

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

Monday, August 6, 2007

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 Becky M. Heron, and Commissioners Lewis A. Cheek, Philip R. Cousin Jr. and Michael D. Page

Absent: None

Presider: Chairman Reckhow

Board Request

Vice-Chairman Heron requested that NCDOT report the condition of state bridges to the Commissioners.

Chairman Reckhow concurred with Vice-Chairman Heron's request. She suggested that a letter be sent to Secretary Lyndo Tippet, Department of Transportation, asking for a report that focuses on bridges in Durham County, as well as other bridges in the state, and inquire about the bridge over New Hope Creek.

Receive Presentation from Griffin & Strong, P.C. on the Disparity Study

George Quick, Finance Director, introduced this item. He stated that on August 28, 2006, the Board extended the county's current Minority and Women Business Enterprise Program to June 30, 2007 and authorized the County Manager to enter into a service contract with Griffin & Strong, P.C. to conduct a Disparity Study.

Mr. Rodney Strong, lead consultant, and other team members provided an overview of the study.

Topics discussed by Mr. Strong included:

1. Utilization, Disparity Findings, and Recommendations
 - Durham County Utilization during the Study Period
 - Statistically Significant Disparities Continue to Exist in Some Areas of Durham County Contracting
 - Disparities in Entry into Self-Employment Exist Between Non-Minority Males and Minorities and Females
 - Summary of Findings on Lending Discrimination from the National Survey of Small Business Finance

Conclusions

- The study produced substantial evidence of both continued discrimination and the continuing effect of past discrimination against minority- and women-owned business enterprises in Durham County.
- The statistical evidence can be summarized as follows:
 - Despite using a very conservative method of calculating availability, which probably understates the actual availability of MWBE firms, minority and women-owned firms were significantly underutilized as prime construction contractors in each racial, ethnic, and gender category.
 - MWBEs were over-utilized as prime contractors in Professional Services for the study period. Disaggregation by race, ethnicity, and gender reveals that African-American firms were at parity in this category, Hispanic firms were under-utilized, and Woman- and Native-American-owned businesses were significantly over-utilized for the period reviewed.
 - MWBEs achieved parity in Non-Professional Services during the study period. African-American-owned firms were significantly over-utilized and the other ethnic and gender categories were under-utilized.
 - MWBEs were significantly underutilized in Goods & Supplies during the study period in each racial, ethnic, and gender category examined.
 - MWBEs were significantly underutilized as subcontractors in Construction for the study period. Each of the ethnic and gender classifications were significantly underutilized in every year of the study period, with the exception of 2005, when African-American-owned firms came close to achieving parity.
- The private sector analysis can be summarized as follows:
 - All MWBEs, with the exception of Native-American-owned firms, were more likely to be denied credit than non-minority-owned firms and pay higher interest rates than non-minority firms.
 - After controlling for various factors, the self-employment income for MWBEs from each minority group analyzed and from women in the Raleigh-Durham-Chapel Hill, NC Metropolitan Statistical Area (MSA) is significantly less than would be expected, compared to that of non-minority, male-owned firms.
 - Non-minority males are more likely to be self-employed in the Raleigh-Durham-Chapel Hill, NC MSA than all of the ethnic and gender groups analyzed.
- The statistical evidence is bolstered by extensive anecdotal evidence.

Mr. Strong recommended that Durham County take the following steps:

- Modify the current MWBE Ordinance to include:
 - Commercial Non-Discrimination Ordinance
 - Enhancement of the monitoring requirements
- Increase outreach and capacity building activities directed toward MWBEs.
- Enhance the County data gathering process and develop an information technology system for the MWBE program.

- Provide additional staff resources to enhance the ability of the County to monitor MWBE compliance.

Commissioner Cheek expressed concern with Mr. Strong's overall conclusion that the County may be discriminating. He asked for an explanation of the method that was used. He informed Mr. Strong that the Board cannot control the submitted; however, work can be made available.

In response to Commissioner Cheek's question regarding whether specific recommendations would be brought back to the Board based on the general recommendations that were presented, Mr. Quick responded that the intent is to receive the Board's approval to move forward. Specific goals and remedies would be incorporated into the program.

Mr. Strong responded to concerns and questions posed by the Board.

The Board held a lengthy discussion about the disparity study.

