

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

Monday, October 8, 2007

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

Absent: Commissioner Lewis A. Cheek

Presider: Chairman Reckhow

Welcome

Chairman Ellen Reckhow welcomed everyone to the regular meeting of the Board of County Commissioners—Monday, October 8, 2007. She requested that everyone rise for the Pledge of Allegiance.

Motion to Excuse

Chairman Reckhow asked for a motion to excuse Commissioner Cheek from the meeting.

Vice-Chairman Heron moved, seconded by Commissioner Page, to excuse Commissioner Cheek.

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow

Noes: None

Absent: Cheek

Vice-Chairman Heron expressed that the Commissioners should send Commissioner Cheek their best wishes for a quick recovery.

Agenda Adjustments

Chairman Reckhow requested that the Board defer agenda item No. 16, Regulation of Solicitation on the Streets and Highways of Durham County, because of Commissioner Cheek's absence.

Vice-Chairman Heron stated that the panhandlers are inside the City limits. She suggested that the Board consider placing this item on the next Joint City-County Committee meeting agenda for discussion.

Chairman Reckhow stated that the issue should be addressed. While traveling to the meeting this evening, she witnessed a panhandler stepping out into the travel lane of a highway.

Vice-Chairman Heron moved, seconded by Commissioner Page, that the Regulation of Solicitation on the Streets and Highways of Durham County be discussed at the next Joint City-County Committee meeting.

Commissioner Page stated that when this issue was first addressed, he had suggested that the Board solicit support from the City. Panhandling activity occurs inside the City limits. He was glad to hear agreement with his initial recommendation.

County Manager Mike Ruffin mentioned that last year, the Joint City-County Committee discussed panhandling at the request of Commissioner Cheek. It was met with a cool reception; however, it could be brought up again.

Chairman Reckhow stated that many initiatives are underway in the County. A briefing could take place at a Joint City-County Committee meeting to discuss various initiatives. Chairman Reckhow heard at last Thursday's Mental Health meeting that now even more is going on.

Vice-Chairman Heron mentioned that other organizations are trying to help with the panhandling issue. With a collaborative effort, maybe we can find a way to help these folks.

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

Commissioner Page apologized to the citizens who have come tonight, and who continuously come to Commissioner meetings, because of this issue. He thanked the citizens for taking a stand on the panhandling issue.

Chairman Reckhow also thanked the citizens. She asked the Clerk to post a notice outside the Chambers regarding the deferment (to notify citizens who may arrive later to hear this item).

County Manager Ruffin mentioned that the next Joint City-County Committee meeting will be held Tuesday, November 13, at 9:00 at City Hall Plaza.

Announcements

Chairman Reckhow announced that the Vote for Learning 2007 Committee will hold a kickoff event for the 2007 Bond Referendum on Wednesday, October 10, 4:30 p.m., at the Durham Public Schools Staff Development Center located at 2107 Hillandale Road. The brief program will highlight the \$207.1 million bond issue for Durham Public Schools, Durham Technical Community College, and the North Carolina Museum of Life and Science. Chairman Reckhow encouraged citizens who are interested in learning more about the bonds to come to the kickoff event.

Chairman Reckhow also announced that the Transportation Advisory Committee will hold a public hearing on the Transportation Improvement Plan (TIP) on Wednesday, October 10, 7:00 p.m., in the Durham City Hall Plaza, Second Floor Committee Room. She welcomed citizens to come to the public hearing if they have an interest in transportation improvements and the plans for the next 6-year TIP.

Chairman Reckhow mentioned, for citizens living inside the City limits, that the primary election for the City Council will be tomorrow. Polls will be open from 6:30 a.m. to 7:30 p.m. She encouraged voters within the City limits to exercise their right to vote. County bonds will not be on the ballot until the general election on November 6.

