

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

Monday, February 3, 2003

9:00 A.M. Worksession

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 (arrived 9:15 a.m.), and Commissioners Philip R. Cousin Jr. (arrived 9:25 a.m.), Becky M. Heron (arrived 9:15 a.m.), and Mary D. Jacobs

Absent: None

Presider: Chairman Reckhow

Opening of Worksession

Chairman Reckhow welcomed everyone to the worksession.

She requested that the meeting begin with a moment of silence in remembrance of the astronauts on spaceship Columbia.

Letter from Hyde County

Chairman Reckhow referenced a letter the Board received from the Hyde County Board of Commission Chairman thanking County Attorney Chuck Kitchen for his work on the Datta Wood case representing all of North Carolina's 100 counties.

Chairman Reckhow also commended Attorney Kitchen for his hard work.

Agenda Adjustments

Chairman Reckhow commented that the meeting would proceed with the revised agenda as printed.

Citizen Comments

Ms. Marion Lambert requested time on the agenda to speak to the Commissioners regarding her child support issue.

Chairman Reckhow allowed Ms. Lambert five minutes to address the Board.

Ms. Lambert asked the County Commissioners to help her obtain the court-ordered child support for her daughter. The child's father is not paying child support or medical insurance as directed by the court. The father says that he is a contractor, not an employee of a building company located at 304 S. Elm Street. He is not paying the child support under the premise that he is not an employee. The owner of the company does not pay wages since the child's father is a contractor.

Ms. Lambert expressed frustration with Child Support Enforcement. Social Services employees will not return her calls when messages are left. She does not get a timely response from the department.

Since June 2001, she has received \$150.00 for child support. I have received no medical insurance information for my daughter.

She asked the Commissioners to establish an agency to oversee the activities of Child Support Enforcement.

Chairman Reckhow requested that the Commissioners direct this complaint to the Social Services Department. She asked for a report from Child Support Enforcement regarding this case.

County Manager Mike Ruffin stated that the Commissioners will receive a report and Ms. Lambert will get a response. Mr. Ruffin asked Ms. Lambert to wait a few minutes to provide additional information to Child Support Enforcement because a telephone call is being made now.

Commissioner Heron suggested that Ms. Lambert contact the Association for Children for Enforcement of Support (ACES) through the Social Services Department. It would be to your advantage to join that group.

Criminal Justice Resource Center Recidivism Report

The Honorable Craig B. Brown, District Court Judge and Chairperson of the Durham Criminal Justice Partnership Advisory Board, requested time on the agenda to present a summary of the latest recidivism study conducted by the Criminal Justice Resource Center. Annually, the staff of the Criminal Justice Resource Center reviews re-arrest data of offenders attending community-based corrections programs at the Center.

Resource Person(s): Gudrun Parmer, Director, Criminal Justice Resource Center

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

The Honorable Craig B. Brown presented the Board of County Commissioners the Program Activity and Recidivism Report: FY 99/00. The report involved admissions from July 1, 1999 through June 30, 2000.

The report consisted of the following sections: Introduction, Program Overview, Demographic Characteristics, Substance Abuse, Program Referral and Participation, and Recidivism (Offenses/Arrest) (Re-Arrests).

Commissioner Heron commented that this program is having a positive impact on the citizens of Durham. She appreciated the work of staff. I hope we can continue to make an impact on this population.

Chairman Reckhow concurred with Commissioner Heron.

Report by the Transportation Demand Management Multi-Jurisdictional Advisory Board

The Commute Trip Reduction Program Ordinance, enacted in February 2000, created the Multi-Jurisdictional Advisory Board. Section 24-120 of the ordinance states that the purpose of this board is to provide guidance to the Lead Agency and the Triangle Transit Authority in implementing and managing the Congestion Management Program. The advisory board shall further provide information on congestion management to the County Manager and the Board of County Commissioners and shall make recommendations to Commissioners as to the performance of the Lead Agency. The advisory board comprises eight members: four appointed by the City of Durham and four appointed by Durham County. The board meets on the 4th Thursday of the 1st month of each quarter (January, April, July, and October).

The ordinance requires that this advisory board make an annual report to the Board of County Commissioners. The chair of this advisory board made a brief presentation on the current status of the Transportation Demand Management efforts in Durham County, including some recommendations for enhancing the Commute Trip Reduction Program.

Resource Person(s): Richard "Dick" Sloane, Chair of the Multi-Jurisdictional Advisory Board

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

Chairman Reckhow asked Mr. Sloane to introduce the Multi-Jurisdictional Advisory Board members who were present.

Mr. Sloane reviewed the following accomplishments and items for consideration included in the annual report:

Accomplishments

1. Triangle Transit Authority is designing a basic uniform system for reporting all survey data.
2. Participation in TDM so far:
 - a. Phase one, 2001 with large employers: 100% participation;
 - b. Phase two, 2002 with large- and medium-sized employers: 98% participation;
 - c. Phase three, 2003 with "all" employers: not yet complete;
 - d. Bus ridership down some but so is working population in the RTP (>15%);
 - e. Vanpool participation up from 7 to 12 in Durham; and
 - f. Telecommuting increasing with great strides forward by Cisco, IBM, and NIEHS. Numbers not available.

Items for consideration:

1. The board is willing and ready to mediate with the Lead Agency staff in seeking ordinance compliance.
2. Ordinance clarification needed in terms of extensions for late reporting.
3. Survey requirement for 65% participation not realistic, particularly for the larger employers. We offer the following, developed through "TRIMET" in Portland, Oregon. This system will yield a solid conservative result and accomplish the desired goal of simplifying and encouraging participation by more employers, according to Dr. Joseph Haseman, head statistician at the National Institute of Environmental Health Sciences in the RTP who reviewed the "TRIMET" scheme for validity. Below is an abbreviated version to provide information on the sampling requirements.

<u>Number of Employees</u>	<u>Required Sample Size</u>
400	261
800	347
1,600	413
3,000	453
6,000	481
15,000	501
100,000	512

4. The following edits need to be made in the ordinance:
 - a. Community Goals, Section 24-117.
 - b. Requirements for Major Employers, Section 24-118. Paragraph 2.
 - c. Definitions, Section 24-123. Paragraph 3 regarding carpools versus vanpools.
 - d. Legal notice by lead agency.
5. Three more board members needed!
6. Need active positive publicity/press on TDM, the Ordinance, and Triangle Transit Authority programs. When can we report again? August 4, 2003?

