

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

Monday, April 28, 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

Commissioner Heron wished to add an item concerning House Bill 397, which is pending in the Legislature and will impact Durham County.

Vice-Chairman Bowser added an item regarding the dangerous intersection of Moores Mill and Red Mountain Roads in Rougemont. Also, he wanted to talk about the potential erection of a state mental health hospital in this area.

Chairman Reckhow added an outgrowth from the 4:00 p.m. BOCC/Durham Public Schools Board of Education joint meeting. The Commissioners should consider contacting the General Assembly regarding major cuts to the schools budget.

Chairman Reckhow wished to inform the Board of a meeting held last Monday with Congressman David Price. She and Commissioner Cousin attended the meeting. Chairman Reckhow wished to inform the Board of the items discussed; therefore, each Commissioner was given an agenda for review. At the meeting, Congressman Price committed to helping the Board on these actions.

Minutes

Commissioner Heron referenced the following paragraph in the February 10, 2003 Special Session Minutes: "Chairman Reckhow suggested that the Commissioners and

the Legislators have a follow-up meeting in the spring to see how the legislative session is going. The Delegation could give the Board a report from the General Assembly.”

Commissioner Heron asked for some feedback regarding this follow-up meeting.

Chairman Reckhow said that she and Public Information Director Deborah Craig-Ray have discussed scheduling another meeting. It would be good to discuss the status of the bills that the Board has asked the Legislators to introduce. She directed Ms. Craig-Ray to set up a meeting in the next two to three weeks.

Ms. Craig-Ray reminded the Board of the May 14, 2003 Legislative Briefing with the North Carolina Association of County Commissioners. At that time, a meeting could be coordinated in Raleigh with the Legislators, or a meeting could be scheduled in Durham.

Chairman Reckhow preferred having the meeting in Durham.

Ms. Craig-Ray said that she would contact the Delegation and schedule the meeting.

Vice-Chairman Bowser referred to the following paragraph in the February 10, 2003 Special Session Minutes: “Vice-Chairman Joe Bowser asked what the Commissioners could do to prevent the State of North Carolina from closing the North Carolina Department of Revenue office in Durham.” He asked County Manager Ruffin if he had heard a response from the State.

County Manager Ruffin answered that a letter had been written to NC Department of Revenue Secretary Norris Tolson, but he had received no response.

Chairman Reckhow stated that she had received a letter of response about three weeks ago and distributed it to all the Commissioners in their mailboxes. The letter stated reasons why the decision was made to close the Durham office.

Vice-Chairman Bowser suggested that a letter be sent to our Legislative Delegation and to Governor Easley explaining the Board’s displeasure that Durham residents will have to travel to the NC Department of Revenue office in Raleigh.

Chairman Reckhow directed that a letter be sent to Governor Easley and copied to our Legislative Delegation. She also asked that the County Manager obtain data on which offices are remaining open so specific points can be made in the letter.

Vice-Chairman Bowser added that Greensboro and Winston-Salem should be compared to Durham and Raleigh. Why are both of those offices remaining open? Also, the high volume of traffic between Durham and Raleigh and parking should be issues in favor of keeping the Durham office open.

Commissioner Jacobs said the letter stated that one of the primary reasons for closing the Durham office was low usage. She suggested that additional data be collected on the usage and maybe that would help.

Commissioner Heron moved, seconded by Commissioner Cousin, to approve the February 10, 2003 Special Session Minutes and the April 14, 2003 Regular Session Minutes of the Board as submitted. The January 6, 2003 Worksession Minutes were approved with corrections.

The motion carried unanimously.

Presentation of the Durham Careers in Hospitality

Hospitality is one of the largest and fastest-growing career clusters in the world. Already hospitality is the fifth-largest employment segment of Durham's economy. Durham is preparing for this growth in its lodging, food service, entertainment, retail, and transportation industries. Durham Careers in Hospitality (DCIH) is a workforce partnership between the Durham Convention & Visitors Bureau and Durham Public Schools for the purpose of generating career awareness with elementary students, career exploration with middle school students, and career experience with high school students.

Currently DCIH is active at the following four Durham schools and involves approximately 200 students:

Eno Valley Elementary
Carrington Middle School
Hillside High School
Northern High School

The DCIH program provides opportunities for young people and their parents to explore careers in the visitor sector as well as hands-on projects based on real-world tasks.

Resource Person(s): Michael Martino, Vice Chair of the Durham Careers in Hospitality Task Force

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

Chairman Reckhow wished to commend area hotels that are providing internships for participating students. This is a great opportunity.

Mr. Martino gave his presentation. The overall objective or mission of the partnership is to teach young people that hospitality is not just hotels and restaurants. It is so much

more. A task force was created and given the responsibility of helping communicate the message of career awareness in the industry. Tours were scheduled for students to visit the malls, hotels, and restaurants as workers to understand operations, inventory, sales, menu preparation, etc. The students have seen the potential for great careers in hospitality. The partnership has been very successful in its first year.

Chairman Reckhow expressed appreciation to Mr. Martino for coming to the meeting and sharing the information with the Commissioners.

Annual Durham County Commissioners' Great Family Fun Walk

The annual Durham County Commissioners' Great Family Fun Walk, which raises money to support recreational programs in the schools, will be held on Saturday, May 3, 2003 at 9:00 a.m. The walk will begin at the Edison Johnson Recreation Center.

Resource Person(s): Artie Kamiya, Chairman of the Durham Fitness Council

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

Mr. Kamiya gave a brief presentation on this 5th annual walk. He told of a new, expanded event called "Be Active, North Carolina." The goal is to sign up thousands of individuals from across the county to log one million minutes of physical activity.

