consent Agenda 5(a). Property Tax Releases and Refunds for Fiscal Year 02-03 (April 2003) (accept the property tax release and refund report as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report).

Due to property valuation adjustments for over assessments, listing discrepancies, duplicate listings, and clerical errors, etc., the report details releases and refunds for the month of April 2003.

Releases & Refunds for 2002 Taxes:

Real	\$ 6,521.20
Personal	\$ 3,693.13
Registered Vehicles	\$ 30,370.81
Vehicle Fees	\$ 410.00
Solid Waste Fees	<u>\$ 305.00</u>
Total for 2002 Taxes and Fees	41,300.14

Prior Years (1994-2001) releases and refunds for April 2003 are in the amount of \$9,732.52.

Total Current Year and Prior Year Releases and Refunds \$51,032.66

(Recorded in Appendix A in the Permanent Supplement of the May 27, 2003 Regular Session Minutes of the Board.)

Consent Agenda 5(b). Budget Ordinance Amendment No. 03BCC000063—DSS—Accept Child Support Incentive Settlement Adjustment (approve the budget ordinance amendment in the amount of \$96,826 accepting the Child Support Incentive Settlement Adjustment).

DURHAM COUNTY, NORTH CAROLINA
 FY 2002-03 Budget Ordinance
 Amendment No. 03BCC000063

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$262,378,447	\$96,826	\$262,475,273

Expenditures:

<u>Activity</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Human Services	\$325,506,285	\$96,826	\$325,603,111

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

This the 27th day of May, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda 5(c). Budget Ordinance Amendment No. 03BCC000064—Mental Health—Allocation of State Mental Health Emergency Services Funds (approve the budget ordinance amendment in the amount of \$66,141).

DURHAM COUNTY, NORTH CAROLINA
 FY 2002-03 Budget Ordinance
 Amendment No. 03BCC000064

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$262,475,273	\$66,141	\$262,541,414

Expenditures:

<u>Activity</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Human Services	\$325,603,111	\$66,141	\$325,669,252

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

This the 27th day of May, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda 5(d). Budget Ordinance Amendment No. 03BCC000065—Sheriff's Office—2003 G.R.E.A.T. Grant for Gang Resistance Education (approve the budget ordinance amendment not to exceed the amount of the grant award [\$43,695]).

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000065

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$262,541,414	\$43,695	\$262,585,109

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 34,043,066	\$43,695	\$ 34,086,761

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

This the 27th day of May, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda 5(e). Budget Ordinance Amendment No. 03BCC000066—Request to Appropriate \$90,000 from Bahama Volunteer Fire Department's Fund Balance (approve the budget ordinance amendment to appropriate \$90,000 from Bahama Volunteer Fire Department's fund balance to its FY 2002-2003 operating budget to purchase a Duplex fire apparatus).

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000066

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2002-03 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>BAHAMA FIRE DISTRICT FUND</u>			
Other Financing Sources	\$0	\$90,000	\$ 90,000

Expenditures:

<u>Activity</u>			
<u>BAHAMA FIRE DISTRICT FUND</u>			
Public Safety	\$351,988	\$90,000	\$441,988

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

This the 27th day of May, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda 5(f). Adoption of Resolution to be Sent to NACo for Adoption (approve the resolution to urge Congress to enact an exemption for counties from the False Claims Act [including its treble damages provision] for transmittal to NACo for adoption at the Annual Convention).

RESOLUTION SEEKING EXEMPTION FROM FALSE CLAIMS ACT

Issue: False Claims Act coverage of counties including treble damages.

Proposed Policy: NACo urges Congress to enact an exemption for counties from the False Claims Act including its treble damages provision.

Background: The False Claims Act 31 U.S.C. § 3729 is a Civil War era law designed to prevent the filing of false or fraudulent claims for payment by the United States. The law was extensively rewritten in 1986. The law provides that private citizens may bring suit, a *qui tam* action, on behalf of the United States to recover funds improperly paid. The citizen may receive up to 30% of the recover. The amount of the recover may be trebled by the court.

States are not considered to be “persons” under the act, and therefore are immune from suit. On March 10, 2003, the United States Supreme Court in *Cook County v. United States* determined that counties were “persons” under the act even though many counties

in the United States are agencies of state government and enjoy the same sovereign immunity as does the state under state law.

Government, including counties, are not subject to punitive damages. In *Cook County*, the Court determined that treble damages were not punitive in nature, but instead compensatory in nature. Therefore, counties are subject to the treble damages provisions of the Act.

Consent Agenda 5(g). Offer to Purchase County Property (2001 Brocton Place) (pursue the upset bid process at this time; the Board has the authority to accept or reject any offer at the conclusion of the upset bid process).

RESOLUTION

WHEREAS, Durham County owns a certain parcel of real property situated in Durham County, North Carolina and properly described as follows:

Parcel ID #835-05-005
PIN 0815-03-40-8260
2001 Brocton Place

WHEREAS, Ms. Kim Jackson has made an offer to the County to purchase the above property for \$160,000 and has made a bid deposit in the amount of \$8,000 which is no less than 5 percent of the bid; and

WHEREAS, G.S. 160A-269 provides for an "Upset Bid Method" for sale which provides for publication of the notice of upset sale including a description of the property, the amount of the offer, requirements for submission of an upset bid, and other details of the sale; and

WHEREAS, the Durham County procedure for sale of the parcel is as follows:

1. Publication of the Notice of Sale;
2. Upset bids must be received within ten days after the date the notice is published;
3. To qualify as an upset bid, the bid must raise the original or current offer by an amount of at least 10 percent of the first \$1,000.00 and 5 percent of the remainder of the original or current offer;
4. Bids shall be made to the Clerk to the Board or the Real Estate Manager, together with a 5 percent bid deposit by certified check, money order, or cash;
5. When the bid has been successfully raised (upset), the new bid becomes the current offer;
6. The highest bid received during the 10-day period is the upset bid rather than the first bid which meets the minimum upset bid requirements;
7. When the bid has been successfully raised (upset), the procedure is repeated;

8. Once the final qualifying offer has been received, it shall be reported to the Board of County Commissioners which must then decide whether to accept or reject it within 30 days of the date which the final qualifying offer so qualifies; and
9. Should the Board of County Commissioners accept the final qualifying offer, a nonwarranty deed will be prepared for the Chairman of the Board's signature and a time for closing will be scheduled:

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Durham County that a Notice of Sale be published and that the upset bid procedure for this sale take place as set forth in this resolution and as authorized by G.S. 160A-269.

Upon motion properly made and seconded, adopted by the Board at its meeting on May 27, 2003.

/s/ Garry E. Umstead
Clerk, Board of Commissioners

Consent Agenda 5(l). Farmland Protection Advisory Board Revised Ordinance and Update (approve the proposed revisions).

ARTICLE IV. FARMLAND PROTECTION PROGRAM DIVISION 1. GENERALLY

Sec. 14-86. Purpose.

The purpose of this article is to promote the best use of land in the county so that development and growth will be accompanied by protection of our attractive, and ecologically desirable forests and farms. The county residents derive many benefits; clean water and air, plant and animal habitat, fresh fruit and vegetables and visual pleasure from these forests and farms. Farmland protection will enable us to continue producing food and fiber on our best soils near the more densely developed city area.
(Ord. of 5-13-96, § A-1)

Sec. 14-87. Enactment.

Pursuant to the authority conferred by G.S. 106-735 through 106-743, and for the purpose of promoting health, safety, general welfare and morals of the county, the county commissioners do enact the following article, which shall be known as the "Durham County Voluntary Farmland Protection Program Ordinance."
(Ord. of 5-13-96, § A-2)

Sec. 14-88. Definitions.