Mr. Sloane informed the Board that the Triangle Transit Authority has taken several initiatives. An awards program has been implemented to recognize employers and transportation coordinators for their outstanding efforts to bring us together for cohesiveness and reinforcement. Also, the TTA has sponsored a quarterly luncheon to share notes and ideas and receive status reports on various programs. The TTA has provided every employer with a transit coordinator handbook, which is very helpful to all of us working on the program. A Compute Trip Reduction logo has been created. The TTA will be providing different posters for circulation about every six months to employers promoting Transportation Demand Management (TDM). Many positive measures are taking place.

Mr. Sloane ended his remarks by asking for questions and/or comments.

Chairman Reckhow thanked Mr. Sloane for his input. She said the Commissioners would not discuss all the merits of his suggestions today.

Chairman Reckhow said that the County Commissioners will attempt to fill the vacant employer position on the advisory board.

Mr. Sloane told the Commissioners that a report would be presented to the Durham City Council per the Interlocal Agreement.

Chairman Reckhow informed the Board that she has been asked to serve on the state TDM advisory panel. The state is considering how the City of Durham, Durham County, and the TTA can be a potential model for the state program. We have much to be proud of; we are basically the TDM pioneers in the state. Wake County has hired a TDM planner at the TTA office to work with Wake County employers.

Chairman Reckhow directed County Attorney Chuck Kitchen to review the items for consideration and bring a report back to the County Commissioners.

Resource Conservation and Development (RC&D) Council

The Durham Soil and Water Conservation District requested that the BOCC allow a 15-minute presentation on the County becoming a member of a Resource Conservation and Development (RC&D) Council. The purpose of the RC&D program is to accelerate the conservation, development, and utilization of natural resources, improve the general level of economic activity, and to enhance the environment and standard of living in designated RC&D areas. RC&D projects relate to: land conservation, water management, economic development, and community sustainability. By participating, Durham County would benefit from grant money to carry out community projects. For example, the December ice storm caused huge amounts of fallen debris from trees. This program could have assisted the County in removing the debris, mulching it, and selling the by-product. Other examples could be the clearing and restoration of streams, installing dry hydrants to obtain a class 5A insurance rating for the County, and

collecting and utilizing the methane gas from the landfill. Ten RC&D Councils have been established in North Carolina. If agreed upon, Durham, along with Franklin, Granville, Johnston, Wake, and Wilson Counties would form the 11th council in the state.

Resource Person(s): Talmage Layton, Associate Supervisor, Durham SWCD; Stan Steury, RC&D Coordinator, Blue Ridge Council; and Eddie Culberson, Director of Soil and Water

County Manager's Recommendation: The County Manager recommended that the Board receive the presentation and advise staff as to whether the County is interested in adopting a resolution to become a member of the RC&D Council.

Mr. Culberson introduced the agenda item by giving a brief review of the work of the Soil and Water Conservation District. He said the purpose of this agenda item is to advise the County Commissioners of the Resource Conservation and Development (RC&D) Council.

Mr. Culberson introduced Mr. Steury who explained the RC&D program to the County Commissioners.

Mr. Layton spoke to the Commissioners about how the RC&D program could positively impact this area. Presently, Mr. Talmage is the coordinator between the Soil and Water Conservation District and the potential Resource Conservation and Development Council we are trying to form in Durham County.

Mr. Layton said the following three projects have been discussed and would be beneficial to Durham County: methane gas recovery system at the landfill on Club Boulevard, installation of dry hydrants to obtain a class 5A insurance rating for the County, and a wood mulching project to sell the by-product.

In response to a question from Chairman Reckhow, Mr. Layton answered that Durham County is required to invest only \$400 for a membership fee to the RC&D Council.

The Commissioners asked several questions about the RC&D Council.

Commissioner Jacobs said this is a very worthwhile effort; I am in full support of this project.

Chairman Reckhow said that this issue is not time-sensitive; therefore, we will direct the County Manager to place this item on the February 10, 2003 consent agenda.

Commissioner Heron agreed that this project is worthwhile.

2003 General Bond Referendum for Durham Public Schools

The Board will get its first look at major Capital Improvement Program revisions during its March 3, 2003 Worksession. It is anticipated that more than \$600 million in projects will be included in the first major revision to the ten-year plan since it was adopted in August of 2001.

Over 35 percent, approximately \$225 million, of the recommended expenditures are for Durham Public Schools. The school system is also updating its facilities plan, the initial draft of which will be presented to the DPS Board of Education on February 4, 2003. The County Manager requested that Superintendent Ann Denlinger recommend a list of projects for the Board of Education to recommend to the Board of County Commissioners in the amount of \$100 million. After the Board of Education has developed its funding priorities and the Board of County Commissioners has decided on the amount of bond funds to finance the improvements, voters will be asked in November to approve the issuance of general obligation bonds for the selected projects.

It should be noted that the November 2003 referendum would combine previously scheduled referenda for 2003 and 2005 and enable the school system to secure sufficient funding to build new schools and complete sorely needed renovations, as well as complete improvements to inner-city schools.

Resource Person(s): Mike Ruffin, County Manager; Chuck Kitchen, County Attorney; and Pam Meyer, Budget and Management Services Director

County Manager's Recommendation: The County Manager recommended that the Board receive the presentation and advise staff, if additional information is desired, prior to the formal presentation scheduled for the March 3, 2003 Worksession.

Chairman Reckhow asked County Manager Mike Ruffin to take the lead on this agenda item.

County Manager Ruffin made the presentation to the Board regarding the bond referendum. He said that the Commissioners are being asked to keep an open mind about the bond referendum as the school system completes its review. We will have additional information to share with the Board at the March worksession.

Commissioner Heron said she would like to see, as the school board makes its future plans, a schedule of anticipated accomplishments for a given time period.

County Manager Ruffin stated that he has requested that information from the school administration.

Chairman Reckhow said that during the February 24, 2003 Joint BOCC/DPS Board of Education meeting, the school board will present a status report on the 2001 Bonds.

Commissioner Heron wished to know how much of the 1993 School Bond Referendum has not been accomplished. Many complaints have been made about that bond issue.

County Manager Ruffin said that part of the Superintendent's recommendation is evaluation of the Lowe's Grove site for a school.

Commissioner Heron stated that the additional property at the Hillside High School site is a major concern.