Commissioner Page announced, on behalf of the DSS Partnership Series (Investing in Human Capital), the final workshop to be on October 18 from 3:00 to 5:00 p.m. at the DSS office, 220 E. Main Street. This workshop will focus on accessing Medicaid, Health Choice for children, and food and nutrition assistance. Commissioner Page encouraged citizens, groups, or nonprofits to attend this very informative session for an opportunity to learn more about what is being offered in the community.

Minutes

Vice-Chairman Heron moved, seconded by Commissioner Page, to approve as corrected the September 10, 2007 Regular Session Minutes and as submitted the September 24, 2007 Regular Session Minutes of the Board.

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

Recognition for Jose Diaz

Chairman Reckhow stated that it is the Board's pleasure to recognize Jose Diaz. She asked Jose to come forward to the microphone. Chairman Reckhow commented that Durham County EMS brought to the attention of the Commissioners the heroism and fast thinking of

Jose who was responsible for saving his family from tragedy earlier in the year. The Board wishes to highlight his work because it is important for all of us to be aware of what needs to be done in an emergency situation.

Chairman Reckhow recognized Jackie Holmes, EMS Supervisor, and Deborah Craig-Ray, Assistant County Manager, to say a few words about Jose's fast thinking.

Ms. Holmes conveyed that on February 8, young Jose Diaz arrived home from school to find his grandmother exhibiting altered mental status due to hypoglycemia. Jose also saw that his grandmother had been cooking something on the stove, which had begun to burn. He immediately called 911. Durham Fire Department employees (Squad 1) and Durham County EMS paramedics Joe Wagner and Charlie Moody responded and found the elderly female disoriented and the house filled with smoke. Firefighters and EMS personnel promptly took appropriate action. As a result of Jose's quick thinking and his ability to stay calm and composed, he probably saved his family home and, more importantly, his grandmother's life. For this, he should be commended, and his actions should be recognized so that others, especially our younger citizens, will follow his example.

On behalf of Durham County EMS, Ms. Holmes presented to Jose the Durham County EMS Life Savers Award and the gear bag filled with fun and practical items for Jose and his family to enjoy.

Ms. Craig-Ray informed Jose that the County of Durham has a certificate for him, which will be presented by the Chairman of the Board.

Chairman Reckhow called Jose forward to accept his certificate of appreciation. She read the certificate as follows: "This certificate is awarded to Jose Diaz for heroism in rescuing his grandmother during her medical emergency and saving the family's home from fire." The certificate was signed by Ellen W. Reckhow, Board Chairman, and Michael M. Ruffin, County Manager.

Chairman Reckhow congratulated Jose, who received applause from the Commissioners, County staff, and audience.

Consent Agenda

Vice-Chairman Heron moved, seconded by Commissioner Page, to approve the following consent agenda items:

- *a. Business Deal Points for the Durham County Memorial Stadium Renovations (approve the Business Deal Points and allow staff to move forward with the Development Agreement [approval is subject to non-substantive changes made by the County Attorney]);

- b. Purchase and Installation of Vehicle Exhaust System—EMS (approve the \$108,304 contract for the purchase and installation of the Plymovent Vehicle Exhaust System);
- *c. Budget Ordinance Amendment No. 08BCC000011—Sheriff's Office—2007 G.R.E.A.T. Grant (approve \$47,950 for gang resistance education); **Chairman Reckhow congratulated the Sheriff's Office for receiving the grant**; and
- d. Approve the Sale of County Surplus Property (812 S. Roxboro Street to Self Help Community Development Corporation for \$8,500; 3046 Ruth Street to Carl Malek for \$1,837; 5 Edgestone Place to John & Beth Gunn for \$1,097; 900 Piper Street to Johnny Peele for \$1,000; 3122 Hope Valley Road to Armando Guerrero for \$851; 915 E. Maynard Avenue to Nathan Turbyfill for \$500; and 900 Scout Drive to Nathan Turbyfill for \$500).

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

*Documents related to these items follow:

Consent Agenda Item No. a. Business Deal Points for the Durham County Memorial Stadium Renovations (approve the Business Deal Points and allow staff to move forward with the Development Agreement [approval is subject to non-substantive changes made by the County Attorney]).