That Section 14-88 of the Durham County Code of Ordinances in hereby amended to read as follows:

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Board. Farmland Protection Advisory Board (hereinafter referred to as “Farmland Board”).

Chairman. Chairman of the farmland protection advisory board (Farmland Board).

Voluntary Agricultural District. VAD. An area designated by the board of county commissioners (hereinafter referred to as “BOCC”) within which landowners can apply to be a participating member. The VAD is an area that supports sustainable farming, conservation and protection of farmland resources.

Ordinance. Voluntary Farmland Protection Ordinance.
(Ord. of 5-13-96, § A-3)

Sec. 14-89. Farmland Protection Advisory Board (Farmland Board).

That Section 14-89 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Creation:* A farmland protection advisory board (Farmland Board), to consist of members appointed by the board of county commissioners (BOCC), is hereby established.

(b) *Mission:* The Farmland Board shall foster the wise use of our farmland resources by working with farmers, the community, government entities and agencies and other resources to identify and implement strategies for the preservation and enhancement of our farming community while protecting the land and soils for future generations.

(c) *Membership:* The Farmland Board shall be composed of a minimum of ten (10) voting members and a maximum of fifteen (15) voting members, the exact number to be determined by the Farmland Board. All Farmland Board members shall reside in Durham County; moving out of Durham County shall be cause for removal of the member. Moving out of the VAD that a member represents shall be cause for removal of the member, although the member may become one of the Farmland Board’s appointments. The Farmland Board membership shall be based upon the following:

- (1) Six (6) members shall be appointed by the Board of County Commissioners (hereafter “BOCC”). These members shall be active farmers and /or be engaged in a business or activity that is involved in the farming community of

Durham County. These members shall be appointed from the following categories:

- | | |
|-----------------------------|--------------------|
| (1) Little River VAD | (1) Eno River VAD |
| (1) Flat River VAD | (1) Lick Creek VAD |
| (1) Business representative | (1) Cape Fear VAD |

However, in the event that after reasonable advertisement, no qualified candidates for a VAD appointment comes forward, then the Farmland Board shall not be bound by the VAD representation requirement and may instead appoint an at-large member. The BOCC will attempt to ensure that female and minority farmers are represented on the Farmland Board.

- (2) One (1) member shall be appointed from each of the following elected or appointed Farmland Boards:
 - a. The Durham BOCC, appointed by its Chair;
 - b. Durham Soil and Water District Supervisor, appointed by its Chair;
 - c. The Board of Directors of the Durham County Farm Bureau, appointed by its Chair; and
 - d. The Durham Open Space and Trails Commission; appointed by its Chair
- (3) Up to five (5) members may be appointed by the Farmland Board. These members may represent a special interest, or focus that the Farmland Board feels would be helpful in fulfilling its duties and responsibilities.

Appointments made by the Farmland Board shall be approved with a majority vote of the Farmland Board, and shall serve three (3) year terms. Members may be nominated from the floor, or by a Nominations Committee. Prospective members shall fill out an application for the Farmland Board appointments as provided by the staff.

Members appointed by the Farmland Board shall be subject to the BOCC's policy on board appointments.

(d) *Advisors:* Advisors from the cooperative extension service, state forest service, farm service agency (FSA) and the Durham Soil and Water Conservation District staff, and the city/county planning department will assist the Farmland Board.

(e) *Tenure:* Appointments to the Farmland Board will be made as needed. Appointments will be for three-year terms and Farmland Board members may apply for and receive reappointment.

(f) *Vacancies:* Any vacancy on the Farmland Board is to be filled by the BOCC for the remainder of the unexpired term.

(g) *Removal of Members:* A member of the Farmland Board may be removed by the body that appointed that member for any of the following reasons:

- (1) Violation of attendance, ethics, or conflict of interest as deemed by the BOCC;
- (2) Moving out of Durham County;
- (3) Non-payment of taxes; and
- (4) Any reason deemed sufficient by the body or official that appointed the member.

i.e. Reasons for removal include the following: Neglect of duty, failure to carry out duties, misfeasance, malfeasance, lack of attendance and failure to comply with the commissioner's resolution on appointments to boards and commissions.

(h) *Funding.*

- (1) The per diem compensation of the members of the Farmland Board shall be fixed by the BOCC.
- (2) Funds will be appropriated to the Farmland Board to perform its duties.

(i) *Procedure:*

- (1) *Chairman.* The Farmland Board is to elect a chairman and vice-chairman each year at its January meeting following the appointment of new members or reappointment of existing members. The chairman shall preside over all regular or special meetings of the Farmland Board. In the absence or disability of the chairman, the vice-chairman shall preside and shall have and exercise all the powers of the chairman. Additional officers may be elected as needed.
- (2) *Jurisdiction.* The jurisdiction of the Farmland Board shall be limited to the county, except in the case where farmland lies in Durham and an adjacent county. The part of the farmland in the county can be included in this program and the contiguous farmland being contained in another county can only be included with the permission of the BOCC of the county in question, unless the farm is already taxed entirely by Durham.
- (3) *Farmland Board year.* The Farmland Board will use the county fiscal year as its year of operation.
- (4) *Meetings.* The Farmland Board shall establish a regular meeting schedule for each calendar year with a regular meeting time, place and date. The Farmland

Board shall meet at a minimum at least six (6) times during the year and the Farmland Board can call additional meetings as required by need and business. All meetings shall be subject to applicable provisions of the North Carolina Open Meetings Law, NCGS Chapter 143, Article 33C. The Farmland Board shall keep permanent minutes of its meetings, recommendations and other actions. Notice of all meetings shall be given as required by law.

- a. **Special Meetings.** The chair may call a special meeting of the Farmland Board at any time by giving oral or written notice to all members in advance in compliance with North Carolina Open Meetings Law. Special meetings shall also be scheduled upon the request of at least (5) members of the Farmland Board.
- b. **Cancellation of Meetings.** Whenever there is no business to come before the Farmland Board, the Chair or Vice-chair may dispense with a regular meeting by giving notice to all members not less than twenty-four (24) hours prior to the time set for the meeting.
- c. **Attendance.** It is expected that members appointed to the Farmland Board will regularly attend its meetings. Members may forfeit the remainder of their terms and may be replaced under the following conditions:
 1. Any member who has three (3) unexcused absences of regular Farmland Board meetings within a one-year time period.

When the Farmland Board finds that a member has become disqualified for membership because his or her attendance or residence requirement does not meet Farmland Board regulations, the Chair of the Farmland Board shall notify the body that appointed the member so that a new member may be appointed for the remainder of the unexpired term.

- (5) **Quorum.** A quorum shall be eight Farmland Board members or 50 percent of current members.
- (6) **Majority vote.** The concurring vote of a majority of the quorum shall be necessary to take action on any matter.
- (7) **Records.** The Farmland Board shall keep minutes showing the vote upon each question, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Farmland Board and shall be public records.
- (8) **Administration.** The Durham Soil and Water Conservation District will serve

as the primary staff support and provide administrative support for the Farmland Board. Staff liaison and support will also be provided by the County Open Space program staff.