Commissioner Jacobs would like a list of the projected improvements and their locations.

Chuck Kitchen explained the legal requirements of the bond sale to the Commissioners.

Commissioner Cousin wished to know how the school board plans to balance the capacity issues with improvement issues.

Commissioner Heron wanted to know the funding source(s) for the operational costs and additional teachers for the new schools.

Chairman Reckhow said that no action is required for this agenda item. This item was for information only.

Briefing of the Emergency Response during the December 2002 Ice Storm

Jeffrey Batten, County Fire Marshal/Director of Emergency Management, provided the Durham County Board of Commissioners with a summary of the staff debriefing which occurred as a result of the ice storm that affected Durham County in December 2002.

Resource Person(s): Carolyn P. Titus, Deputy County Manager, and Jeffrey Batten, County Fire Marshal/Director of Emergency Management

County Manager's Recommendation: The County Manager recommended that the Board receive the briefing and provide staff with any feedback or direction.

The areas covered in the report follow:

- Preparation Made
- Emergency Operations Center (EOC) Issues
- Joint Information Center (JIC)
- Shelter Issues
- Emergency Management/Fire Marshal Office Issues
- Transportation Issues
- Communication Issues
- Fellow-up Needed
- Lessons Learned

The County Commissioners received the report and asked several questions to which Mr. Batten responded.

Rules of Procedure for the Durham County Board of Commissioners

Revisions were proposed to the Rules of Procedure for the Board of Commissioners. The revisions reflect practices that have been adopted since the last revision to the rules regarding public comment, deadlines for submission of agenda items, and several clerical corrections.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: Review the proposed changes to the Rules of Procedure and make any changes desired. The item will then be moved to the consent agenda for the regular Board meeting on February 10, 2003 for approval.

Chairman Reckhow introduced the agenda item. She stated that she had asked the County Attorney to update the Rules of Procedure. The last update was in 1997.

Chairman Reckhow asked County Attorney Chuck Kitchen to give the Commissioners a quick overview of what had been done to update the Rules of Procedure.

Attorney Kitchen reviewed the changes. The changes merely reflected the Board's current policies and operations.

The Rules of Procedure follow (additions are in **bold** print; strikethroughs are recommended for deletion).

RULES OF PROCEDURE FOR THE DURHAM COUNTY BOARD OF COMMISSIONERS

INTRODUCTION

The following rules of procedure were developed for use by the Durham County Board of Commissioners. They incorporate general principles of parliamentary procedure and the applicable laws of North Carolina. The Rules were designed with the following guidelines in mind:

1. The Board must act as a body;
2. The Board should proceed in the most efficient manner possible;
3. The Board must act by at least a majority vote;

4. Every member must have an equal opportunity to participate in decision-making;
5. The Board must apply the rules of procedure consistently; and
6. When situations occur which are not explicitly covered by these Rules and cannot be resolved through reasonable inference from or interpretation of these Rules, then Robert's Rules of Order shall be followed.

It is the policy of this Board that all hearings, deliberations and actions be conducted fairly, openly and consistent with the applicable Statutes of North Carolina.

I. YOUR COUNTY COMMISSIONERS

Durham County has a five-(5) member Board of Commissioners which is elected at-large for two (2) year terms. The Board sets policies and enacts ordinances which are administered by the County Manager and his/her staff.

II. REGULAR MEETINGS

The Board shall hold a regular meeting on the second and fourth Monday of each month. The meeting shall be held at the Durham County ~~Court House~~ **Government Administrative Complex**, 2nd floor in the Commissioners' Meeting Room, 200 East Main Street, Durham, NC and shall begin at 7:00 p.m. (meetings may begin earlier in some circumstances) and end not later than 11:00 p.m., unless extended by majority vote to 12:00 midnight. An extension of the meeting beyond 12:00 midnight shall require a unanimous vote of the Board. If the Board votes to extend the meeting beyond midnight, then the Board shall also vote to determine those items remaining on the agenda on which a vote will be taken.

III. SPECIAL MEETINGS

The Chairperson or a majority of the members of the Board may at any time call a special meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. Notice of the meeting shall be delivered to each Board member and posted at the Court House at least 48 hours before the meeting.

If a special meeting is called to deal with an emergency, the notice requirements of this rule do not apply. However, the person or persons who call an emergency special meeting shall take reasonable action to inform the other members and the public of the meeting. Only business connected with the emergency may be discussed at the meeting.

At the first meeting in December following an election of County Commissioners, all the newly elected members of the Board shall take and subscribe the oath of office. At the first meeting in December of each year, as the first order of business, the Board, with the

County Attorney presiding, shall elect a chairperson. The Board will immediately thereafter elect a vice-chairperson. These officers shall not otherwise be removed from office unless disqualified as a member of the Board. The second order of business for the first meeting in December of each year shall be for the Board to approve the Durham County Public Official performance bonds.

IV. AGENDA

The Clerk to the Board shall prepare the agenda for the meeting. Agenda packages will be distributed by the end of the Wednesday preceding the meeting date. All agenda materials must be submitted to the Clerk to the Board on ~~Friday preceding that distribution date~~ **the Monday, two weeks preceding the meeting date**. Any board member may, by a timely request, have an item placed on the agenda for inclusion in the agenda package.

~~Any citizen of Durham County shall have the right to request, in writing to the Clerk to the Board, that any item be placed on the agenda for consideration by the Board at a worksession regular meeting. The request should include a summary of the issue being presented and such background material as the requester deems relevant. Upon such request in writing, the Clerk shall forward the request to the County Manager and Chairman of the Board who shall determine whether, in their discretion, to place the item on an appropriate agenda, or whether the matter can be handled by the County Administration. If the item is placed on an agenda, the person making the request shall have up to ten minutes to speak on the item.~~

A complete copy of the agenda with attached material shall be available for public inspection as soon as distribution to Commissioners has been completed.

At least one copy of the complete agenda package shall be available for public inspection and reference at the rear of the Commissioners' Meeting Room during the meeting.

Any member of the Board may add any item to the agenda at the beginning of the meeting, and the County Manager or County attorney, may, with the permission of the Chair, add an item that is not on the agenda.

V. PUBLIC ADDRESS TO THE BOARD

The public may present a written petition to the Board by submitting it to the Clerk to the Board prior to any regular meeting of the Board or during normal business hours at the Clerk's Office. The Clerk shall forthwith make copies of the petition and forward it to each commissioner with a copy to the County Manager.