Chairman Reckhow thanked Mr. Kamiya. She recognized Tom White, President/CEO of the Chamber of Commerce, who was in the audience and mentioned the City of Medicine Road Race, which also will be held on Saturday, May 3 and will begin at the Durham County Stadium at 8:30 a.m.

Consent Agenda

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

- (a) Appointments to Durham Workforce Development Board (approve the appointment of Chairman Reckhow and Vice-Chairman Bowser to the Durham Workforce Development Board);
- *(b) Budget Ordinance Amendment No. 03BCC000060— Fire Marshal—Recognition of Federal Grant Monies Disbursed Through State Emergency Management—"Continuity of Operations/Government" (approve Budget Ordinance Amendment No. 03BCC000060 to recognize funds of \$27,200 in federal grant monies disbursed through NC Emergency Management);

- * (c) Budget Ordinance Amendment No. 03BCC000061— Fire Marshal—Recognition of Federal Grant Monies Disbursed Through State Emergency Management— “Weapons of Mass Destruction” and “Exercise Funding” (approve Budget Ordinance Amendment No. 03BCC000061 to recognize the amount of \$74,953 in federal grant monies disbursed through NC Emergency Management);
- (d) Public Health—Authorization to Accept Donation of the Tooth Ferry Dental Van from Duke University Medical Center (accept this asset and approve completion of the paperwork to conclude the transfer);
- (e) Reschedule May 26, 2003 Regular Session (reschedule the May 26, 2003 Regular Session to Tuesday, May 27, 2003 beginning at 7:00 p.m. due to the Memorial Day Holiday);
- * (f) Interlocal Cooperation Agreement for Sales Tax Distribution (approve the Interlocal Agreement in order for the County to receive the increased revenues); and
- (g) Exemption of Architect Contract (exempt the architect’s contract to evaluate the YMCA Daycare building from the bidding requirements).

The motion carried unanimously.

Commissioner Heron wished to make comments regarding consent agenda item Nos. 4(b) and 4(c). She suggested that representatives from Durham County Animal Control and the Animal Shelter be included in the decision-making process for the disaster plan. During the December ice storm, a great need arose for housing pets.

Chairman Reckhow directed the County Manager to write a thank-you letter to the Chancellor of the Duke Health System for donating the Tooth Ferry van (consent agenda item No. 4[d]).

*Documents related to these items follow:

Consent Agenda 4(b). Budget Ordinance Amendment No. 03BCC000060—Fire Marshal—Recognition of Federal Grant Monies Disbursed Through State Emergency Management—“Continuity of Operations/Government” (approve Budget Ordinance Amendment No. 03BCC000060 to recognize funds of \$27,200 in federal grant monies disbursed through NC Emergency Management).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000060

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	\$262,276,294	\$27,200	\$262,303,494

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$33,940,913	\$27,200	\$33,968,113

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

This the 28th day of January, 2003.

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

Consent Agenda 4(c). Budget Ordinance Amendment No. 03BCC000061—Fire Marshal—Recognition of Federal Grant Monies Disbursed Through State Emergency Management—“Weapons of Mass Destruction” and “Exercise Funding” (approve Budget Ordinance Amendment No. 03BCC000061 to recognize the amount of \$74,953 in federal grant monies disbursed through NC Emergency Management).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2002-03 Budget Ordinance
Amendment No. 03BCC000061

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	\$262,303,494	\$74,953	\$262,378,447

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 33,968,113	\$74,953	\$ 34,043,066

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

This the 28th day of January, 2003.

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

Consent Agenda 4(f). Interlocal Cooperation Agreement for Sales Tax Distribution (approve the Interlocal Agreement in order for the County to receive the increased revenues).

The interlocal agreement follows:

**INTERLOCAL COOPERATION AGREEMENT FOR THE DIVISION OF SALES
TAX BETWEEN THE COUNTY OF DURHAM AND THE CITY OF DURHAM**

This Agreement made and entered into as of the 1st day of July 2003, between the County of Durham, a political subdivision of the State of North Carolina, hereinafter referred to as the "County" and the City of Durham, a North Carolina municipal corporation, hereinafter referred to as the "City";

WITNESSETH:

WHEREAS, the governing bodies of the County and the City, in lieu of the County changing the method of sales tax distribution, have passed resolutions in April 1995 setting forth a method of distribution of sales tax which would be fair and equitable to both governments; and

WHEREAS, the Board of County Commissioners has enacted an additional one-half cent sales tax under the authority given by the General Assembly to help off-set the loss of reimbursements by the State of North Carolina; and

WHEREAS, the amount of sales tax revenues received by the City is projected to produce an excess of revenue over lost reimbursements, and the amount of sales tax revenues received by the County is projected to produce a deficit of revenue over lost reimbursements for a period of years until there is additional growth in sales tax revenues; and

WHEREAS, the North Carolina General Statutes in Chapter 160A, Article 20, Part 1, provide that units of local government may enter into agreements in order to execute an undertaking providing for the contractual exercise by one unit of any power,

function or right of another unit:

NOW THEREFORE, for and in consideration of mutual covenants contained herein and the mutual benefits to result therefrom, the parties hereby agree as follows:

1. DEFINITIONS:

- A. Prior Sales Tax: The First One-Cent, the First Half-Cent, and Second Half-Cent Local Government Sales and Use Taxes as authorized in Articles 39, 40, and 42 of Chapter 105 of the General Statutes of North Carolina.
- B. New Half-Cent Sales Tax: The Third Half-Cent Local Government Sales and Use Tax as authorized in Article 44 of Chapter 105 of the General Statutes of North Carolina.