Directives

1. Recommend an optimal program to the Board to ensure that all businesses have equitable opportunities to acquire county contracts.
2. Joint venture with the City and DPS regarding data monitoring.
3. Follow up on a recommendation regarding sufficient staffing in order to have a credible program.
4. Bring back at a future Worksession.
5. Staff to look at merits of a small business enterprise program, DBE program, and/or MWBE program.
6. County Attorney and George Quick to work closely with the disparity project.

Durham Public Schools—Revision of Construction Contract for Lowe's Grove Middle School

Hugh Osteen, Assistant Superintendent of Operational Services, stated that on June 25, 2007, the Board of County Commissioners approved a contract with DeVere Construction Co. Inc. for the renovation of Lowe's Grove Middle School for \$7,620,000. Due to the multiple phases or issuances of bonds from the 2003 School Bond Referendum, a final installment of funds for the Lowe's Grove Project will not be available until spring of 2008. In order to remain within current limits, the contract must be reduced by removing three alternates for external canopies for a total of \$354,000. Should the alternate work be required at a later date, an amendment to the contract will be brought before the Board.

Mr. Osteen stated that the new contract will not include alternates #1, #2, and #3 and will total \$7,266,000. All other bidding and contract documents remain as previously approved.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to suspend the rules.

The motion carried unanimously.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve the revised construction contract for the renovation of Lowe's Grove Middle School with DeVere Construction Co. Inc. for \$7,266,000.

The motion carried unanimously.

Durham County Detention Facility Jail Bed Needs Assessment

Glen Whisler introduced this item by stating that the Board requested an update on the Jail Bed Needs Assessment at the Durham County Detention Facility (DCDF). On December 11, 2006, the Board of County Commissioners awarded a contract to O'Brien/Atkins Associates (O/A), P.A. to provide professional services updating the Jail Bed Needs Assessment, including the evaluation of the current Intake and Booking areas at the DCDF.

Construction of the Durham County Detention Facility was completed in 1996, with a bed count of 576. In 1997-98, the bed count was increased by 160 for a total of 736. The current average daily population is approximately 600, and this study evaluated the future bed needs and assessed the supporting operations including the following:

1. Inmate population forecasts through 2030;
2. Profiles of the detention population, admissions, and releases;
3. Recommendations of specific number and types of beds;
4. Functional and space evaluation of the existing jail intake and booking area;
5. Assessment of food service and laundry to accommodate additional beds; and
6. Cost estimates

The study provided a schedule and cost estimate for the Detention Center expansion that can be incorporated into the Capital Improvement Plan (CIP). The intent of the update is to receive the Board's input on the study and provide direction to the staff.

Rod Miller, Pulitzer/Bogard & Associates LLC, provided an overview of the Durham County Jail Expansion Needs Assessment, Phase A (Inmate Data and Projections) and Phase B (Review of Jail Intake).

Mr. Miller stated that the critical issue is the difference between the number of beds and the functional capacity of the facility.

David Bogard, Pulitzer/Bogard & Associates LLC., summarized the intake and release process.

Mr. Franklin L. Turner, Jr., AIA, O'Brien/Atkins Associates, P.A., provided a brief synopsis of the food and laundry process.

Per the Board's request, Mr. Turner made comments regarding the cost analysis.

Chairman Reckhow stated the feasibility of considering alternatives, including diverting some inmates to other programs.

The Board held a discussion on the expansion of the detention facility.

Directives

1. Bring information to the Board about other jurisdictions that have a successful pretrial release program.
2. County Manager to solicit data from Interim District Attorney Jim Hardin regarding the length of time it takes to bring cases forward.
3. County Manager to follow up on the pretrial services infrastructure.
4. County Manager to bring back recommendations to a future Worksession about short-term, mid-term, and long-term renovations.
5. Focus on facilities that are comparable to the DCDF to obtain a better cost analysis.

South Regional Library Update

Glen Whisler introduced this item. He stated that on June 27, 2005, the Board of County Commissioners awarded a design contract to The Freelon Group, P.A. to provide architectural services for the South Regional Library. At the December 5, 2005 Worksession, the BOCC approved the current site location of the library and directed staff to proceed with the design.