Any citizen of Durham County shall have the right to request, in writing, to the Clerk of the Board, that any item be placed on the agenda for consideration by the Board at a Worksession. The request must be submitted to the Clerk to the Board

at least two weeks preceding the meeting date as provided on Page 9, Agenda. Please refer to Page 10, Citizen Comment, for details.

Any member of the public who wishes to address the Board regarding an agenda item shall complete a sign-up card on the table outside the entrance door to the Commissioners' Room, clearly indicating the item number(s) to which they intend to speak. Sign-up cards will be available beginning thirty minutes before the start of the meeting. No one will be allowed to have his/her name placed on the list by telephone request to County Staff. A time limit is established of three minutes for each individual, other than staff and those presenting the request to the Board, in an effort to ensure adequate discussion of that item and all the other items on the agenda. Each individual signed up to speak shall only be entitled to the time allotted to each speaker and one additional time period which may be yielded to him by another individual who has also signed up to speak on that item. Information sheets outlining the process for the public's participation in Board meetings will also be available in the rear of the room.

VI. ORDER OF BUSINESS*

- 1) Discussion/Adjustment of Agenda*
- 2) Approval of Minutes
- 3) Approval of Consent Items
- 4) Public Hearings
- 5) Administrative Reports
- 6) Unfinished Business (carry over)
- 7) New Business
- 8) Closed Session
- 9) Adjournment

*By general consent of the Board, items may be considered out of this order.

VII. POWERS OF THE CHAIRPERSON

The Chairperson shall preside at meetings of the Board. In the Chairperson's absence, the Vice-chairperson shall preside and shall have all the powers specified herein. If the chairman and vice-chairman are both absent from the meeting, the Clerk to the Board shall convene the meeting and the remaining members shall elect a member to preside for that meeting or until either the Chairperson or Vice-chairperson appears. A member must be recognized by the Chairperson in order to address the Board. The Chairperson shall have the following powers:

1. To rule motions in or out of order, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes;
2. To establish time restraints for discussion, except for matters requiring a quasi-judicial public hearing;

3. To determine whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
4. To entertain or refer to the County Attorney questions of parliamentary law or procedure;
5. To call a brief recess when needed;
6. To adjourn in an emergency;
7. To conduct public hearings as otherwise provided for herein; and
8. The Chair shall have the Duty to decide upon and to assign those members of the Board as he or she sees fit to membership on any other board or commission which requires a county commissioner to serve *ex officio*. After such an appointment has been made, the Chair shall inform the other members of the Board at the next regular meeting of the Board who shall then ratify the appointments or take other appropriate action.

VIII. ACTION BY THE BOARD

The Board shall proceed to discuss an item, including receipt of comment from the staff or the public, when the item is announced by the Chair. Upon completion of discussion, the Board shall, unless some other action is deemed appropriate, proceed by motion on the item. Any member, including the Chairman, may make a motion or second a motion.

Second Required

Any motion to be considered for a vote shall require a second. If the motion does not receive a second, it "dies" for lack of a second. If the motion is seconded, and stated by the Chairman, it then goes before the Board for discussion and debate.

Substantive Motions

Only one substantive motion may be considered on the floor. A new substantive proposal may not be put forth until action on the preceding one has been concluded.

A subsidiary motion can be made only while a substantive motion is pending. Examples of subsidiary motions are: a motion to table a motion, to move the previous question, to go into ~~executive~~ **closed** session, to amend a main motion, to make a substitute motion.

Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum being present unless otherwise required by these rules, an ordinance, or state statute.

Debate

The Chairperson shall state the motion and then open the floor to debate. The Chairperson shall preside over the debate according to these general principles:

- (a) The introducer (the person who makes the motion) is entitled to speak first;
- (b) A member who has not spoken on the issue shall be recognized before a member who has previously spoken;
- (c) To the extent possible, the debate should alternate between opponents and proponents of the measure.

Procedural Motions

The following procedural motions and no others shall be in order.

1. To Adjourn. The motion may be made only at the conclusion of action on a pending matter; it may not interrupt deliberation of a pending matter.
2. To Take a Recess. The motion is in order at any time a member feels a recess is needed. The chairman also has the power to call a brief recess.
3. To Defer Consideration. A substantive motion whose consideration has been deferred expires one hundred (100) days thereafter, unless a motion to revive consideration is adopted.
4. To Revive Consideration. This motion is in order at any time following the expiration of 100 days after a vote to defer consideration of an item.
5. To Reconsider. The motion must be made by a member who voted with the prevailing side in the prior action.

A motion to reconsider an item on which action has been taken following a public hearing required by statute may be considered only after a public hearing on the reconsideration request.

A motion to reconsider an item on which action has been taken following a discretionary public hearing may be considered without further public hearing in the discretion of the Board determined by majority vote.

6. To Ratify. To provide clarity the Board may later ratify any action which it has or could have authorized.
7. To Prevent Reconsideration for Six (6) Months. The motion shall be in order immediately following the defeat of a substantive motion and will

not be allowed at any other time. The action of the Board, if the motion is adopted, is valid for six (6) months or until the next regular election of county commission board members, whichever occurs first.

8. To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the amended motion has the same effect as rejection of the original motion. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last offered amendment is disposed of by vote. Any amendment to a proposed ordinance shall be reduced to writing before the vote on the amendment.
9. Renewal of Motion. A motion that is defeated may be renewed at any subsequent meeting unless a motion to prevent reconsideration has been adopted.
10. Withdrawal of a Motion. A motion may be withdrawn by the introducer at any time before a vote.
11. Suspension of the Rules. These rules may be suspended by a majority vote of the Board, but such motion may not be made if a substantive motion is already before the Board.

Duty to Vote

Every member must vote unless excused by a majority vote according to law. A member who wishes to be excused from voting shall so inform the chairman, who shall take a vote of the remaining members prior to any discussion of the item.

G.S. 153A-44 provides members may be excused from voting on matters in which they have a direct financial interest, or on questions involving the Board Member's official conduct. The County Attorney may be asked by the individual commissioner, the Board or any other interested party to render an opinion on questions of conflicts of interest arising from financial interest, official conduct or any other circumstance presenting the appearance of conflict of interest of any member.

Introduction of Ordinances

A proposed ordinance shall be deemed to be introduced at the first meeting in which it is placed on the agenda regardless of whether it is actually considered by the Board.