(9) *Duties.* The Farmland Board shall:

- a. Review and approve or disapprove applications for qualified farmland and for membership in a VAD and make recommendations concerning the establishment and modification of VADs and of potential conservation easements and other programs or polices that will promote the preservation of farmland resources in Durham County.
- b. Review and make recommendations concerning any ordinance or amendment adopted or proposed for adoption under this article.
- c. Hold public hearings pursuant to section 14-92 of this article.
- d. Advise the BOCC on projects, programs or issues, affecting the agricultural economy and any other activities within the county that will affect agricultural districts.
- e. Advise and promote to the BOCC financial incentives and benefits to promote participation in the VAD program and the viability of farmland in Durham County

(Ord. of 5-13-96, § A-4)

- f. Educate the public and the farming community in Durham of the benefits of protection of farmland and continuation of farming.
- g. Act on behalf of the County in promoting and administering the farmland protection program and advising staff on program direction and goals.
- h. Review and advise staff on potential conservation easements, voluntary agricultural districts, and other programs which further the protection of farmland in Durham County.
- i. Represent the farming community on behalf of the County at public and educational venues throughout the County.

(10) The Farmland Board shall produce by March of each year a written annual report to the BOCC that shall include the status, progress and activities of the county's farmland protection program of the preceding fiscal year and shall include:

- a. Number of member farms participating in VADs;
 - b. Number of Agricultural Conservation Easements granted to the County;
 - c. Yearly budget summary;
 - d. Other activities;
 - e. Farmland Board Membership status; and
 - f. Proposed program emphasis for upcoming year.
- (11) *Conduct of Business.* All members of the Farmland Board are subject to the Durham County Ethics Policy, while conducting or representing business of the Farmland Board.
- (12) *Conflicts of interest.* Farmland Board members hold their positions for the benefit of the general public and Durham County. Conflicts can arise in situations in which a Farmland Board member's duty to act in the public interest conflicts with a potential desire to advance his or her own interest. These conflicts of interest can include financial, associative, and personal bias. As a general rule, members shall refrain from taking part in actions that might reasonably call into question the impartiality and fairness in those decisions.
- (13) *Bylaws.* The Farmland Board may adopt additional bylaws for its conduct of business, including policies for excused or unexcused absences, rules of procedure, etc.

Sec. 14-90. Application and certification of qualifying and voluntary agricultural district.

That Section 14-90 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Requirements.*

- (1) To secure county certification as qualifying farmland, a farm must:
 - a. Be participating in the farm present use value taxation program established by G.S. 105-277.2 through 105-277.7 or is otherwise determined by the county or its agent to meet all the qualifications of this program set forth in G.S. 105-277.3;
 - b. Be certified by the Durham Soil and Water District as being a farm on which at least two-thirds of the land is composed of soils that:
 1. Are best suited for providing food, seed, fiber, forage, timber and oil seed crops;

2. Have good soil qualities;
 3. Are favorable for all major crops common to the county where the land is located;
 4. Have a favorable growing season; and
 5. Receive the available moisture needed to produce high yields for an average of eight out of ten years; or be one on which at least two-thirds of the land has been used in agricultural, horticultural or forestry operations as defined in G.S. 105-277.2 (1, 2, 3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies.
- c. Be managed, if highly erodible land exists on the farm in accordance with the Durham Soil and Water Districts defined erosion-control practices that are addressed to such highly erodible land;
- d. Be the subject of a conservation agreement, as defined in G.S. 121-35, between the county and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten years, except for the creation of not more than three lots, or one per 20 acres, that meet applicable county zoning and subdivision regulations.

(2) Reserved.

(b) *Voluntary agriculture districts.* To be included in a voluntary agricultural district, a landowner may apply to the chairman for such inclusion at the same time he applies for qualifying farmland certification, or at any time subsequent to receiving qualifying farmland certification.

- (1) The purpose of voluntary agricultural districts shall be to encourage the economic and financial health of farming areas, to increase protection from nuisance suits, undesired non-farm development and other negative impacts on participating farms and to increase the identity and pride in the agricultural community and its way of life.

(2) Requirements to participate:

- a. To qualify to become a participating farm in an agricultural district a farm shall comply with N.C.G.S. § 106-738.
- b. Any additional criteria adopted by the Farmland Board regarding farming activities.

- (3) Landowners may apply to participate in existing districts and are encouraged to do so.

(c) *Procedure.*

- (1) To secure certification as a qualifying farm, and if so desired by the applicant, a landowner may apply to the Farmland Board. Application forms may be obtained from the Farmland Board members or the local soil and water conservation district office.
- (2) Upon receipt of an application, the Soil and Water Conservation District staff will process the application with copies forwarded as follows:
 - a. Local tax assessor office.
 - b. Local office of the NRCS.
- (3) Within 60 days of receipt of the application from the local tax assessor and NRCS office, the Farmland Board will meet and render a decision regarding the application. The Soil and Water Conservation staff will notify the applicant by mail if the real property for which certification is sought satisfies the criteria established in section 14-89 and if the land has been certified as qualifying farmland, and also as a member of a VAD, if application was so sought.
- (4) The Soil and Water District Staff will notify the tax supervisor of any new participating VAD farms approved by the Farmland Board.

(d) The Soil and Water District staff will administer the program and will ensure that the VADs and participating farms are marked on county maps displayed for public view in the following county offices:

- (1) Registrar of deeds.
- (2) Code enforcement.
- (3) Tax supervisor.
- (4) Soil and water conservation district.
- (5) Cooperative extension.
- (6) Any other office deemed necessary by the Farmland Board; i.e. FSA,

city/county planning department, etc.

(e) *[Action to encourage the formation of voluntary agricultural districts.]* The county may take such action as it deems appropriate through the Farmland Board or other body or individual to encourage the promotion of VADs and to further their purposes and objectives, including, at a minimum a public information program to reasonably inform landowners of the farmland protection program.
(Ord. of 5-13-96, § A-5)

Sec. 14-91. Land use incentives for VAD participation.

That Section 14-91 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Purpose.* The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between voluntary agricultural district participants and non-farm landowners in proximity to districts.

(b) *Procedure.*

(1) Waiver of water and sewer assessments.

a. *Purpose.* The purpose of this section is to help mitigate the financial impacts on farmers of some local and state capital investments unused by such farmers.

b. *Procedure.*

1. Landowner(s) belonging to voluntary agricultural districts shall not be assessed for, or required to connect to water and/or sewer systems which are assessed by the County of Durham.
2. Water and sewer assessments will be held in abeyance, without interest, for farms inside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
3. When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
4. Assessment procedures followed under G.S. ch. 153A, art. 9 shall conform to the terms of this article with respect to qualifying farms that entered into conservation agreements while such ordinance was in

effect.

5. Nothing in this section is intended to diminish the authority of the county to hold assessments in abeyance under G.S. 153A-201.

(2) The county shall not spend monies to convert land to non-farm uses in voluntary agricultural districts unless no feasible alternative to such conversion exists.

(Ord. of 5-13-96, § A-9)

Sec. 14-92. Public Hearings Prior to Condemnation.

That Section 14-92 of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) *Purpose.* Pursuant to G.S. 106-740, no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district until such agency or unit has requested the local agricultural advisory board to hold a public hearing on the proposed condemnation.

(b) *Procedure.*

(1) Upon receiving a request from an applicant, the Farmland Board shall publish notices describing the proposed action in the appropriate newspapers of the area within two days of the request, and will in the same notice, notify the public of a public hearing on the proposed condemnation, to be held within 30 days of receipt of the request.

(2) The Farmland Board will meet to review:

a. If the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency.

b. Alternatives to the proposed action that are less impactive and disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place.

(3) The Farmland Board will consult with the county cooperative extension service agent, NRCS and soil and water district personnel, director of planing, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Farmland Board's review of the proposed action.

Land value will not be a factor in the selection between properties under consideration for the proposed action.

- (4) Within ten days after the public hearing, the Farmland Board will make a report containing its findings and recommendations regarding the proposed action. The report will be made available to the public for comment prior to its being conveyed to the decision-making body of the agency proposing acquisition.
- (5) Pursuant to G.S. 106-740, the county will not permit any formal initiation of condemnation by local agency action while the proposed condemnation is properly before the Farmland Board within these time limitations.
(Ord. of 5-b3-96, § A-7)

Sec. 14-93. Record notice of proximity to farmlands.