2. PURPOSE: The purpose of this Agreement is to provide for the continued distribution of sales tax revenues between the City and County of Durham in a fair and equitable manner. This Agreement is adopted in lieu of the Board of County Commissioners changing the method of distribution of Sales Taxes from the *per capita* method of distribution to the *ad valorem* method of distribution. It is further the purpose of this Agreement to provide for a more certain method of distribution in order for both governing bodies to better plan budgets.

3. DISTRIBUTION OF SALES TAX REVENUES:

- A. Method of Distribution. The sales tax revenues will continue to be distributed on a *per capita* basis between the County of Durham and its municipalities.
- B. Prior Sales Tax and New Half-Cent Sales Tax. Upon distribution of the Prior Sales Tax and New Half-Cent Sales Tax revenues by the Secretary of Revenue and receipt of same by the County and its municipalities, the total will be ascertained and of this total, minus the amount distributed to the Town of Chapel Hill and the City of Raleigh, the County will be entitled to 56.86 percent and the City will be entitled to 43.14 percent. The County will also be entitled to an additional payment from New Half-Cent Tax revenues as provided in Subparagraph "3C".
- C. New Half-Cent Sales Tax. After the distribution described in Subparagraph "3B", the City shall retain the first three million eight hundred twenty-six thousand two hundred forty-eight dollars (\$3,826,248.) of the revenue received by it from the Secretary of Revenue of the New Half-Cent Sales Tax in any given fiscal year. Of any amount of New Half-Cent Sales Tax revenues the City receives from the Secretary

of Revenue over and above three million eight hundred twenty-six thousand two hundred forty-eight dollars (\$3,826,248.) in any given fiscal year, the City will remit fifty percent (50%) of that amount to the County.

- D. Time of Remittance. The City shall remit the above sales taxes to the County on a monthly basis by wire transfer.
4. RECORDS AND AUDITS:
- A. Records. Records maintained by the City showing the amount received from the Secretary of Revenue and the calculation of the amount distributed to the County shall be available for inspection at any time to the County upon reasonable notice to the City.
- B. Audits. The County may, at its own expense, provide for an audit of the records relating to sales taxes owed the County and received by the City from the Secretary of Revenue.
5. DURATION:
- A. This Agreement will take effect on the 1st day of July, 2003.
- B. This Agreement shall endure through and until June 30, 2008, unless terminated sooner as set forth in Subparagraph "5C".
- C. This Agreement may be terminated by either party with at least six (6) month's prior written notice; however, termination shall be effective only at the end of a fiscal year. If the County elects to terminate this Agreement prior to the expiration of the five-year term, then the County shall repay to the City the cumulative amount of New Half-Cent Sales Tax revenues paid by the City to the County pursuant to Subparagraph "3C".
6. GENERAL PROVISIONS:
- A. This Agreement shall be recorded in the Office of the Clerk of both the City and County.
- B. Amendments to this Agreement shall be effective only when reduced to writing and duly executed by parties.
- C. The laws of the State of North Carolina shall control and govern this Agreement.

- D. This Agreement sets forth the entire agreement between the County and the City and supersedes any and all other agreements on this subject between the parties.
- E. Any claims, disputes or other controversies arising out of, and between parties to this Agreement which may ensue shall be subject to and decided by the appropriate division of the General Court of Justice of Durham County, North Carolina.
- F. The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This agreement shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed on the day and year first above written, in their respective names by their proper officials by authority of resolutions duly adopted by the governing bodies of each of the taxing units.

CITY OF DURHAM

ATTEST:

/s/ Ann Gray
CITY CLERK

BY: /s/ Marcia Conner
CITY MANAGER

COUNTY OF DURHAM

ATTEST:

/s/ Garry E. Umstead
CLERK TO THE BOARD

BY: /s/ Ellen w. Reckhow
CHAIRMAN OF THE BOARD

FY 2003-2004 Draft Consolidated Action Plan Public Hearing

The adopted Citizen Participation Plan requires that two public hearings be held prior to Consolidated Action Plan submission to the Department of Housing and Urban Development (HUD). The purpose of the first public hearing, held on February 24, 2003, was to receive comments pertaining to HOME program needs in Durham. The purpose of the second public hearing is to receive comments on the use of FY 2003-2004 HOME funds as proposed in the Draft Consolidated Action Plan which was made available for public review March 20, 2003 through April 20, 2003.

The Durham City-County HOME Consortium anticipates receiving total HOME Investment Partnership (HOME) program funds in the amount of \$1,456,000. This amount includes an annual HOME allocation of \$1,306,000 and program income in the amount of \$150,000. The proposed use of FY 2003-2004 HOME funds includes a

Community Housing Development Organization (CHDO) set-aside, substantial homeowner rehabilitation activities for low-income city and county residents, and a First-Time Homebuyers Program for city and county residents. Housing and Community Development staff is recommending that two FY 2003-2004 HOME proposals also be funded: rehabilitation/historic preservation activities (Historic Preservation Society of Durham) and Walltown housing development (Self-Help Credit Union). The Durham City-County HOME Consortium will be required to provide a 25-percent match (non-federal funds) to the total amount of HOME funds used directly for affordable housing activities during FY 2003-2004. The required match would be approximately \$300,000 and would be funded with City Housing Bonds and available County funds as outlined in the current Consortium Agreement.

Charlene Montford, Director of the City of Durham Department of Housing and Community Development, has reviewed this request and recommends that the Board of County Commissioners hold the FY 2003-2004 Draft Consolidated Action Plan public hearing to receive citizen comments.