Adoption of Ordinances

To be adopted at the meeting at which it is first introduced an ordinance must receive the approval of all members of the Board. If the proposed ordinance is approved by a majority of those voting but not by all the members of the board or if the ordinance is not voted on at that first meeting of the Board, it shall be considered at the next regular

meeting. If it then or at any time thereafter within 100 days of its introduction receives another majority vote, the ordinance is adopted.

Adoption of the Budget Ordinance

1. Any action with respect to the adoption or amendment of the budget ordinance may be taken at any regular or special meeting of the board by a simple majority vote.
2. No action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the Board.
3. The adoption and amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any local act concerning and calling of an initiative or referendum.

During the period beginning with the submission of the budget to the Board and ending with the adoption of the budget ordinance, the Board may hold any special meetings that may be necessary to complete its work on the budget ordinance. Any provisions of law concerning the call of special meetings do not apply during that period so long as (i) each member of the Board has actual notice of each special meeting called for the purpose of considering the budget, and (ii) no business other than consideration of the budget is taken up.

Closed Session

The Board may hold closed sessions as provided by law. It shall commence a closed session by a majority vote on a motion to do so which specifically refers to the provision(s) of law providing the authority for the closed session as required by the amended Open Meetings Law.

Quorum

A majority of the membership of the Board shall constitute a quorum. The members required for a quorum shall not be affected by vacancies. If a member is absent or has withdrawn from a meeting without being excused by a majority vote of the remaining members, he/she shall be counted as present for the purposes of determining whether a quorum is present, and his/her vote shall be recorded as a vote in the majority, or in case of a tie among those members remaining present, as a vote in support of any motion made.

Public Hearings

Public hearings required by law or deemed advisable by the Board shall be organized and adopted by a majority vote, setting forth the subject, date, place and time of the hearing.

The Board may adopt a standing rule that the staff may schedule and give notice of public hearings on requests for zone changes and special use permits pursuant to the Planning and Zoning Ordinance.

At the appointed time, and after the staff or other appropriate persons have presented the item, the chairperson shall call the hearing to order open the public hearing, and when the allotted time expires or no one who has not yet spoken wishes to do so, the chairman shall declare the hearing ended. To the extent required by state law, the chairman shall have the authority to administer oaths or authorize the Clerk to do so to witnesses presenting evidence in public hearings. Except for matters requiring a quasi-judicial public hearing, the party presenting the request shall have ten minutes to present its request. Any other persons speaking either in favor of or opposed to the request shall have three minutes each for their remarks. Each individual signed up to speak shall only be entitled to the time allotted to each speaker, plus one additional time period if yielded to him by another signed up to speak on the same item. Rebuttals will only be permitted if deemed necessary by the chairman, with time limits therefor being set in the discretion of the chairman.

Minutes

Minutes shall be kept of all meetings of the board, including closed sessions as provided by law.

The Rules of Procedure for Durham County Commissioners were adopted by the Board on March 13, 1989 and became effective March 13, 1989. There have been periodic amendments which are reflected in this revision adopted January 27, 1997, **and February 10, 2003.**

RULES OF PROCEDURE FOR DURHAM COUNTY COMMISSIONERS TO GOVERN WORK SESSIONS

INTRODUCTION

The following rules of procedure were developed for use by the Durham County Board of Commissioners in conducting Worksessions. Since Worksessions have been initiated for the purpose of discussion only with the intent of reducing the amount of time for consideration of items at regularly scheduled meetings, it is intended that no action will be taken on any item during the Worksession, other than that of giving directions to the administration and staff as to preparation and presentation of the item at a scheduled regular meeting. However, since notices of the sessions are given as required by the Open Meetings Law, they constitute an Official Meeting of the Board, and action can be taken. It is recommended however, that actions not be taken unless necessary to address an issue which is time-sensitive, and which can not wait until a regularly scheduled meeting of the Board. In the event action is required to be taken on a time-sensitive issue, those Rules of Procedure adopted by this Board on March 13, 1989 and as amended relate to motions and votes shall be followed.

To the extent the Rules of Procedure adopted by this Board on March 13, 1989 as amended govern discussions of items and materials, they shall apply to discussions at the Worksession.

I. MEETING TIME

The worksessions will be held on the first Monday of each month unless the meeting time is changed to avoid conflicts with regularly scheduled holidays, or unless changed or canceled by majority vote of the Board. The meetings will be held in the County Commissioners' Meeting Room beginning at 9:00 a.m.

II. AGENDA

The Clerk to the Board shall prepare the agenda for the meeting. Agenda packages will be distributed on the Wednesday preceding the meeting date. All agenda materials must be submitted to the Clerk to the Board **on Monday, two weeks preceding the meeting date** ~~by 10:00 a.m. on the Tuesday preceding that distribution date~~. Any board member may, by a timely request, have an item placed on the agenda.

A complete copy of the agenda with attached material shall be available for public inspection as soon as distribution to Commissioners has been completed. Each Board member shall receive a copy of the agenda with the agenda materials by the end of the Wednesday preceding the day of the meeting.

At least one copy of the complete agenda package shall be available for public inspection and reference at the rear of the Commissioners' Meeting Room during the meeting.

The Board may, by majority vote, add an item that is not on the agenda.

III. CITIZEN COMMENT

Any citizen of Durham County shall have the right to request, in writing to the Clerk to the Board, that any item be placed on the agenda for consideration by the Board at a worksession. The request should include a summary of the issue being presented and such background material as the requester deems relevant. Upon such request in writing, the Clerk shall forward the request to the County Manager and Chairman of the Board who shall determine whether, in their discretion, to place the item on an appropriate agenda, or whether the matter can be handled by the County Administration. If the item is placed on an agenda, the person making the request shall have up to five minutes to speak on the item. The request must be submitted to the Clerk to the Board at least two weeks preceding the meeting date as provided on Page 9, Agenda.

IV. POWERS OF THE CHAIRPERSON

The Chairperson shall preside at the worksessions. In the Chairperson's absence, the Vice-chairperson shall preside and shall have all the powers specified herein. A member must be recognized by the Chairperson in order to address the Board. The Chairperson shall have those powers specified in the Board's Rules of Procedure related to discussion of items and materials on the agenda for the worksession, and specifically

1. To establish time restraints for discussion;
2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his/her remarks and to entertain and rule on objections from other members on this ground;
3. To entertain or refer to the County Attorney questions of parliamentary law or procedure;
4. To call a brief recess when needed; and
5. To adjourn in an emergency.