That Section 14-93 of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) *Purpose.* The purpose of this section is to help prevent potential conflicts from occurring between qualifying farms and non-farm landowners regarding acceptable and responsible farming operations and practices.

(b) *Procedure.* The County's computerized land records system will include a notice reasonably calculated to alert a person researching the title of a particular tract that such tract is located within one-half mile of a VAD.

(c) *[Not liable in damages in good faith.]* In no event shall the county or any of its officers, employees or agents be held liable in damages for any misfeasance, malfeasance or nonfeasance occurring in good faith in connection with the duties or obligations imposed by any ordinance adopted under subsection (b).

(d) *[Researching the title of a tract.]* In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary agricultural district as defined in this article.

(Ord. of 5-13-96, § A-8)

Sec. 14-94. Revocation of conservation agreement.

That Section 14-94 of the Durham County Code of Ordinances is hereby amended to read as follows:

By written notice to the Farmland Board, a landowner of qualifying farmland may revoke the conservation agreement formulated pursuant to section 14-90 of this article. Such revocation shall result in the loss of qualifying farm status, and consequently, loss of eligibility to participate in a voluntary agricultural district and benefits thereof. However, if only a portion of the district is affected by the revocation, and the remainder of the district meets the criteria of section 14-90 the district still exists.
(Ord. of 5-13-96, § A-6)

Sec. 14-95. State and local agency notification.

That Section 14-95 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) The Farmland Board shall consult as much as possible with the state department of agriculture, the state division of soil and water conservation and any other entity the Farmland Board deems necessary to the proper conduct of its business.

(b) A copy of this article shall be recorded with the state commissioner of agriculture's office after adoption. At least once a year the Farmland Board shall submit a written report to the commissioner of agriculture including the status, progress and activities of the county's farmland protection program, including voluntary agricultural districting information regarding:

- (1) Number of landowners enrolled.
- (2) Number of acres applied.
- (3) Number of acres certified.
- (4) Number of acres denied.
- (5) Date of certification.

(c) Copies of the annual reports cited in subsection (b) will be sent to:

- (1) Board of County Commissioners
- (2) State Division of Soil and Water Conservation;
- (3) Durham Planning Department;
- (4) Durham Planning Commission; and

(5) Any other entities the Farmland Board deems appropriate.
(Ord. of 5-13-96 § A-b)

Sees. 14-96—14-125. Reserved.

DIVISION 2. GUIDELINES

Sec. 14-126. Generally.

That Section 14-126 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *Generally.* The protection of the county's best agricultural land in a manner that directs and accommodates growth and development is a high priority to the residents of the county. To this end the county establishes the following goals:

- (1) To protect and conserve those soils in the county best suited to agricultural uses;
- (2) To identify and harmonize policies of government at all levels which may conflict with the goal of protection of farmland;
- (3) To reduce land use conflicts between agricultural and other land uses; and
- (4) To promote agriculture as an integral part of the county economy. Nontraditional farms will also be promoted.

These program guidelines contain policies and procedures for administering a farmland protection program that includes the acquisition of conservation easements.

(b) *Duties and responsibilities of the Durham Farmland Protection Advisory Board.* The farmland protection advisory board (hereinafter referred to as the Farmland Board) as organized and empowered pursuant to the Durham County Voluntary Farmland Protection Ordinance shall administer this farmland protection program. The Farmland Board, with guidance from the county attorney and county staff, shall act on behalf of the county in administering this farmland protection program. The Farmland Board shall review properties proposed for purchasing or donations of agricultural conservation easements, work with county commissioners on funding options, and acts necessary for the implementation of this program. The Farmland Board shall administer this program within the financial resources provided by the BOCC and outside funding resources. The Farmland Board will make recommendations to the BOCC regarding the purchase of conservation easements, and acceptance of donated conservation easements. The BOCC will be the final decision-maker regarding the purchase of conservation easements, and

accepting the donation of conservation easements.

(c) *Definition of conservation easements.* For purposes of this program, conservation easements are defined as: "All right, title, and interest in the use of land for any and all purposes which are not directly and customarily incidental to agricultural or open space uses."

(d) *Definition of agricultural uses.* For purposes of this program, agricultural uses are defined as: "Agricultural uses include, but are not limited to, the production of crops, trees, horticultural specialties, livestock, and livestock products. Associated uses allowable are sales and processing necessary and customarily incidental to the agricultural activities on site which are in keeping with the purpose of the program.

(e) *Definition of open space.* For purposes of this program, open space is defined as: "Open space is land used for recreation, natural resource protection, amenities, and/or buffer yards. Open space may include, but is not limited to, lawns, walkways, active recreation areas, playgrounds, wooded areas, greenways, and water courses.
(Ord. No. 7-12-99, § I)

Sec. 14-127. Agricultural priority areas (APA).

That Section 14-127 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) The designation of agricultural priority areas in the county is intended to identify geographic areas containing the most productive agricultural soils in active farming areas. Agricultural priority area designation is the first step in directing the expenditure of funds for conservation easement acquisition. Efforts to coordinate with the city/county planning department in regards to the urban growth boundary and priority growth area will be made.

(b) *Criteria for designation.* The following are guidelines for the designation of agricultural priority areas:

- (1) Areas should contain sufficient contiguous agricultural land to facilitate its permanent agricultural use.
- (2) Areas should consist primarily of soils identified in the county as prime or locally important.
- (3) Land in the area should be primarily in agricultural use.

(c) *Procedure for designation and/or termination.* Agricultural priority areas will be

recommended by the Farmland Board and adopted by the BOCC. In determining areas to include, the Farmland Board may confer with any governing body affected by the proposed APA, receive recommendations from the soil and water conservation district and city/county planning department, and/or conduct a public meeting to receive public comments. The BOCC will establish APAs by resolution and adopt an official map showing boundaries of all APAs. Termination of an APA shall be by resolution approved by the BOCC.

(d) *Protection from public capital projects.* The county will promote, to the extent possible, protection of continued agricultural use of land in APAs from incompatible capital projects that are not planned at the time of APA establishment and which would result in extensive, direct and/or indirect conversion of farmland resources. If possible, no project funded directly or indirectly by the BOCC will be conducted on land included in an APA if it would lead to the direct conversion of farmland.

(Ord. No. 7-12-99, § II)

Sec. 14-128. Acquisition of Agricultural Easements by Purchase or Donation.

That Section 14-128 of the Durham County Code of Ordinances is hereby amended to read as follows:

(a) *General.* The county may purchase conservation easements in agricultural and/or open space lands. All applications for the purchase of conservation easements will be evaluated based upon a farmland ranking system to be developed by the Farmland Board and made available to the public. Highest priority will be given to farms located within an approved APA and Voluntary Agricultural District. There may be instances when purchasing agricultural conservation easements on small farms outside of the APA may serve county citizens well. Applications will be ranked based upon various site factors, such as the level of development pressure and agricultural production capability. Conservation easements may be purchased in accordance with the ranking of farm properties and the availability of allocated funds. Compensation for conservation easements will be based on the Farmland Board's determination of the difference between fair market value and agricultural or open space value appraisals. The purchase price will be subject to negotiation. Typically all purchase and donation negotiations will be conducted by assigned county staff and recommended to the BOCC for their review and approval.

(b) *Description.* The purchase of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the county.