Resource Person(s): Michael Pullum, Senior Planner, Department of Housing & Community Development, City of Durham

County Manager's Recommendation: The Manager's recommendation was that the Board hold the FY 2003-2004 Draft Consolidated Action Plan public hearing to receive citizen comments.

Mr. Pullum made a brief presentation to the Board of County Commissioners.

Chairman Reckhow opened the public hearing that was properly advertised.

Dr. Lavonia Allison, representing the Durham Committee on the Affairs of Black People, spoke on this item. She was pleased to see the amount allocated to the First-Time Homebuyers Program. She was concerned with the \$530,000 Planning and Administration costs under Community Development Block Grant Allocations and the \$140,000 Administrative Costs under HOME Allocations in the list of recommended expenditures. These allocations must be reduced so the funds can be spent on line items such as John Avery Boys & Girls Club Structural Improvements, which should be a priority item.

As no one else had signed to speak on this item, Chairman Reckhow closed the public hearing and referred the item back to the Board.

Commissioner Heron asked Mr. Pullum to explain "Administer Housing Code Enforcement—The Department of Housing and Community Development is responsible for the policy development and the enforcement of local ordinances concerned with housing conditions, abandoned and hazardous vehicles, weedy lots, debris and junk-filled

lots and other public nuisances associated with the health and safety of Durham's communities." What does the department actually do to enforce this?

Mr. Pullum answered that these activities must be expended within the City limits.

Commissioner Heron wanted to know how much money is funded for code enforcement.

Mr. Pullum responded that \$450,000 is used in Community Development Block Grant funds. No HOME funds are expended for this activity.

Commissioner Heron asked if there is any coordination between housing enforcement and zoning enforcement. Can any of the funds be used for zoning enforcement, which has a shortage of staff?

Mr. Pullum responded that no coordinated effort occurs except in discussions between the directors of both departments to discuss the needs throughout the city. The department only deals with housing code violations, not zoning violations.

Commissioner Heron directed Mr. Pullum to address this issue further at the May 12 meeting.

Commissioner Heron asked how Mental Health receives the funds for Shelter Plus.

The Consolidated Action Plan considers all funding that comes into the City and parts of the County through our HOME Consortium. Specific activities are funded. Shelter Plus is funded through the State, but it is included in the consolidated plan which must include all funding sources.

Commissioner Heron further directed Mr. Pullum to bring information to the Board regarding the success of last year's goals, since they must be approved again this year.

Chairman Reckhow asked about the administration costs of 10 percent for the HOME program and 20 percent for the Community Development Block Grant. What is the range that HUD sets for these programs?

Mr. Pullum responded that the maximum amount allowed is allocated but the entire amount is not used every year.

Chairman Reckhow asked if the money under the line item "Program Income" earns interest.

Mr. Pullum responded that the funds are placed back into the respective programs.

Chairman Reckhow requested data on the returns for the programs and on the percentage being recycled. She asked if the County has appointees on the advisory group.

Mr. Pullum responded that, to his knowledge, Mr. James Spivey is the only County appointee.

Commissioner Jacobs asked the definition of low and very-low income. Is it related to the poverty guidelines?

Mr. Pullum said HUD determines the scale. Very low is considered to be persons less than 25 percent of the median-family income; low is between 50 and 80 percent of the median-family income. He will bring the dollar amounts back to the Board on May 12th.

Commissioner Jacobs asked Mr. Pullum to also bring back figures on the amount of money that was actually spent on the line items, in particular the administrative costs.

Commissioner Heron wanted to know how much unspent money has been accumulated over the past years.

Mr. Pullum responded that the HOME funds have been reallocated to new projects. There is a very small residual. He would bring back the dollar amounts on May 12th.

No action was necessary regarding this agenda item.

Public Hearing on Coordinated Transportation: FY 2003-2004 Rural Operating Assistance Program (ROAP) Grant—Application Approval

Cooperative Extension Service requested Board approval of the Rural Operating Assistance Program (ROAP) grant to be submitted to the North Carolina Department of Transportation (NCDOT). The ROAP grant consolidates the Elderly and Disabled Transportation Assistance Program (EDTAP), Rural General Public Program, and the Work First/Employment Program into a single application package. EDTAP provides assistance in the transportation of the elderly and disabled. The Work First Transitional/Employment Program is intended to provide operating assistance for transitional Work First. Rural General Public funds will be used to supplement existing routes that currently serve the County.

The application proposes that \$88,069 of governmental revenue be allocated to support transportation for Durham County elderly/disabled residents through the Elderly and Disabled Transportation Assistance Program (EDTAP), \$27,040 for Rural General Public Transportation (RGP), and \$14,049 for Work First Transitional/Employment. These funds support the transportation needs of citizens through County and nonprofit human service agencies. Funding will be used to assist with transportation services from July 1, 2003 through June 30, 2004.

NCDOT annually allocates funds for EDTAP, RGP, and Work First. Durham County will receive \$129,158 for FY 2003-2004.

Funds shall be used to provide services for the noted agencies:

Council of Senior Citizens	Dept. of Social Services (Adult)
Durham Exchange Club Industries	Retired and Senior Volunteer Program
Services for the Blind	Piedmont Consortium

Transportation Advisory Board made recommendations for the allocation of EDTAP funds.

Resource Person(s): Cheryl Lloyd, County Cooperative Extension Director, and Johnny Ford, Transportation Access Coordinator

County Manager's Recommendation: The Manager recommended approval of the ROAP application for submittal to NCDOT.

Mr. Ford presented the agenda item.

Chairman Reckhow opened the public hearing that was properly advertised.

As no one signed to speak on this item, Chairman Reckhow closed the public hearing and referred the item back to the Board for questions/discussion/consideration.