V. DISCUSSION BY THE BOARD

The Board shall proceed to discuss an item, including receipt of comment from the staff, when the item is announced by the Chair. Upon completion of discussion, the Board shall give the staff and administration direction as to preparation for and presentation of the item at a regularly scheduled meeting. This may take the form of expressed consensus among the members, but if necessary to establish the Board's intent, may be expressed in the form of a motion and voted upon. These rules may be suspended by a majority vote of the Board.

Quorum

A majority of the membership of the Board shall constitute a quorum. However, since it is intended that no action will be taken during the work session, a quorum is not required to discuss materials and agenda items. In the event it is necessary to vote on any item which is time-sensitive, a quorum must be present for the motion and vote. For purposes of such votes in the worksessions, if a member is absent or has withdrawn from a meeting without being excused by a majority vote of the remaining members, he/she shall be counted as present for the purposes of determining whether a quorum is present, and his/her vote shall be recorded as a vote in the majority, or in case of a tie among those members remaining present, as a vote in support of any motion made.

VI. MINUTES

~~There will be no minutes as such made of the worksessions, unless and until action is taken on an issue which is time sensitive. The Clerk to the Board will, however, maintain a record of the worksession for public and future reference. The Clerk shall prepare a description of the directives to staff resulting from the meeting, and distribute this to the Board members on a periodic basis.~~

Minutes of the worksessions shall be prepared by the Clerk to the Board to the same extent as a regular meeting and as required by law.

These Rules of Procedure to Govern Conduct of Worksessions were adopted by the Durham County Board of Commissioners on January 14, 1991, and became effective on that date. They have amended from time to time, and said amendments are reflected in this revision adopted January 27, 1997, **and February 10, 2003.**

Analysis of Zoning Violation at 127 Chapparral Drive

On January 27, 2003, the Board of County Commissioners requested a report regarding the citation of Mr. Dan Gernandt for operating a vehicle repair facility in a residential zone. Specifically, the Board requested a history of the violation as well as options that could be considered to remedy the violation. That information was communicated in a memorandum from Frank Duke on January 31, 2003.

Resource Person(s): Frank Duke, Planning Director

County Manager's Recommendation: The County Manager recommended that the Board receive the report and advise the staff if any additional action or information is desired.

Chairman Reckhow called on Mr. Duke to give an overview of the report.

Mr. Duke's report follows:

Summary: On January 24, the Board of County Commissioners requested a report on the options available to them to address issues raised as a result of the Planning Department citation of Mr. Dan Gernandt for operating a vehicle repair facility in a residential zone.

Background: The subject property is a 20,000 square foot lot located within a residential development, Kentington Heights. The property is zoned Rural District (RD), which requires a 30,000 square foot minimum lot size. Though smaller than the minimum lot, the property is a legal non-conforming lot, having been created prior to the adoption of the Zoning Ordinance. The property is designated in the County version of *The NC 54/I-40 Corridor Study* for mixed-use development, along with the remainder of Kentington Heights. The map shows the location of the subject property.

The RD zoning district is intended to provide for agricultural uses while serving as a transition from rural areas to more urban areas. The regulations governing the district are intended to discourage the premature development of the area and to encourage the maintenance of rural character.

The following represents a chronology of the actions associated with this case.

March 2002 Commissioner Becky Heron files a complaint, on behalf of the citizens, with the Planning Department that a commercial parking lot and a vehicle repair facility are being operated at 127 Chapparral Drive in violation of the Zoning Ordinance.

Zoning Enforcement Officer Alden Jackson inspects the property. Mr. Gernandt acknowledges charging people to park on his property during the opening of the Streets of Southpoint. Mr. Jackson issues a notice of violation for the commercial parking operation. He also determines that the vehicle repair business is in violation of section 4A.1.2 of the Zoning Ordinance. No notice of violation is issued, however, pending a determination as to whether the vehicle repair facility is a grandfathered use pursuant to the ordinance adopted by the Board of County Commissioners on May 11, 1987, requiring the operators of businesses in rural areas of Durham County to file for a non-conforming use permit by August 9, 1987 in order to be vested from application of the revisions to the Zoning Ordinance then being adopted by the County.

April 2002 In consultation with the County Attorney's Office, the Planning Department determines that Mr. Gernandt did not file for the required nonconforming use permit in 1987, and thus is not considered to be a grandfathered use under the County Ordinance.

Mr. Jackson issues a notice of violation for the operation of the vehicle repair facility in the Rural District.

May 2002 Mr. Gernandt files an appeal of the notice of violation, claiming that the use is grandfathered and has been licensed by the County and the City through the continuous issuance of privilege licenses.

June 2002 The Board of Adjustment (BOA) hears Mr. Gernandt's appeal. During this quasi-judicial hearing, Mr. Gernandt's attorney acknowledges that his client did not seek the required nonconforming use permit in 1987. In response to questions from his attorney, Mr. Gernandt testifies that he believes that his vehicle repair facility qualifies as a home occupation and should be allowed to remain in business as a home occupation. The Board of Adjustment continues the case for 90 days, directing staff to evaluate whether Mr. Gernandt's business qualifies as a home occupation.

July 2002 Zoning Enforcement Officer Jackson and Supervisor Pratt Simmons inspect the property at 127 Chapparral Drive. In consultation with the County Fire Marshall, the Planning Department determines that the vehicle repair facility cannot meet the requirements for a home occupation because:

1. The area used for vehicle repair was 84% of the livable portion of the dwelling while the Zoning Ordinance caps this area at 25%;
2. The vehicle repair facility is in an accessory structure, which the Zoning Ordinance prohibits;
3. The hydraulic lift for the vehicle repair facility is located outside, while the Zoning Ordinance prohibits outside storage;
4. The vehicle repair facility stocks motor oil, power steering fluid, filters, and parts which are sold to the public during the course of repairs while the Zoning Ordinance prohibits the resale of goods;
5. The vehicle repair facility utilizes equipment that generates noise that can be heard off-site in violation of the Zoning Ordinance;
6. The vehicle repair facility utilizes materials that the County Fire Marshall has advised are hazardous in violation of the Zoning Ordinance.