(c) *Minimum eligibility criteria.* The agricultural and/or open space land must be at least 20 acres in size or contiguous to at least two qualifying farms which will create a

tract of not less than 20 acres and be in agricultural and/or open space use or be of such significant agricultural, open space, or environmental importance that the minimum 20 acre size will be waived upon recommendation of staff.

(d) *Application procedure.* A request for consideration must be submitted to the Farmland Board through the cooperative extension service, county soil and water conservation district, the county open space staff or local USDA FSA Center.

(e) *Review and ranking of applications.* The Farmland Board will review and rank each of the applications using the farmland ranking system.

(f) *Acquisition/Donation of Conservation Easements.*

- (1) The BOCC will consider the purchase or donation of conservation easements upon the recommendation of the Farmland Board after staff review of the property and preliminary negotiations with the property owner.
- (2) County staff assigned to the easement program will adopt guidelines and procedures to include the following in both the purchase and donation of conservation easements:
 - a. Farmland and Open Space property and resource appropriateness for inclusion into program.
 - b. Negotiation with landowner to determine easement parameters, reserved rights, restrictions and County interests.
 - c. Development of preliminary easement language
 - d. Baseline report documentation.
 - e. Information to property owner for required surveys, appraisals, deeds, titles and other necessary documentation.
 - f. Negotiation with landowner on purchase price of easement if applicable.
- (3) The County Attorney will review all pertinent information to ensure all documents are proper and legal for execution of documents conveying the conservation easements to the County.
- (4) The County Attorney or his/her designee will negotiate the final easement language with the landowners legal representative and with review of assigned county staff.

- (5) The final signed and recorded easement and supporting documentation will be permanently archived in the Durham County Administrative offices with copies provided for the landowner, County Open Space staff, the Farmland Board and the Soil and Water Conservation District office.
- (6) For both purchased and donated conservation easements the County will determine appropriate expenses the landowner incurs that may be reimbursable by the County.

(g) *Public disclosure.* During negotiations concerning the purchase or acceptance of conservation easements, information will be kept confidential, as allowed by law. Following an agreement between the landowner and the BOCC, information may be made public as provided by law. Following closing of each acquisition, information may be made public as provided by law.

(Ord. No. 7-12-99, § III)

Sec. 14-129. Donation of conservation easements.

That Section 14-129 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *General.* The BOCC may accept a voluntary donation or devise of conservation easements.

(b) *Description.* The donation of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the county in perpetuity.

(c) *Minimum eligibility criteria.* The agricultural and/or open space land must be at least 20 acres in size or contiguous to at least two qualifiable farms which will create a tract of not less than 20 acres and be in agricultural and/or open space use or be of such significant open space, agricultural or environmental importance that the 20 acre minimum will be waived upon recommendation of staff.

(d) *Application procedure.* Upon contact by landowner, a meeting will be set with the county staff to discuss the possible donation and negotiate the parameters, reserved rights and restrictions of the agreement.

(e) *Review of applications.* The Farmland Board will review the documentation to determine whether the minimum eligibility criteria are met or whether to waive any of the criteria.

(f) *Public disclosure.* During negotiations concerning the donation of conservation

easements, information will be kept confidential, as allowed by law. Following a donation agreement, information may be made public as provided by law.
(Ord. No. 7-12-99, § IV)

Sec. 14-130. Repurchase of conservation easements.

That Section 14-130 of the Durham County Code of Ordinances in hereby amended to read as follows:

(a) *General.* The designation of agricultural priority areas and the subsequent purchase of conservation easements is intended to create areas with sufficient amounts of contiguous agricultural and/or open space land to facilitate the permanent agricultural and/or open space use of the land. While program activity will be directed toward that goal, success is dependent on the voluntary participation of landowners. If a landowner or several owners of small tracts are the only participants in their area, the goal may not be achieved. These landowners could become land locked by development and agricultural activity and/or open space use may become impractical. In such a situation it may be in the best interest of the landowner and the public to allow repurchase of the conservation easements for the property in question. Other circumstances could also affect a property's suitability for continued agricultural and/or open space use. Repurchase of conservation easements by a landowner is foreseen as an unusual and infrequent occurrence, and would take place with the concurrence of the Farmland Board and the BOCC.

(b) *Repurchase procedure.* A landowner requesting a review of his property for possible repurchase of conservation easements should do so by certified letter to the Durham County Manager. The letter should state the reason for the request and the date that the property was entered into the program. Upon approval in principle to the repurchase, the landowner must submit two appraisals of value for the property in question. One appraisal will establish the fair market value of the property at its current highest and best use. The second appraisal will establish the value of the property for agricultural or open space use. Other appraisals will be secured as necessary. The Farmland Board will review the appraised values and recommend to the BOCC to either repurchase the property or decline to repurchase the property. If a repurchase price is approved by the Farmland Board of commissioners, the landowner will be notified. If the price is acceptable to the landowner, he/she will submit a written offer to purchase the conservation easements. If this offer is granted by the county, closing proceedings will begin. The county may accept the bid and advertise for upset bids. When legal documents are prepared and adequate financing is available, a date, time, and location for closing will be agreed upon. Payment shall be made directly to the county at closing by a certified check or equivalent payment.
(Ord. No. 7-12-99, § V)

Sec. 14-131. Property use restrictions.

That Section 14-131 of the Durham County Code of Ordinances is hereby amended to read as follows:

In addition to restrictions set out elsewhere in these guidelines, the following restrictions will generally apply to property included in the purchase, acquisition of determinable conservation easements or donation of conservation easements. Individual easement parameters, restrictions, reserved rights and conservation purposes will be negotiated with the landowner by county staff with subsequent approval by the county attorney prior to any BOCC action.

- (1) Residences permitted on the land from which conservation easements have been conveyed are existing dwellings and the replacement of existing dwellings. Request for additional dwellings shall be considered on a case-by-case basis.
- (2) All permitted nonagricultural structures shall, when feasible, be located in the immediate vicinity of existing structures, described as homestead or curtilage, as reasonable expansions of the homestead or curtilage or on the area(s) of the property of least productive capability. Such permitted structures shall, when feasible, utilize existing or common driveways, lanes or rights-of-way.
- (3) The extraction of minerals by surface mining and extraction and removal of topsoil from the property are prohibited. The extraction of subsurface or deep-mined minerals, including natural gas and oil, and the noncommercial extraction of minerals including limestone, shale and other minerals shall be permitted, as long as the removal activity does not significantly diminish the agricultural potential of the land.
- (4) Use of the property for dumping, storage, processing, or landfill of nonagricultural solid waste generated off-site is prohibited. Land application of biosolids is acceptable.
- (5) Use of the property for dumping, storage, processing, or landfill of hazardous or nuclear waste is prohibited.
- (6) Signs, billboard, and outdoor advertising structures may not be displayed on the property except to state the name of the property, farmland status, the name and address of the occupant, to advertise an on-site activity and to advertise the property for sale or rent, as allowed by the county sign ordinance.
- (7) Agricultural land will be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially or irretrievably diminish the productive capability of the property.

- (8) County officials shall have the right to enforce these restrictions by injunction and all other appropriate proceedings allowable by law. Representatives of the county may enter upon the property for the purposes of inspection concerning compliance with the farmland protection program.
 - (9) The county will hold the conservation easements in public trust for farmland protection and/or open space purposes and will not voluntarily assign these rights except to another organization bound to hold such rights for the same purposes.
 - (10) All tracts of land from which conservation easements were purchased with federal or state funds will be subject to federal and state regulations concerning farmland protection.
 - (11) Timbering operations. Clear cutting of timber is not allowed. A request to waive this restriction will be considered only if a valid management plan prepared by a registered forester or consulting forester, is submitted with the request.
- (Ord. No. 7-12-99, § VI)

Sec. 14-132. Durham County Farmland/Open Space Protection Program Guidelines
Farmland Ranking System.