Commissioners Heron and Jacobs and Vice-Chairman Bowser voiced their concerns about the lack of door-to-door assistance, drivers' performance and conduct, turnaround time for service, and the administration of services.

Ms. Lloyd and Mr. Ford addressed the Commissioners' concerns and answered questions. Door-to-door service is not provided because of liability and cost issues.

County Manager Ruffin said that staff would look beyond the liability issue and consider ways to assist the elderly and disabled from their door to the curb.

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the ROAP application for submittal to NCDOT.

The motion carried unanimously.

Approval of the DJJDP Funding Plan for 2003-2004

The Durham County Juvenile Crime Prevention Council requested that the Board of County Commissioners review and approve the North Carolina Department of Juvenile Justice and Delinquency Prevention (DJJDP) funding plan for addressing the needs of juvenile offenders in Durham County. The plan is designed to strengthen and expand

needed juvenile court sanctions and treatment services. Programs provide treatment, rehabilitation, and educational enrichment based on locally defined priorities. Local priorities include reduction of academic failure and family problem management. A publicly advertised request for proposals and assessment process has been completed under the direction of DJJDP Regional Consultant James M. Barbee.

The funding plan was approved on April 23, 2003 at the regularly scheduled meeting of the Durham Juvenile Crime Prevention Council with a quorum present.

Resource Person(s): Cheryl L. Lloyd, County Extension Director; Greg Brown, Chair; and Karen Thompson, Allocations Committee Chair, Treasurer

County Manager's Recommendation: The County Manager recommended approval of the NC DJJDP Funding Plan as recommended by the Durham Juvenile Crime Prevention Council.

Chairman Reckhow commented that Commissioner Heron gives a lot of time by serving as a liaison to this group. She asked Commissioner Heron if she had any remarks.

Commissioner Heron said that funding for this agency goes through a great deal of scrutiny and deliberation. Each program is evaluated and monitored several times during the year by Juvenile Crime Prevention Council members. These agencies well deserve the funding.

Dr. E. Lavonia Allison, representing the Durham Committee on the Affairs of Black People, spoke on this agenda item. She was concerned with academic failure and crime among our youth. Additional funding should be considered for the Rites of Passage, which is an efficient and successful program. The Fatherhood Taskforce should have been funded because males are absent in many households. She wanted to know whether the success of the programs has been evaluated.

Ms. Lloyd conveyed that certain restrictions apply to how the funding is used. A major restriction is that the state encourages and expects the bulk of the money to go to intervention programs. That is one reason for the reduced amount in several of the preventive programs.

Commissioner Jacobs asked Ms. Lloyd to explain the program called A New Day.

Ms. Lloyd said A New Day is an alternative school and support program for children who have problems with delinquency and/or juvenile offenses in public schools. This provides an option to the Youth Home.

Commissioner Heron added that A New Day is located at the Lakeview School and program participants are educated during their stay.

Ms. Lloyd explained that any funding allocated to these programs requires a match; therefore, funding requests are made with careful consideration and thought as to how much can be matched.

Commissioner Jacobs asked why three programs requested funding and were denied.

Ms. Lloyd responded that the Juvenile Crime Prevention Council reviews the history of existing programs and the potential of new programs within the 12-month period. Each member votes. Funding is provided based on priorities that come from the full vote.

Ms. Thompson, Allocations Chair and Treasurer, explained further that the Council has no money for the expansion of new programs. That is the reason several programs were not funded.

Chairman Reckhow asked about the program at the Durham County Emergency Shelter.

Ms. Lloyd replied that the shelter is a temporary placement for youth who need emergency care or shelter. These youth have committed no crime or offense.

Ms. Lloyd thanked Ms. Thompson and Commissioner Heron for their service on the council.

Vice-Chairman Bowser moved, seconded by Commissioner Cousin, to approve the NC DJJDP Funding Plan as recommended by the Durham Juvenile Crime Prevention Council.

The motion carried unanimously.

American Tobacco Documents

The Board was requested to approve the Development Agreement, Lease, and Design-Build Contract documents for the American Tobacco Project in substantially the form as presented. As the financing for the project has not yet been obtained, the lender may require some minor changes in the documents. As such, the Board is further requested to allow minor document amendments which do not change material terms upon the agreement of the County Manager and County Attorney.

The financing is expected to be completed in August or September 2003.

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

County Manager's Recommendation: The County Manager recommended that the Board approve the form of the documents and allow for minor amendments upon the agreement of the County Manager and County Attorney.

Chairman Reckhow began by saying that many, many hours of work have gone into the development agreements and companion understandings. She acknowledged County Manager Ruffin and County Attorney Kitchen for their hard work.

County Manager Ruffin thanked the Commissioners, County Attorney Chuck Kitchen, Assistant County Attorney Carol Hammett, Deputy County Manager Carolyn Titus, Budget and Management Services Director Pam Meyer, Finance Director George Quick, County Engineer Glen Whisler, Public Information/Governmental Affairs Director Deborah Craig-Ray, Business Development Manager Yolanda Moore-Gaddy, and Jim Goodman, Mike Hill, and Reich Welborn (representatives of Capital Broadcasting Corporation) for all their work on the American Tobacco project. Tonight is a culmination of years of work.

The Board of Commissioners was asked to approve the form of the following documents:

Development Agreement
Parking Lease Agreement
Design/Build Agreement
Interlocal Cooperation Agreement

County Attorney Kitchen made a PowerPoint presentation on the following:

Key points:

County will contract with American Campus, LLC (ACL) to build 1140-space parking garage ("South Garage").