Sept 2002 The BOA reopens its hearing on Mr. Gernandt's appeal. After hearing testimony from Mr. Gernandt as well as staff regarding the potential of the vehicle repair facility being considered a home occupation, the BOA determines that the use cannot be considered a home occupation. The BOA continues the case for 9 months and recommends that the Board of County Commissioners reopen the amnesty period for non-conforming uses to register and be grandfathered so that Mr. Gernandt can continue in business.

Dec 2002 County Manager Mike Ruffin requests that the Planning Department and the County Attorney develop alternatives to address Mr. Gernandt's situation.

Issues: The County cannot selectively enforce the Zoning Ordinance. Any alternative selected to address the situation that has arisen with regard to 127 Chapparral Drive will have application for all other properties within Durham County that are in a similar situation.

Alternatives: The County Attorney and the Planning Director met in January 2003, and developed 9 alternatives that could be employed to address the issues at 127 Chapparral

Drive. Each alternative is listed below, along with any identified implications from its utilization.

- 1. Cease enforcement of the Zoning Ordinance in unincorporated Durham County.** The BOCC could direct the Planning Department to do no enforcement of the Zoning Ordinance in the County. With a direction to not enforce the Ordinance, all existing enforcement actions would be dropped. This would, effectively, repeal all zoning in unincorporated Durham County.
- 2. Reopen the amnesty period for non-conforming uses to be grandfathered.** In 1987, the BOCC created an amnesty program for businesses in the rural areas of the County to register and obtain vested rights to continue in operation. This amnesty period was created at the same time that the BOCC was adopting a new zoning ordinance. The BOA has recommended that the BOCC pursue this course of action.

It should be acknowledged that it is unlikely that Mr. Gernandt's business would have qualified under the amnesty program created by the BOCC in 1987. That program was designed to accommodate businesses that were legally established under the 1973 zoning ordinance, which were now being rendered non-conforming due to 1987 changes to the County ordinance. The 1973 ordinance did not allow vehicle repair facilities in the Rural District. Such businesses were allowed under the 1957 Zoning Ordinance, but Mr. Gernandt has testified that he began his business 20 years before the notice of violation, or in 1982. The use was illegal at the time it was established, and so would not have qualified for the 1987 amnesty if Mr. Gernandt had applied for it.

The County Attorney has expressed concern that, since no new zoning ordinance is coming into effect at this time and that Mr. Gernandt's business has been determined to be in violation of the existing Zoning Ordinance, this alternative will be viewed by the courts as having the same effect as ceasing all zoning enforcement in the County. It will create a precedent for periodically authorizing violation of the ordinance with no intervening change in circumstance.

- 3. Modify home occupation standards.** The home occupation standards (section 7.20 of the Zoning Ordinance) could be modified to make the various areas of the ordinance that the vehicle repair facility at 127 Chapparral Drive does not meet legal. Such a modification would, however, violate a fundamental premise of zoning – that uses should be separated unless they are specifically designed to accommodate one another or unless one is clearly subordinate and incidental to the other. Given the intense nature of the uses at 127 Chapparral Drive, the property is actually functioning with two primary uses.

4. **Direct Mr. Gernandt to seek a variance.** Any variance sought would be a use variance, which is illegal under North Carolina law.
5. **Direct Mr. Gernandt to seek rezoning for the property.** The County currently has no zoning district that Mr. Gernandt could seek that will accommodate the mix of uses and site constraints with regard to location of uses already on the site. Any attempt by Mr. Gernandt to rezone the property using current districts to address the vehicle repair facility will create problems for the residential use. It will also run into issues with regard to buffers, which the Joint City-County Planning Committee (JCCPC) has just directed be significantly increased between low density residential and more intense uses; this change could dramatically impact the ability to use the property with the existing uses since any rezoning initiated by the property-owner would require that the property be brought into full compliance with the Zoning Ordinance.

Equally critical, the only zoning districts that permit vehicle repair with outside operations are Light and Heavy Industrial (I-2 and I-3), and neither of these zoning districts allow residential uses. Any attempt to rezone the property to either of these districts will require Plan Amendments.

6. **Modify the existing Mixed Use (MU) zoning district to accommodate this property.** The property at 127 Chapparral Drive is designated Mixed Use in the County version of *The NC 54/I-40 Corridor Study*, the small area plan governing the property. Presumably, the property could be rezoned to Mixed Use (MU), if it met the standards in the ordinance for such rezoning; it does not. In order to use the MU district on this property, the regulations would have to be revised to eliminate the requirement for a development plan, eliminate the requirement that there be a mix of at least 3 uses, eliminate the minimum acreage, eliminate the requirements establishing a maximum intensity of the total site used by each use, and modify the list of allowed uses on properties zoned mixed use. Application of this revised zoning district would also require amendments to the text of *The NC 54/I-40 Corridor Study*, which calls for the area to be developed with retail, office, and medium and high density residential uses, not the industrial use reflected in the existing vehicle repair facility.
7. **Create a new zoning district to address this particular mix of uses.** There is no certainty that any new zoning district created would actually address Mr. Gernandt's situation. The process would require support by the JCCPC and the Zoning Committee with significant input from the community. Following creation of the new district, the property would then have to be rezoned. In addition, a plan amendment would be required to address any inconsistencies with *The NC54/I-40 Corridor Study*.

8. **Direct staff to initiate a plan amendment and rezoning of the property with the BOCC as the applicant.** The BOCC may initiate a plan amendment and rezoning on any property within its jurisdiction. Such a BOCC-initiated action would be considered involuntary on the part of the property owner, meaning that he would not have to comply with all development standards unless he/she subsequently proposed expansion of the uses. Such action would have the effect of legalizing the vehicle repair shop while permitting continued use of the residential house on the property; if a property-owner applicant initiated or sought the Industrial zoning the residential use, which is not permitted in the Industrial zoning districts that accommodate outside repair of vehicles, would have to be eliminated once the zoning was approved. Accordingly, the BOCC could initiate a plan amendment, changing the property's designation to Industrial, and a corresponding rezoning to either I-2 or I-3 by directing the County Manager's to submit completed applications and \$440 for postage and advertising surcharges (all other fees would be waived if the BOCC was the applicant) to the Planning Department. It should be noted that the closest industrial areas to this site are nearly 3 miles away; such an amendment and rezoning would typically be considered spot zoning and the introduction of an incompatible use into an area that would not be supported by staff.
9. **Do nothing.** A failure to take any action would mean that the appeal would go back to the BOA in June of 2003.