That Section 14-132 of the Durham County Code of Ordinances in hereby amended by being deleted.

Public Hearing on the 2003-04 Recommended Budget

The Board of County Commissioners conducted a public hearing to receive citizen input on the FY 2003-2004 recommended budget. To be able to hear from all interested citizens, the Chairman set a time limit of three minutes for each speaker.

County Manager's Recommendation: The Manager recommended that the Board receive input from speakers and incorporate in the deliberations prior to finalization of next fiscal year's budget.

Chairman Reckhow welcomed all the citizens who had come to speak and thanked them for their interest in the budget.

Chairman Reckhow remarked that the Commissioners have received much public input regarding the schools' budget and animal protection issues. She wished to briefly respond to many of the comments by clarifying that the Board of County Commissioners has not made a decision on the schools' budget. In fact, the schools' budget has not been actively considered. The Commissioners received the document from the school board about two weeks ago. The Board will be meeting with school representatives next week

to begin budget discussions. This budget public hearing was scheduled early in the process to allow public input before any decisions are made. The schools' budget document requests a \$1.1 million increase. This was unanimously adopted by the school board at a meeting in April. Since then, the General Assembly has been meeting and discussing budgets at the state level. Both the House and Senate have made cuts that greatly impact our schools. The Board of Commissioners and the Durham Legislative Delegation must discuss this issue. A loss of as many as 200 teaching positions was referenced in correspondence from citizens. Most of those teaching positions would be affected by possible state cuts, not by decisions being made at the local level. The Board of County Commissioners is working with the school board on a \$105 million bond referendum for this coming fall. At a joint meeting with the County Commissioners and the Durham Public Schools Board of Education to discuss capital improvement projects, the school board did brief the Commissioners on possible state cuts. The Commissioners' response was that the two boards would stay in communication and work together as more information regarding the state cuts unfolds. The Durham County Commissioners have a record of being very generous to Durham Public Schools, which is one of the top-funded systems in the state. The Board of County Commissioners wants the school system to continue to move forward; we will not back off from our commitment to education. Chairman Reckhow encouraged citizens to direct their energy to the state by communicating with our state delegation about the serious nature of the school system cuts.

Chairman Reckhow recognized Durham Public Schools Board of Education Chairman Kathryn Meyers to make some clarifying comments.

Ms. Meyers made the following remarks:

Thanks for the invitation and to all the parents and citizens who are here tonight to speak in support of Durham Public Schools.

On April 24, 2003, the Board of Education adopted, on a unanimous vote, a budget of \$250 million for Durham Public Schools for FY 2003-2004. This budget includes \$83.5 million in local funds, an increase of \$1.1 million over last year. Dr. Denlinger and the school board will be meeting with the Commissioners in the coming weeks to secure passage of this budget. The budget approved by the board does not include cuts to athletics, AIG instruction, or Exceptional Education. Every school has some flexibility with the budget at the school level. Dr. Denlinger has assured the board that all principals have been advised to include their site-based decision-making committees in budget decisions that are appropriate to the local schools.

We are very concerned about the anticipated cuts to Durham Public Schools funding from the state, which, in the worst-case scenario, total \$4.2 million, about 3 percent. Last Thursday, the school board agreed to stay the course with our current budget proposal. When we know exactly how the state budget will impact our school system, we will share

that information with the County Commissioners and work with them to secure additional funding for teachers, if possible.

The school board will work to mitigate any confusion that might arise from comments related to the schools' budget that may emerge from your public hearing this evening.

The school board is absolutely committed to sustaining significant progress in student achievement for ALL students. While we are realistic about these challenging fiscal times, we cannot and will not compromise our goals. Thank you.

Chairman Reckhow opened the public hearing which was properly advertised.

Alison Baillie, 3943 Colorado Avenue, Durham 27707, is one of 140 volunteers who contribute over 500 total hours each month at the Animal Shelter. Volunteer help is vital to shelter operations. Staff works very hard under very stressful circumstances for very modest pay. The average hourly rate is \$8.50. Projected County funding of \$366,000 does not cover the cost of salaries and benefits, which are projected at \$422,000 for next year. The new expansion to open at year's end will ease the overcrowding but will compound the problem of funding. She commented on the dedication of staff and volunteers and the excellent way in which the shelter is operated. She asked the County Commissioners to support the Animal Protection Society's request for additional funding so the community can be proud of the shelter.

Carol L. O'Brien, 3904 Chippenham Rd, Durham 27707, Durham resident and long-time supporter of the Animal Protection Society of Durham County, was concerned about the \$54,000 shortfall in the shelter's operating budget. She was concerned about the implications for the animals and for the community. She is personally involved in helping to raise private support for the shelter, but enough money cannot be raised to run the shelter properly. Please consider supporting the Animal Protection Society's request for additional funding so the shelter can continue to promote the health, safety, and welfare of the animals and the community.

Victoria Peterson expressed that the Commissioners should hold more than one budget public hearing and that citizens should be allowed more than three minutes to speak. She spoke about the serious problem of crime in the African-American community. She said that our public officials refuse to address this issue. She asked that the County implement apprenticeship programs instead of continuing to put poor, uneducated, African-Americans in jail.

Vice-Chairman Bowser asked the County Attorney to speak to the comment made by Ms. Peterson that the court system receives approximately \$12 million in annual revenue from fines and other fees.

County Attorney Kitchen responded that all fines from the courts go to the school system. The facilities fees, which are charged for court costs for both criminal and civil cases, come back to the County by statute and must be used for support of the courts.

Warren Harris, 9 East Gleewood Place, Durham 27713, was speaking on behalf of the Personnel Advisory Committee which represents the personnel and employee benefit concerns of DSS employees. Mr. Harris gave the Commissioners a handout which referenced the number of DSS employees potentially eligible for County services. We have employees who reluctantly receive public assistance benefits to help supplement their economic and healthcare needs. Our agency and staff are working hard to help families become self-sufficient, yet the County does not pay a living wage that allows its workers to support their families without public assistance. His request was that the County Commissioners maintain the 5 percent step increase and longevity pay, with no increase in health insurance.

Diana Palmer, 12 Cottage Woods Court, Durham 27713, represented the Southwest Elementary School PTA. She encouraged the County Commissioners to re-assess their budget allocation for Durham Public Schools. There is no way that the school system can function with the \$1.1 million budget increase; \$4.7 million is needed. She presented a petition with 2,350 signatures encouraging the Commissioners to fully fund Durham Public Schools. Parents and teachers have been asked to write their state legislators demanding more funding for education. We encourage the County Commissioners to make education your top priority.

John Lubans, 2507 Sevier Street, Durham 27705, represented Friends of the Library and asked the Commissioners to thoughtfully consider the Library's budget request. The Library helps citizens of all ages. He thanked the Commissioners for their past, present, and future support of the Library.

Stephen Hopkins, 920 Wadesboro Street, Durham 27707, thanked the Commissioners for their consistent support for Northeast Central Durham, District 1 PAC. He reminded the Commissioners of the upcoming projects in the district and asked that they continue their support through DSS and Cooperative Extension budgets.

Robert H. Wilkinson, 148 Pinecrest Road, Durham 27705, President of Friends of the Library, was representing a total of 735 volunteers at the Library. He gave the Commissioners statistics regarding the number of citizens who utilize the library, its materials, and its programs. Library budgetary cuts may be a short-term solution but will haunt our future with a less-informed, less-productive citizenry. He requested support and approval of the County Public Library budget as defined by Library Director Phillip Cherry.