County will build a 441-space parking garage on the DATA site ("East Garage") if ACL builds Diamond View II Office Building (DVII).

Of the 441 spaces, 336 will be for DVII parking and 105 will be for Diamond View I (DVI) replacement parking.

City obligations:

City will contract with ACL to build a 1311-space garage ("North Garage").

City will build a garage next to the County East Garage which will hold 110 spaces.

The two garages will functionally work as one garage.

City will provide approximately \$8,356,520 in Economic incentives to ACL.

ACL obligations:

ACL will renovate the American Tobacco Complex including the restoration of approximately 374,436 feet of predominantly commercial office space with some retail or restaurant uses (Phase I).

ACL will renovate approximately 108,000 feet of space, which may include several different uses (Phase IA).

ACL may build Diamond View II, an approximately 90,000-square-foot office building.

ACL may build Phases III (approximately 174,390 square feet) and IV (178,756 square feet) of the remaining buildings on the American Tobacco site.

No additional parking will be provided by the public sector for Phases III and IV other than the decks as outlined.

Financial commitment:

County will pay to ACL the sum of \$14,435,514 (including approximately \$238,246 in sales tax which will be recovered) to design and construct the South Garage.

If DVII is built, County will pay to ACL The sum of \$5,397,178 (including approximately \$94,718 in sales tax) to ACL to design and construct the East Garage.

County will pay ACL \$18/month per space to manage all parking spaces.

Revenues:

ACL will lease 100 percent of the South Garage spaces and 100 percent of the DVII spaces from County.

County will lease 100 percent of DVI replacement spaces to City, which will sublease the spaces to ACL.

ACL will pay to the County \$45/month per space to lease the South Garage and DVII spaces.

City will pay to the County \$18/month per space (or actual amount of management fee) to lease the DVI spaces.

ACL will pay \$60,000 per season for baseball parking for South Garage.

Miscellaneous:

If the theater is built, ACL will manage parking with revenues after expenses coming to County.

There will be free public parking for the restaurants after 6:00 p.m.

ACL will have restrictive covenants in deeds for property so that none will apply for historic property tax designation for 20 years.

County will have restrictive covenants that it will lease 90 percent of the parking in the decks for monthly parking.

County M/WBE Ordinance provisions will be used in the construction of the decks.

Financing of the decks is anticipated to be through a § 160A-20 transaction called a "private placement" with a lending institution.

The financing for each of the County decks will be taxable financing.

Policy statement:

The American Tobacco project is a unique opportunity to provide public parking for an area that once comprised the largest tobacco company in the world. Due to the special location and relationship of the campus to downtown Durham and the opportunity to reinvigorate a section of Durham, the County is undertaking this project. It is the intention of the County that the building of parking decks as outlined in the agreements will not be repeated, and thus no formal policy for any future projects is needed.

Vice-Chairman Bowser and Chairman Reckhow asked County Attorney Kitchen questions about financing.

County Attorney Kitchen responded that a variable rate of financing would be used with a cap. The current rate is 5 percent with a 7½ percent cap. A provision exists in the Deal Points that financing cannot go beyond 8½ percent for us to move forward.

Vice-Chairman Bowser was concerned about the word “may” in the contract language.

County Attorney Kitchen explained that parts of the project are conditional.

Vice-Chairman Bowser asked additional questions of Attorney Kitchen about ownership.

Attorney Kitchen responded that ACL is merely the contractor; it will design and build the parking decks. The County will own the decks. The local act provides for a public/private partnership and allows both parts (parking decks and buildings) to be built by one party.

Vice-Chairman Bowser wanted to know if the County is getting the best deal for its money since the bidding process was not utilized.

Attorney Kitchen replied that County Engineer Glen Whisler hired a cost estimator to make sure the contractor was not taking advantage of the County. His estimation was higher than what we are being charged. We may not be getting the lowest bid, but we don't have the risk involved with multi-prime contractors, which would be the deck and office building not being built simultaneously.

Vice-Chairman Bowser was concerned with the 20-year restrictive covenant for a historic property tax designation.

Chairman Reckhow agreed with his concern. She would feel more comfortable with a longer period of time. She asked County Attorney Kitchen if the problem is that the documents are operative for 20 years.

County Attorney Kitchen said the agreement was 20 years from the last financing. While the County's financing is in place and we are paying off the borrowed money, Capital Broadcasting Corporation (CBC) agreed to have a restrictive covenant not to apply for a

property tax designation. Lengthy negotiations ensued with CBC relating to this very issue. Their concern was that when the financing is paid off and the County is making money on the deck, there would be no reason why they should not be allowed to petition for a property tax designation. That doesn't mean they will get it; they wanted the right to petition, which is currently the right under the law except for this agreement. The right to petition was one of the compromises in this deal.

Vice-Chairman Bowser voiced his concern about the citizens of Durham County pouring money into this project. We should get a 100 percent return for a designated number of years after this becomes a positive return. Is that 27 years, County Manager?

County Manager Ruffin responded that it was between 25 and 27 years. He read from Section 6.B of the Deal Points that was adopted August 26, 2002 which stated the 20-year covenant. It appears we have already agreed in principle to support the Development Agreement.

Chairman Reckhow directed the County Attorney to make sure that the language in the Agreement reflects the language in the Deal Points.

Vice-Chairman Bowser asked how much taxes are involved in the 20-year period for the City and County.

Attorney Kitchen responded that the amount is approximately \$956,500 per year for each of the 20 years, which would be about \$19 million. This does not include revaluation, because we don't know what the percentage will be. Assuming a normal growth rate, the amount should be between \$22 and \$25 million.