Recommendation. That the BOCC provide direction regarding the course of action they want pursued.

After working with County Attorney Kitchen over the past ten months, it was determined that no option/alternative can be pursued with Mr. Gernandt as the applicant. His property will meet no existing County zoning classification and, given the site constraints, there is no way the property can meet site design standards. As such, whatever action is taken must be initiated entirely by the Board of County Commissioners. Mr. Gernandt can not be the applicant for a plan amendment or a rezoning because his property simply will not meet the standards established by the Board. Please be aware that any action taken would also be applicable to all properties throughout unincorporated Durham County that are in a similar situation. Also, some of the options/alternatives in the report aren't legal under North Carolina law. There is no way a variance could be issued for this property to allow the use to continue. Any variance would be a use variance that is not allowed under North Carolina law.

Mr. Duke also pointed out that there is no existing zoning district in Durham County that will address Mr. Gernandt's situation and, in fact, the only zoning districts which allow outside repair of vehicles are industrial districts. This would require rezoning of the property to an industrial district which would be spot zoning since the closest industrial is

three miles away. This would also be illegal under North Carolina law. The remaining options, which are not recommended, are available to the Board:

- Do nothing. A failure to take any action would mean that the appeal would go back to the Board of Adjustment in June 2003.
- Effectively repeal all zoning in unincorporated Durham County. This not recommended and would be a drastic measure.
- Attempt code changes, plan amendments, and rezonings. This process could take well over a year, and there is no guarantee this would help Mr. Gernandt's situation.

Mr. Duke answered questions from the Commissioners and explained issues addressed in the report.

Mr. Duke stressed that Durham County staff worked extremely hard to try to find a way to allow Mr. Gernandt to keep his business operational.

Commissioner Heron wanted to make it perfectly clear why she brought this matter to the attention of the Planning Department. She was responding to a citizen who suggested that this particular business was illegal in this area.

Vice-Chairman Bowser expressed much frustration that nothing could be done to allow Mr. Gernandt to keep his business open.

Dr. Lavonia Allison began making comments from the audience.

Chairman Reckhow, at Commissioner Cousin's request, allowed her to come to the microphone and address the Board.

Dr. Allison was concerned that Mr. Gernandt had been able to purchase licenses for his business. She asked questions of Mr. Duke.

Mr. Duke responded to her questions.

Chairman Reckhow said that, based on the report, the Board has no logical options to resolve this matter and help Mr. Gernandt.

Attorney Kitchen said that Mr. Gernandt could appeal the decision of the Board of Adjustment to Superior Court, which would give Mr. Gernandt some time.

Chairman Reckhow asked Commissioner Bowser to inform Mr. Gernandt that the Board had studied the matter and could find no possible solution.

Vice-Chairman Bowser asked why privilege licenses had been issued to Mr. Gernandt to operate his business. Where was the loophole in this process?

County Attorney Kitchen answered Vice-Chairman Bowser's question.

Commissioner Heron explained that the Home Occupation Ordinance was to help businesses remain in operation under certain regulations. Much effort went into notifying the public of the special permits. The time period was extended at least once to purchase the permits.

Chairman Reckhow thanked Mr. Duke for his thorough investigation of this matter.

Method of Distribution of Local Option Sales Tax

Proceeds for the 2½ cents of local option sales taxes are divided between the County and the City of Durham pursuant to a 1995 resolution that was adopted by the Board of Commissioners on April 24, 1995. According to the resolution, the County retains 56.86 percent of the proceeds while the remaining 43.14 percent is paid to the City of Durham. The resolution provides that any changes in how local option sales tax proceeds are distributed, whether by changing the agreed-upon percentage, or by changing the method of distribution, requires that the party desiring to discuss the change notify the other party in writing on or before March 1, preceding the July when the change would take effect.

Resource Person(s): Mike Ruffin, County Manager; Chuck Kitchen, County Attorney; Pam Meyer, Budget and Management Services Director.

County Manager's Recommendation: The County Manager recommended that the Board authorize the Manager to notify the City of Durham in writing on or before March 1, 2003 that the Board of County Commissioners desires to discuss how proceeds from the local option sales taxes are distributed.

County Manager Ruffin presented this item to the Board. He clarified that this item was not presented in order to change sales tax distribution method. This item is merely to notify the City of Durham that the Board wishes to discuss how proceeds from the local option sales taxes are distributed. A very good argument exists for considering a change from how the proceeds currently divided. The additional ½-cent sales tax that was effective on December 1, 2002 will provide a significant windfall for the City of Durham. In fact, our budget office estimates that the City will receive approximately \$23.4 million more over the next ten years than it lost in reimbursements. Over that same ten-year period, the County will lose \$18.3 million more than we lost in reimbursements. These two estimates represent a difference of \$41.7 million. The Board is seeking to understand how that money being collected over the next few years will affect us. Perhaps that will facilitate some discussion as to whether the current formula continues to be a fair way to distribute those monies.

Chairman Reckhow stated that no discussion with the City about this matter has occurred since 1995. She offered a brief history regarding the division of the proceeds for the 2½-cents local option sales taxes. The new ½-cent sales tax has caused our situation to

change. The new revenue doesn't meet our loss but gives the City a windfall. That is the reason for recommending discussions with the City.

Commissioner Jacobs recommended that the Manager notify the City in writing on or before March 1, 2003 that the Board desires discussion of this matter.

Commissioner Cousin made a motion, seconded by Commissioner Heron, to suspend the rules to allow a vote on this item.

The motion carried unanimously.

Commissioner Jacobs moved, seconded by Vice-Chairman Bowser, to authorize the County Manager Ruffin to notify the City of Durham in writing on or before March 1, 2003 that the Board of County Commissioners desires to discuss how proceeds from the local option sales taxes are distributed.

The motion carried unanimously.

Closed Session

Commissioner Jacobs moved, seconded by Commissioner Heron, to adjourn to closed session in order to preserve the attorney-client privilege and to discuss *Bass v. Durham*, 02 CVS 1521, Orange County Superior Court, pursuant to G.S. § 143-318.11(a)(3).

The motion carried unanimously.

Reconvene to Open Session

Chairman Reckhow announced that in the closed session direction was given to the County Attorney on a lawsuit. No action was taken.

Adjournment

Chairman Reckhow adjourned the meeting at 12: 12 p.m.

Respectfully submitted,

Garry E. Umstead, CMC

Clerk to the Board