On November 6, 2006, the Board of County Commissioners received an update on the design development phase of the project and modifications were requested. On March 12, 2007, the Board of County Commissioners approved the amendment of the design contract with the Freelon Group, P.A. for the project redesign and deviations from the original prototype design. The prototype plan developed and built for the East and North Branches has been refined for the South Branch. Refinements include exterior modifications incorporating more brick (removing cast stone and hard plank siding material) and revising the main entrance. Floor plan modifications include a display area in the main entrance acknowledging the former Lowe's Grove Elementary School, a small vending area with seating, smaller restrooms to conform to the new plumbing code, reconfiguration of stacks, circulation, and reference desks to improve efficiency of the library, and increased usage of self-check out stations. The updated floor plan contains approximately 25,000 square feet with provisions for a future addition of 10,000 square feet. The intent of this update is to receive the Board's input on the updated plan for this branch, which will allow the project to advance to the construction document phase.

Rick Kuhn provided an update on the design development phase for the proposed Durham County South Regional Library to be located on the former Lowes Grove property.

Chairman Reckhow thanked the Freelon Group for the presentation.

In response to Chairman Reckhow's question regarding the project schedule, Mr. Whisler stated that the contract documents must be finished in order to request bids in summer 2008.

Directive

Consider starting the proceedings in early spring.

Closed Session

Commissioner Cheek moved, seconded by Commissioner Cousin, to adjourn to closed session to preserve the attorney-client privilege and to discuss County of Durham v. Arc 3, LLC, et al., 06 CVS 847 pursuant to N. C. Gen. Stat. § 143-318.11(a)(3).

The motion carried unanimously.

Analysis of Impact of Medicaid Relief and Strategy to Determine Whether to Impose a ¼% Sales Tax or .4 (of 1%) Land Transfer Tax

County Manager Mike Ruffin presented this item by stating that Governor Easley signed the state budget, which provides a three-year strategy for the elimination of the County's cost on Medicaid. In addition, the budget provides counties the option to impose either a ¼% sales tax or a .4 (of 1%) land transfer tax upon approval by Durham County voters. Staff will discuss the financial impact of the elimination of Medicaid on the County's budget and lay out a recommended strategy for determining whether to ask Durham County voters to approve the imposition of either new tax.

County Manager Ruffin presented the following:

Durham County Medicaid Legislation Summary

State Legislation Specifics

FY 2007-08

- State assumes 25% of county Medicaid costs beginning 10/1/07
- Counties forgo a portion of their ADM Fund monies
 - Medicaid relief > expected county ADM, loss in ADM fund = 60% of ADM fund
 - Medicaid relief < expected county ADM, loss in ADM fund = 60% of Medicaid relief
 - State sales taxes used to hold counties harmless if lost revenues exceed Medicaid savings; all counties guaranteed at least \$500,000
- No impact on cities

FY 2008-09

- State assumes 50% of county Medicaid costs beginning 7/1/08
 - Counties and cities forgo ¼ cent per capita of Art. 44 beginning 10/1/08
 - Art. 44 transitional hold harmless kept in place
- State sales taxes used to hold counties harmless if countywide sales taxes, including municipal hold harmless, exceed Medicaid savings
 - State assures all counties benefit by at least \$500,000

- 90% of estimated hold harmless distributed by March
- Remaining trued up by August 15
- Counties replace city sales tax losses including growth
 - Department of Revenue reduces county Art. 39 allocations by city hold harmless amount & send directly to cities

FY 2009-10

- State assumes 100% of county Medicaid costs beginning 7/1/09, for expenses incurred on or after
- Counties and cities forgo all of Art. 44 beginning 10/1/09
 - Counties and cities receive last quarterly sales tax payment
- Art. 42½ per capita converted to point of delivery
- Local sales 2% - 1.5% point of delivery, .5% per capita
- State sales taxes used to hold counties harmless if countywide sales taxes, including municipal hold harmless, exceed Medicaid savings; all counties guaranteed at least \$500,000
 - 90% of estimated hold harmless distributed by March
 - Remaining trued up by August 15
 - State assures all counties benefit by at least \$500,000
- Counties replace city sales tax losses including growth

FY 2010-11

- State assumes 100% of county Medicaid costs for expenses incurred on or after
- Counties and cities forgo all of Art. 44
- Local sales 2% - 1.5% point of delivery, .5% per capita
- State sales taxes used to hold counties harmless if countywide sales taxes, including municipal hold harmless, exceed Medicaid savings; all counties guaranteed at least \$500,000
 - State assures all counties benefit by at least \$500,000
 - 90% of estimated hold harmless distributed by March
 - Remaining trued up by August 15
- Counties replace city sales tax losses including growth