Vice-Chairman Bowser wanted the public to know that after 20 years, the approximate \$1 million per year would be cut in half, assuming the historic property tax designation is granted.

After much discussion among the County, the County Attorney, and the County Manager, Mr. Hill was asked whether the 20 years could be changed to 25 years or 30 years.

Mr. Hill said that the 20-year period was not negotiable. This particular matter involved much time, effort, and discussion during the negotiation period. This point is treated identically in the City agreement. The Deal Points were adopted and signed by the County Commissioners in August 2002. Every point in the document affects other points in the document. There has been much give and take. No part of the agreement could be changed without affecting other areas. This item was not placed on the agenda to engage in a negotiation session. Mr. Hill stressed that CBC will not automatically be granted the designation after 20 years. A governmental entity must make that decision.

Vice-Chairman Bowser said that this 20-year period is an advantage to the builder and a disadvantage to the citizens of Durham County.

Chairman Reckhow pointed out that the Deal Points, which basically benchmark this agreement, were signed on August 26, 2002. The agreement presented tonight is consistent with the Deal Points.

Vice-Chairman Bowser continued to express grave concerns regarding the 20-year covenant.

Commissioner Heron agreed with the concerns of Vice-Chairman Bowser.

Vice-Chairman Bowser stated that he thought the agreement was that CBC would not seek the historic tax designation. One reason he agreed to the project was that he thought the citizens would be getting their money back through the tax process.

Chairman Reckhow mentioned that the financial projections are very conservative and assume no increase in property value, which is highly unlikely. Hopefully, real estate will appreciate steadily, which will inflate our tax revenue from this property beyond this very conservative projection. Also, we have an inflation clause in the agreement that allows us to raise the parking rate starting in Year 2007 through Year 2010. After Year 2010, market rate can be charged.

Commissioner Cousin asked what governmental body would be petitioned for the tax designation.

County Attorney Kitchen responded that the petition would be presented to the State. The State would then make a recommendation to the City of Durham. The question is whether the City is required to approve the tax designation if, in fact, the State makes the recommendation. The City has taken the position that it is not required to approve it.

Commissioner Cousin asked if the process may change within the next 20 years. What happens if Durham City and County Governments merge?

County Attorney Kitchen replied that if the governments merge, the merged entity would be the body approving the tax designation unless the Statutes were changed. Also, CBC would not be allowed the historic tax credits if the purchaser of the property changes the property, especially the outside.

Chairman Reckhow called on the following citizens to speak:

Dr. E. Lavonia Allison, representing the Durham Committee on the Affairs of Black People, raised an issue of concern—the participation of African-American contractors. She hopes the promises made will be kept. Dialogue must continue as this process moves forward. We will work together positively.

J. C. Scarborough III, represented Scarborough & Hargett Funeral Home, 306 S. Roxboro St., Durham, NC 27701. He was not opposing the project; he was for progress. His family's business has been operational since 1906 and has moved five times within the City limits of Durham. The funeral home is now located next door to one of the proposed sites for the parking decks. He has been anticipating and preparing to move since 1991. He has been told twice that the property would be purchased by June 2003. We have hired consultants to help prepare for a move, which has been costly and caused a strain on the business. We are now in limbo. He asked the County Commissioners to keep him informed. If a decision has been made, please follow through.

Chairman Reckhow informed Mr. Scarborough that the County administration would be in touch with him in the near future; we are going to be moving forward.

Floyd McKissick Jr., 6903 Herndon Road, Durham, NC 27713 stated that the project should move forward right away. There is an opportunity for a public/private initiative that can radically transform downtown Durham. He commended Jim Goodman and Mike Hill on their vision, energy, commitment, and enthusiasm. It is time to bring to fruition a project that is critical to the future of downtown Durham.

Ted Conner, 3305 Park Overlook Drive, Durham, NC 27712 thanked everyone who participated in this process. Today is a momentous day in Durham County's history. If the County Commissioners move forward with the development agreement with American Tobacco, this project will change the face of Durham and Durham's future. Durham County residents and businesses will benefit dramatically, both directly and indirectly. Additional secondary growth will occur which will boost the Durham County tax base/revenues. The developer should be commended for the outstanding commitment to meeting the contracted and social project obligations. American Tobacco will be a tremendous success. We can't let this opportunity pass. This project will enhance Durham's image, protect our heritage, and provide long-term financial help for our community. He urged the Board of County Commissioners to approve the Development Agreement.

Chairman Reckhow thanked the Chamber of Commerce and Downtown Durham Inc. for all their help on this project.

Commissioner Jacobs asked for clarification on the County Manager's recommendation for this agenda item.

Chairman Reckhow reiterated that the recommendation was to approve the form of the documents and allow for minor amendments.

Commissioner Jacobs suggested that the Board move forward and approve the recommendation.

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the form of the documents (Development Agreement, Parking Lease Agreement, Design/Build Agreement, and Interlocal Cooperation Agreement) and allow for minor amendments.

The motion carried unanimously.

Commissioner Cousin moved, seconded by Commissioner Jacobs, to approve the policy statement.

The motion carried unanimously.

House Bill 397

Commissioner Heron stated that this bill could have financial implications on the County's emergency management, 911 operators, and possibly volunteer fire departments. The Senate will be dealing with this budget within the next day or two.

Commissioner Heron asked County Attorney Kitchen to brief the Board on this item.

County Attorney Chuck Kitchen said that this is a 193-page House budget bill. Section 34.10(a) on page 186 has the fees for EMS. County Attorney Kitchen had contacted Jeff Batten, Emergency Management Director, and asked him for the number of individuals and pieces of equipment that would be affected. They ascertained the approximate EMS costs for H397 (House budget) as follows:

EMS	\$10,000
911	11,100
County Fire	22,150

The cost does not include the City Fire Department. These costs directly affect the County.