Lorisa Seibel, 2410 Par Place, Durham 27705, represented E. K. Powe PTA. She commended the Commissioners for their past support of Durham Public Schools and asked that revenues be raised, if necessary, to support the schools' budget.

Afiya Carter, 1712 Bivins Street, Durham 27705, Co-Chair of the E. K. Powe Site-Based Decision-Making Committee, voiced her concerns about losing teachers. One position lost is one position too many. She demanded that our schools remain safe from budget cuts. The least our society can do is provide a basic, meaningful education to prepare the children of today for a brighter future tomorrow.

Sherry Kurtz, 125 Celeste Circle, Chapel Hill 27517, spoke on behalf of her seven- and three-year-old children. She expressed the potential harm to our students if teacher and teacher assistant positions are cut. Parkwood Elementary is housing 980 students but was build for 650 students. This overcrowding causes many problems. Her true concern was for the future. Overcrowding, larger classes, and limited resources must stop. Please watch guard the funds which will provide for the future of our children and for Durham. Please provide adequate funding for our schools. State budget cuts are Durham County's problem because these are Durham County's children.

Laura Yost-Grande, 2208 Copeland Way, Chapel Hill 27517, was concerned about adequate, long-term funding solutions for educating our children in the Durham Public Schools. She praised Parkwood Elementary for the excellent job it does in educating its children. Progress in education takes dedicated teachers, teacher assistants, parents, students, administrators, elected officials, and money. She proposed that the Commissioners prayerfully explore and consider some long-term solutions to the budget crisis such as impact fees on new houses and a special tax assessment for schools. She asked for a collaborative effort between the County Commissioners, Durham Public Schools, City Council, teachers, parents, and citizens of Durham to solve this ongoing budget issue.

Joe Becton, 808 E. Pettigrew Street, Durham 27701, Finance Chairman of the John Avery Boys and Girls Club Board of Directors, asked for a favorable response to the club's request for \$35,000 which will assist the organization in maintaining essential services for the next fiscal year. The club was established in 1939 and was the first African-American youth club in North Carolina. It is a local affiliate of the National Boys and Girls Club of America and a participating agency of the United Way. This non-profit organization is devoted to preparing disadvantaged youth, ages 6 through 18 from all racial and cultural backgrounds, to live in today's society by delivering services that meet their educational, cultural, health, and character development needs. The club has one main facility at 808 E. Pettigrew Street and two satellite branches. Annual membership fees are \$10. Mr. Becton stated that his purpose was to heighten the Commissioners' awareness of the excellent, positive program. The John Avery Boys and Girls Club is deserving of the \$35,000 request.

W. Floyd Laisure, 808 E. Pettigrew Street, Durham 27701, Executive Director of the John Avery Boys and Girls Club, reiterated the remarks of Mr. Becton. The club is a pillar in this community, a safe-haven from drugs and crime, and makes positive changes in this community for our young people.

Mark Goodwillie, 808 E. Pettigrew Street, Durham 27701, John Avery Boys and Girls Club Board member, identified with the Commissioners' tough budget choices for FY 2003-04. Each speaker has advocated for a good cause. John Avery Boys and Girls Club has a track record of success. If boys and girls are led the way, they will take the initiative. Please give the financial capital necessary for the continued success of this club.

Elaine C. Hyman, 808 E. Pettigrew Street, Durham 27701, President of the Board of Directors for the John Avery Boys and Girls Club, told of the successes of the club. She gave the history of one particular 11-year club member and told how the club made a difference in her life. Please look favorably on the request from the John Avery Boys and Girls Club.

Larry Stroud, 412 Quartz Drive, Durham 27703, teacher assistant at Southwest Elementary School, asked that the Commissioners please fight to maintain the current number of teachers and assistants.

Ellen R. Granger, 1109 Queensbury Circle, Durham 27713, is Treasurer of the Animal Protection Society of Durham. The Animal Protection Society is a nonprofit organization which contracts with the County to operate the Animal Shelter in Durham. The FY 2003-04 projected budget is \$498,000. Salaries and benefits total 85 percent of the budget or \$422,000. Eleven percent (\$56,000) is for animal care, two percent for administration, and two percent for van, utilities, and miscellaneous. Payroll is our greatest expense. The shelter must be staffed seven days a week with only three staff per shift. Volunteers help significantly with shelter needs. We are requesting \$390,000, with a current budgeted amount of \$335,000 to \$340,000, a \$50,000 difference. The Animal Protection Society contributes a total of \$81,600 to the shelter. Animals need to be treated well and with respect. Please fund the budget request.

Joyce C. Nichols, 2014 Athens Street, Durham 27707, representing Hillside PTA and John Avery Boys and Girls Club, asked that the Commissioners look favorably on both budget requests. She asked the parents to write to our state legislators.

Karen Alexander, 3619 Ranbir Drive, Durham 27713, expressed disappointment in the three levels of leadership in Durham—Durham County Government, Durham City Government, and the Durham Public Schools Board of Education. The main problem is that the three elements of government are top-heavy. Top administrators are receiving huge salaries and a larger percentage salary increase than staff. Everyone needs to

sacrifice, especially the top administrators. She asked that the John Avery Boys and Girls Club be given its funding request.

Minora Sharpe, 721 Stone Lion Drive, Durham 27703, asked that the Commissioners approve the schools' budget request.

Delores Eaton, 126 Masondale Avenue, Durham 27707, read a portion of an article from Nations Magazine and asked the Commissioners to reduce the budget by reducing administrators' salaries.

Donna Fudale, 15 Belthrope Drive, Chapel Hill 27517, was concerned that the potential cuts to the schools' budget would eliminate the services her children need. She doesn't believe that citizens will vote to approve the 2003 bond issue to build more schools if Durham cannot afford to staff its existing schools.

Mike Spears, 1212 Red Oak Ave, Durham 27707, represented the Durham Committee on the Affairs of Black People. He spoke in support of funding the John Avery Boys and Girls Club. As a past member, he received very positive recreational, educational, and social skills. The club is keeping many children off of the streets. Also, it is necessary to fund the schools at its current requested amount. The Commissioners must look at the enormous salaries of our top administrators. The number of teachers should not be reduced. Our tax dollars should be spent more wisely.

E. L. Allison, Durham Committee on the Affairs of Black People, felt that the County Manager should be congratulated for recommending no increase in property taxes, no reduction in staff, and no elimination of services. The Board should also be congratulated. However, we must look at the large salaries of top administrators who are making six figures. The evaluation process for these employees/officials should be examined. Why are the schools understaffed and over capacity? Don't cut teachers and don't raise taxes. We need some answers to our questions and concerns.

Steven Matherly, 2022 W. Club Blvd., Durham 27705, representing People's Alliance, understands the difficulty in putting together a balanced budget which addresses the needs of Durham County taxpayers. We believe that the Commissioners do their best. The People's Alliance feels that property owners in Durham would accept a property tax increase rather than compromise the schools' and DSS budgets. It is not wise to cut public school programs. He was against the American Tobacco Project. These monies should be spent on strategies that work, such as first-rate education and fully-funded social programs. The money should not be spent enticing wealthy companies.

Chairman Reckhow thanked the citizens for their comments at the public hearing. These comments will be taken into account as the Commissioners deliberate over the next four weeks to finalize the budget.

Chairman Reckhow declared the public hearing closed.

Preliminary Resolutions for Financing the American Tobacco Project and General Obligation Bonds

The Board was requested to approve the preliminary resolutions for the financing of the American Tobacco Project and the General Obligations Bonds to be voted on this November. The American Tobacco Project involves the beginning of the financing for the South Deck. It is anticipated that the financing will be through a private placement financing pursuant to G.S. § 160A-20. A public hearing will be necessary, and a resolution calling for the hearing and making certain required findings will be brought to the Board at a subsequent meeting.