FY 2011-12

- State assumes 100% of county Medicaid costs for expenses incurred on or after
- Counties and cities forgo all of Art. 44
- Local sales 2% - 1.5% point of delivery, .5% per capita
- State sales taxes used to hold counties harmless if countywide sales taxes, including municipal hold harmless, exceed Medicaid savings; all counties guaranteed at least \$500,000
 - State assures all counties benefit by at least \$500,000
 - 90% of estimated hold harmless distributed by March
 - Remaining trued up by August 15
- Counties replace city sales tax losses including growth

The Numbers

- FY 2008
 - Medicaid Reduction--\$2,372,706

- Payback to PSBF--\$1,200,000
- Hold Harmless to City--\$0
- Total Savings--\$1,172,706
- FY 2009
 - Medicaid Reduction--\$7,420,278
 - County Sales Tax Loss--\$2,896,247
 - Hold Harmless to City--\$2,500,046
 - Total Savings--\$2,023,985
- FY 2010
 - Medicaid Reduction--\$16,935,294
 - County Sales Tax Loss--\$6,810,305
 - Hold Harmless to City--\$5,878,666
 - Total Savings--\$4,246,323
- FY 2011
 - Medicaid Reduction--\$18,254,378
 - County Sales Tax Loss--\$8,051,365
 - Hold Harmless to City--\$6,949,950
 - Total Savings--\$3,253,063

Additional Revenue Authority Components

- Counties authorized to levy either a .4% land transfer tax or ¼-cent point of delivery sales tax (minus food sales [14%]), subject to voter approval
- No required municipal distribution and no earmarks on dollars

New .25 Sales Tax (Point of Destination)

- Estimated at 4% growth for future years based on conservative historical trends
- Estimates based on a quarter of the Article 39 one-cent sales tax (minus 14% for food sales that would not be charged)
- Note: the FY 2007-08 collected amount will be approximately 25% if the local resolution is approved, to be effective April 1, 2008.

.4% Land Transfer Tax

- The current statute that governs excise tax, GS 105-228.30, prescribes a tax rate of \$1.00 on each \$500.00 of value. This translates to 0.2% of the value of the property being transferred. Of this, one-half of the tax (less 2% that is retained for administrative costs) is remitted to the State and the remaining one-half is retained by the County in the County's general fund.
- Examining the deed stamp excise tax collections for Durham County over the past 13 years shows significant fluctuation from year to year in the dollar amount and growth rate of collection. Over the entire 13-year period, the average growth was 10.36% (9.02% if the largest decrease and increase are factored out).
- In trying to understand the fluctuations in the growth rate, it was charted against the average 30-year fixed rate mortgage interest rates over the same period. The trend is a

mostly inverse relationship between the excise tax and the interest rate. When rates go down, the housing market strengthens, and the excise tax increases; when rates increase, housing sales decrease.

Durham County Deed Stamp Growth Rate (graph)
Sales Tax Growth Rate (graph)

Transfer Tax vs. Sales Tax Growth Rates (graph)

- Using a 9.02% constant growth rate for the excise tax collections, the increased revenues over the next 10 years are as follows:

2008	\$5,326,617	2013	\$16,406,364
2009	\$11,614,155	2014	\$17,886,218
2010	\$12,661,752	2015	\$19,499,555
2011	\$13,803,842	2016	\$21,258,415
2012	\$15,048,949	2017	\$23,175,924

- Note: the FY 2007-08 amount will be approximately 50% if the local resolution is approved, to be effective January 1, 2008.

Impact of New Revenue on the County's Capital Finance Plan (chart)

Sales Tax or Land Transfer Tax

The Law

- Land Transfer-.4 of 1%
- Sales Tax—¼-cent point of delivery (no tax on food)
- No required municipal distribution
- No earmarks on how funds must be expended
- Only one can be enacted after a referendum
- August 31, 2007 - Final decision to place on ballot for November referendum

¼-Cent Sales Tax

- Estimated at 4% growth for future years based on historical trends
- Estimates based on a quarter of the Article 39 one-cent sales tax (minus 14% for food sales that would not be charged)
- Effective date if approved in November referendum – April 1, 2008