Commissioner Heron wanted the Board to go on record to express its concerns about this section of the House budget bill and communicate these concerns to our Senators.

County Attorney Kitchen said that the House was in conference today regarding this bill.

Commissioner Heron stated that the County must provide this mandated service, and we are being charged for it.

Chairman Reckhow advised that a letter be sent tomorrow by facsimile because the House is attempting to approve the budget on Wednesday or Thursday.

Mr. Batten said that no one was made aware of this section of the bill. Also, why was EMS singled out? In the future, will fire fighters and law enforcement be charged? There is no logic to this. There is nothing that states that a volunteer would be exempt. The bill is very ambiguous.

Commissioner Heron moved, seconded by Commissioner Cousin, that the Board of County Commissioners make every effort to inform our Legislators of the negative impact this bill would have on our local emergency services and that it should be pulled immediately.

The motion carried unanimously.

Intersection of Moores Mill and Red Mountain Roads

Vice-Chairman Bowser expressed concern about the number of accidents and several fatalities that had occurred at this intersection in Rougemont. Residents petitioned the state several years ago to place rumble strips on the road to alert drivers of the potential danger. The state has not responded. Residents asked Vice-Chairman Bowser to request that the Board write NCDOT to address this issue.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to write a letter to John Nance, Division Engineer, NCDOT, and copy to Ty Cox, NCDOT board member, asking for a solution to the potential danger at this intersection and to request a response.

The motion carried unanimously.

State Mental Hospital

Vice-Chairman Bowser wanted to know if Durham County has petitioned the state to build the state mental hospital in Durham. Durham would be the perfect place, since it is the City of Medicine. Chatham, Wake, and Granville Counties are petitioning and competing for this hospital.

Commissioner Heron asked whether this would be of cost to the County.

Chairman Reckhow responded that the land would not be taxable, which would result in a loss of property tax revenue, but she doesn't think the State is asking for local contributions.

Vice-Chairman Bowser moved that the Board write a letter to the appropriate authorities (Department of Health and

Human Services in Raleigh) offering the Durham community for this hospital.

The motion was not seconded.

Vice-Chairman Bowser added that this hospital would generate many jobs for Durham.

County Manager Ruffin suggested that staff look into the history of this project and obtain pertinent information before proceeding further.

Chairman Reckhow directed the County Manager to look into this issue and place it on a worksession agenda.

Durham Public Schools

Chairman Reckhow stated that the budget passed by the State House includes major cuts to schools across the state. Durham Public Schools would experience about \$3 million in cuts, the net cut being about \$1.6 million because of additional funding for 13 teaching positions for second grade. Areas substantially cut would be non-instructional support, vocational education, and school technology along with a discretionary cut of almost \$1 million.

Commissioner Jacobs moved, seconded by Commissioner Cousin, that a letter be faxed in the morning to our state senators and a copy to the governor concerning the amount of cuts to our school system, with vocational education and school technology cuts highlighted.

Commissioner Heron recommended that the value of vocational education be stressed in this letter. Vocational education lowers our dropout rate by giving the students options.

Vice-Chairman Bowser asked how many teaching positions would be lost due to the cut in vocational education.

Chairman Reckhow responded that approximately 11 positions would be eliminated.

Vice-Chairman Bowser said that vocational education is sometimes the only outlet for many students. The State is showing a lack of sensitivity by cutting this area. Education should be for all people. He has contacted all of his state representatives regarding this matter.

Chairman Reckhow called for the vote on the motion.

The motion carried unanimously.

Nominations for Appointments to the Duke University Health System Board of Directors

Garry E. Umstead, CMC, Clerk to the Board, distributed ballots to select two or three members of the Durham County Hospital Corporation Board of Trustees to be nominated for an appointment to the Duke University Health System Board of Directors.

Resource Person(s): Garry E. Umstead, CMC, Clerk to the Board

The following were nominated for an appointment (asterisks indicate nominees):

- Chapman, Charles F.—Bowser
- *Coleman, Arnett, MD—Cousin, Heron, Jacobs, and Reckhow
- Dauchert, Jr., Eugene F.—no votes
- Davis, Walter E., MD—no votes
- Gilmore, Jr., Exter G.—Bowser
- *Jacobs, Mary D., Ed.D.—Bowser, Cousin, Heron, Jacobs, and Reckhow
- Harvard III, Rev. Joseph S.—no votes
- *Keadey, Penelope A.—Heron, Jacobs, and Reckhow
- Schmidt, Evelyn D., MD—no votes

Board Appointments—Durham County Hospital Corporation Board of Trustees

Garry E. Umstead, CMC, Clerk to the Board, distributed ballots to make appointments to the Durham County Hospital Corporation Board of Trustees.

Resource Person(s): Garry E. Umstead

The following appointments were made (asterisks indicate appointees):

- *Joseph S. Harvard III—Bowser, Cousin, Heron, Jacobs, and Reckhow
- *C. Edward McCauley—Bowser, Cousin, Heron, Jacobs, and Reckhow
- *Cedric M. Bright, MD—Bowser, Cousin, Heron, Jacobs, and Reckhow
- *Robert E. Price, MD—Bowser, Cousin, Heron, Jacobs, and Reckhow
- *Ira Q. Smith, MD—Bowser, Cousin, Heron, Jacobs, and Reckhow
- Robert A. Buchanan—no votes

Adjournment

Chairman Reckhow adjourned the meeting at 9:43 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board