The preliminary resolution for the General Obligation Bonds also begins the process toward calling for a referendum in November. The final decision on whether to call for the referendum will not be made by the Board until the end of June; however, it is necessary to begin the work on the financing issue due to time constraints involved with a referendum.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: The County Manager recommended that the Board approve the two resolutions with separate motions in order to begin the financing processes.

Chairman Reckhow asked County Attorney Kitchen to explain this item to the Board.

County Attorney Kitchen explained that these preliminary resolutions will enable us to present the applications to LGC. This is the beginning of the financing process. The Board of Commissioners will have the opportunity to decide to go forward with these two financings in the future. Both of the matters will come back to this Board in June to introduce the bond order for the November bonds and to have findings on American Tobacco that reflect the bids and interest rates and to select a financial institution.

County Manager Ruffin informed the Board that at the June 9, 2003 Worksession, time will be allotted to review the CIP, the proposed projects for the 2003 bond referendum, and the voter opinion poll.

Vice-Chairman Bowser asked why a bond counsel (Robinson, Bradshaw & Hinson, P.A.) from Charlotte was used. Shouldn't we utilize our law firms here in Durham?

County Attorney Kitchen responded that the County has been doing business with this particular bond counsel for some time. It is one of the most respected bond counsels in the state.

Commissioner Jacobs asked about the estimated tax increases related to the bonds and debt instruments.

County Attorney Kitchen, County Manager Ruffin, and Keith Lane, Senior Budget Analyst, responded to Commissioner Jacob's question.

After additional discussion, the following motion was made:

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the Resolution Relating to an Installment Financing Agreement to Finance the Cost of Constructing Certain Off-Street Parking Facilities.

The motion carried unanimously.

The resolution follows:

**RESOLUTION RELATING TO AN INSTALLMENT FINANCING
AGREEMENT TO FINANCE THE COST OF CONSTRUCTING CERTAIN
OFF-STREET PARKING FACILITIES OF THE COUNTY OF DURHAM,
NORTH CAROLINA**

WHEREAS, the County of Durham, North Carolina (the "County"), American Campus, LLC and Capitol Broadcasting Company, Incorporated have negotiated a Development Agreement on redeveloping the former American Tobacco Complex facilities located in the downtown area of the City of Durham, North Carolina (the "Development Agreement"); and

WHEREAS, the County is obligated pursuant to the Development Agreement to fund the cost of a project consisting of the design, development and construction of certain off-street parking facilities, containing approximately 1,140 parking spaces and called the South Garage, and the acquisition of land therefor as described in the Development Agreement (the "Project"); and

WHEREAS, the County is considering entering into an installment financing agreement and certain related documents pursuant to Section 160A-20 of the North Carolina General Statutes, as amended, for the purpose of providing funds in an amount not to exceed \$15,000,000, with any other available funds, for the construction and other accomplishment of the Project; and

WHEREAS, it is necessary to take certain related action at this time:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County as follows:

Section 1. The County Manager, the Finance Director and the County Attorney of the County are each hereby designated as a representative of the County to file an application for approval of such proposed installment financing agreement with the Local Government Commission of North Carolina and are authorized to take such other actions as may be advisable in connection with the negotiation of such proposed installment financing agreement and the development of the related financing; and all actions heretofore taken by any of such officers or any other officer of the County relating to such matter on behalf of the County are hereby approved, ratified and confirmed.

Section 2. The law firms of Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina, and Marsh and Marsh, Attorneys at Law, Durham, North Carolina, are hereby confirmed as co-special counsel of the County in connection with such proposed installment financing agreement.

Section 3. This resolution shall take effect immediately upon its passage.

Commissioner Heron moved, seconded by Commissioners Jacobs, to approve the Resolution Relating to the Authorization of General Obligation Bonds of the County of Durham, North Carolina.

The motion carried unanimously.

The resolution follows:

**RESOLUTION RELATING TO THE AUTHORIZATION OF GENERAL
OBLIGATION BONDS OF THE COUNTY OF DURHAM, NORTH CAROLINA**

WHEREAS, the Board of Commissioners for the County of Durham, North Carolina (the "County"), is considering authorizing the issuance of general obligation bonds of the County pursuant to Article 4 of Chapter 159 of the North Carolina General Statutes, as amended, for the purpose of providing funds, with any other available funds, for various purposes, as follows:

(a) \$105,315,000 School Bonds with voter approval for erecting, remodeling, enlarging and reconstructing school buildings and other school plant facilities and acquiring necessary land, rights of way, furnishings and equipment therefor,

(b) \$8,345,000 Community College Bonds with voter approval for expanding and improving the facilities for Durham Technical Community College at its main campus in the City of Durham, including the construction of an additional building and additional parking facilities and sidewalks, the expansion and improvement of an existing building, the improvement of other facilities and the acquisition of necessary furnishings and equipment therefor,

(c) \$5,280,000 Museum Bonds with voter approval for enlarging and improving exhibits, parking facilities, visitor facilities, offices and maintenance facilities at the North Carolina Museum of Life and Science, and

(d) \$4,725,000 Library Facilities Bonds with voter approval for providing additional library facilities of the County, including the construction of a branch library in the southern area of the County and the acquisition of necessary furnishings and equipment therefor, and

WHEREAS, it is necessary to take certain related action at this time:

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the Board of Commissioners for the County, as follows:

Section 1. Said Board hereby finds and determines in connection with authorizing the issuance of such bonds that (i) the proceeds of such School Bonds and Community College Bonds will be used to finance a portion of the costs of the respective projects determined to be needed by The Durham Public Schools Board of Education (the "Board of Education") and The Trustees of Durham Technical Community College (the "Trustees") to meet urgent needs for additional and improved school facilities and technical community college facilities to serve the residents of the County and the proceeds of such bonds other than such School Bonds and Community College Bonds will be used to finance a portion of the costs of the respective projects to meet urgent needs for facilities or provide desirable facilities to serve the residents of the County and, accordingly, the issuance of such bonds (collectively the "Bonds") is necessary or expedient for the County, (ii) the principal amounts of the Bonds are adequate and not

excessive for the proposed respective purposes of the Bonds because they are based upon best estimates of the Board of Education and the Trustees in the case of such School Bonds and Community College Bonds and the County in the case of the Bonds other than such School Bonds and Community College Bonds of the costs of the respective projects and will be supplemented with other funds to be adequate for the respective purposes of the Bonds, (iii) the County's debt management procedures and policies are good and will be managed in strict compliance with law, (iv) the increase in taxes necessary to service the Bonds will not be excessive because it is expected that any increase in taxes will not exceed four and thirty hundredths cents (4.30) per one hundred dollars (\$100) of the appraised value of property subject to taxation by the County and (v) the Bonds can be marketed at reasonable rates of interest.

Section 2. The County Manager, the Finance Director and the County Attorney of the County are each hereby designated as a representative of the County to file an application for approval of the Bonds with the Local Government Commission of North Carolina and are authorized to take such other actions as may be advisable in connection with authorizing the issuance of the Bonds; and all actions heretofore taken by any of such officers or any other officer of the County relating to such matter on behalf of the County are hereby approved, ratified and confirmed.

Section 3. The law firms of Robinson, Bradshaw & Hinson, P.A., Charlotte, North Carolina, and Marsh and Marsh, Attorneys at Law, Durham, North Carolina, are hereby confirmed as co-bond counsel of the County in connection with the authorization and issuance of the Bonds.

Section 4. This resolution shall take effect immediately upon its passage.

Adjournment

Chairman Reckhow adjourned the meeting at 8:55 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board