.4 % Land Transfer Tax

- Estimated at 9.02% growth for future years based on historical trends
- Estimates based on 13 years of receipts of deed stamp revenue
- Effective date if approved in November referendum - January 1, 2008

How Much

- First Full Year of Collections - FY 2009
 - ¼ Cent Sales Tax - \$9,844,589
 - .4 of 1% Land Transfer Tax - \$11,614,155

- Tax Rate Equivalent
 - ¼ Cent Sales Tax - 3.66 cents
 - .4 of 1% Land Transfer Tax - 4.32 cents

Impact on Capital Finance Plan (chart)

Sales Tax Growth (graph)

Deed Stamp Revenue (graph)

Comparative Trend Analysis (graph)

Recommendations

- Place on ballot in November.
- Hold public hearing on special date this month.
- Poll commissioned to determine voter preferences and impact of either or both questions on proposed bonds.
- Consult area think-tanks about ballot-related impacts.
- Use public hearing and polling results to help determine which of the questions to place on ballot.
- Adopt resolution calling for referendum on August 27, 2007.
- Revise financial policies to earmark all collections from the tax for infrastructure.

The Board held a discussion about holding a public hearing to allow citizens to comment on the sales tax or land transfer tax.

The Board reached a consensus to place the public hearing on the August 13 Regular Session agenda.

Chairman Reckhow suggested that further questions and requests be directed to the County Manager.

Directive

Staff to answer the following questions:

- What would a family with average or median income pay in sales tax with a ¼-cent increase?
- How much of the new quarter cent sales tax would be paid by nonresidents?
- What is the value of an average home in Durham County (existing and new) that is sold?
- Given that average value, what would the additional transfer tax be?
- How many homes are sold in Durham in an average year?
- What percent of the transfer tax would be paid by non-residential property owners?
- What is the average number of years a home is owned in Durham?
- How much more would the owner of an average priced home have to pay in property taxes if the home is owned the average amount of time?

Possible Moratorium on Conservation Subdivisions

Lowell Siler, Deputy County Attorney, stated that on August 1, 2007, the Joint City-County Planning Committee (JCCPC) discussed conservation subdivisions. Several citizens and

JCCPC committee members discussed whether the current version of the Unified Development Ordinance (UDO), which allows for conservation subdivisions, has deficiencies. Furthermore, the JCCPC discussed whether a temporary moratorium is appropriate in order to suspend the development of conservation subdivisions and allow staff and the community adequate time to research and discuss these issues and, possibly, amend the UDO.

Mr. Siler discussed how a moratorium would affect cases that were already in process.

The County Attorney provided legal advice relating to N.C.G.S. 153A-340(h) which states, "Any preliminary subdivision plat accepted for review by the county prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium."

The board held a discussion about amending the stormwater ordinance.

Directives

1. For future projects, look at low-impact designs for stormwater management.
2. Refer item back to Planning staff to amend the ordinance language.

Board and Commission Term Limits and Recruitment Process

Chairman Reckhow stated that at the June 25 Regular Session, the Commissioners decided to discuss whether to continue placing term limits on boards and commissions. In addition, the Commissioners decided to discuss the recruitment process regarding the board and commission appointments.

The County Attorney recommended that the Commissioners consider the number of years instead of terms.

Commissioner Cheek suggested making the waiver provision [Section 1(E) of the Resolution for Establishment of Policy and Procedures for Appointments to County Boards, Commissions, Committees, or Authorities] broader.

Chairman Reckhow requested that the County Attorney amend the provision to reflect the Board's authority to waive the maximum term length policy for categorical positions and positions with terms shorter than the standard three years.

Commissioner Page recommended that the chairs or members of the boards and commissions consider interviewing applicants that express interest in serving.

Directives

1. Clerk to the Board's staff to communicate with the chair of the boards and commissions to determine which ones wish to screen applicants to provide recommendations to the Board of County Commissioners.
2. Check with the Herald-Sun regarding advertising in the "Volunteer Opportunities" section of the paper.

3. Provide guidelines in the “Resolution for Establishment of Policy and Procedures for Appointments to County Boards, Commissions, Committees, or Authorities” to specify the Board's intent.

Adjournment

There being no further business, Chairman Reckhow adjourned the meeting at 3:10 p.m.

Respectfully Submitted,

Angela M. McIver
Staff Specialist
Clerk to the Board’s office