BUSINESS DEAL POINTS Durham County Memorial Stadium Renovation Project

The County of Durham, the Durham Stadium Authority, and Shaw University (collectively the Parties) have common and compelling interests in reaching final agreement on renovating the Durham County Memorial Stadium. The completed renovations will allow Durham County Memorial Stadium to offer the amenities that comprise today's top dual-sports facilities in the region including an eight-lane synthetic surface oval track, an infield of synthetic turf, a state-of-the-art scoreboard and an enhanced sound system. The interior improvements will include updated restrooms, concession stands, and ticket booths. There will also be a full-size press box to accommodate special events, the media, and coaching staff.

The renovation is projected to have an economic impact to Durham County of over \$500,000 in the 2007-2008 season alone, even before any of the long-term improvements have been made.

The following non-binding business point items have been agreed to in concept by the County of Durham, the Durham County Stadium Authority, and Shaw University. These points shall be further refined and form the basis for negotiation of a Development Agreement.

I. PRE-CONSTRUCTION

- a. The Parties have jointly drafted this Business Points document in anticipation of presenting it for approval to the Stadium Authority on October 2, Board of County Commissioners on October 8, 2007 and the Shaw University Board of Trustees at its next regularly scheduled meeting. If this document is approved by the Parties, then negotiations will commence on the necessary formal, legally binding development agreements (the "Development Agreement"), and various other documents to be prepared by the attorneys and presented to the Parties for approval. In the event this document is not approved by the Parties, the Parties shall either cease negotiations or renegotiate the terms and conditions of a new Business Deal Points document.
- b. The Development Agreement shall further define the Project Scope and Schedule. The Schedule shall accommodate legitimate interests of all Parties, including currently scheduled events at the Stadium, minimal closures of the Stadium and minimal interference with high school and college sporting events to be held at the Stadium. The parties anticipate that all phases of the project will be completed by September 2009. But the obligations of the parties and this agreement shall continue for ten (10) years from effective date of this Agreement.
- c. The Development Agreement shall also define the proposed uses within the Project, including sporting events and possible community activities.
- d. It is expected that the County will begin Phase I, as outlined below, immediately upon execution of the Development Agreement. The County will use good faith, best efforts to complete the balance of the Phases of the project in the time frames established.

II. PHASES

Except for the Video Screen and associated work as defined below, all work, improvements, and construction for this Project shall be performed or caused to be performed by the County including all work, improvements and construction as provided in the permit and site plan. The County shall enter into the necessary contract(s) to have the work performed and shall be responsible for payment to all contractors. Shaw will not be a party to any contracts let for the Stadium improvements proposed herein. The work has been divided into two phases. The Phase schedule is set forth below. The parties acknowledge and agree that all work performed by the County is subject to North Carolina public bidding laws and shall be carried out in accordance with all applicable laws.

A. PHASE I

Phase I work is scheduled for the period beginning December 2007 with completion by September 2008. The main focus in Phase I is construction of the new synthetic field turf and track, signage, and a new score board. The intent is to have major construction work, which will have the biggest potential impact on scheduling events in one Phase, to mitigate any additional

interference with sporting activities and other events at the Stadium. The following is an itemized list of Phase I improvements:

1. Marque Sign
2. Landscaping associated with signage
3. Track and Field Improvements
4. Synthetic Field Turf
5. Storm Drainage
6. Score Board
7. Storage Shed
8. Purchase of Track Protection Mats

B. PHASE II

Phase II work is scheduled for the period beginning December 2008 with completion by September 2009. The main focus in Phase II is aesthetics, plumbing, mechanical, and engineering upgrades, and sound system upgrade. The following is an itemized list of Phase II improvements:

1. Demolition and Replacement of an Expanded Press Box including deck and elevator enhancements
2. Replacement of roof on support buildings
3. Upgrade all locker rooms
4. Upgrade public restrooms
5. Relocate and upgrade concession stands
6. Replace Stadium Seating Covers including addition of seat numbers
7. Plumbing, Mechanical, and Engineering Upgrades
8. Relocate ticket booths
9. Extend Concrete Concourse
10. Lighting Improvements for Broadcasting Ability
11. ADA Improvements to the North Side Seating Area
12. Enhanced Security/Parking Lot Lighting
13. Decorative Fencing in front of Grandstands
14. Pressure Washing of Grandstands, Walks, and Concession Apron
15. Sound System Upgrade

III. COST ALLOCATIONS

The County and Shaw have agreed to share in the cost related to the renovations described in Section II. The cost allocations are set forth in Attachment A, attached hereto, and incorporated herein. The County and Shaw's respective share of the cost of renovations and improvements shall equal 64% and 36% respectively. The parties acknowledge that Attachment A contains cost estimates and that final costs may be more or less than those provided in Attachment A. The parties agree to the percentages and cost allocations set forth in Attachment A and any increase or decrease in costs for the actual work shall be shared accordingly.

The County intends on financing these improvements through a security interest financing under N.C.G.S. sec. 160A-20. For purpose of N.C.G.S. sec. 159-28, the County's obligation under this agreement is an amount not to exceed \$4,192,033. The total estimated cost allocated to Shaw University is \$2,388,984. The parties acknowledge that these estimates may be increased or decreased before the Development Agreement is finalized, but once finalized, the Development

Agreement shall state a maximum amount to be allocated to each Party, and that amount shall not be exceeded by any party without an amendment to the Development Agreement. In the event that costs increase above the maximum amounts stated in this Agreement, the parties shall amend the Development Agreement to reflect the increased amounts due under the allocation formula, or revise the project to the approved budget.

Each Phase shall be funded at the beginning of each Phase. Thus Phase I shall be funded upon execution of the Development Agreement, and Phase II shall be funded upon a written notice to proceed from the County to Shaw indicating the start date of construction.

Upon execution of the Development Agreement, Shaw shall pay to the County an amount equal to the cost allocated to Shaw University for Phase I, or the allocated percentage based on the actual cost of the work pursuant to contracts let by the County for said work. Upon receipt of a notice to proceed from the County to Shaw University for Phase II, Shaw shall pay to the County an amount equal to the cost allocated to Shaw University or the allocated percentage based on the actual cost of the work pursuant to contracts let by the County for said work for Phase II.

IV. SHAW'S USE OF THE STADIUM

In consideration for its financial investment in the Stadium, Shaw University shall have access to and use of the Stadium for Shaw University "Public" and "Non-public" events, as defined herein and specified in Attachment C, attached hereto and incorporated herein. Public events are those events in which an entrance fee is charged or the media is invited, such as football games and track meets or media events. Non-public events are those in which only Shaw athletes, coaches, and staff are present for practices, drills, or scrimmages. Shaw shall not be charged a rental fee for public events, but shall be responsible for its share of maintenance and operations costs as described herein and set forth in Attachment B. Non-public events will be charged at the annual rate set by the Stadium Authority, which may be changed from time to time.

V. MAINTENANCE AND OPERATIONS COSTS ASSOCIATED WITH USE AND IMPROVEMENTS TO THE COUNTY STADIUM

The County has analyzed the annual maintenance and operations costs associated with the planned improvements and projected use of said improvements on both an annual basis and for a period of ten years. These costs are set forth in Attachment B, attached hereto, and incorporated herein.

The County and Shaw University have reached agreement on Shaw's portion of the annual maintenance and operations costs based on a projected number of public events per year. Because Shaw University has agreed to an investment of approximately 36% of the total capital improvements costs, they will contribute 64% of normal maintenance and operations costs. The average per game maintenance cost for Shaw equates to \$2,684 with a ten-year total cost of \$377,704 as outlined in Attachment B.

Shaw shall pay to the County an amount equal to their per year maintenance and operations costs on or before June 30th of each year, with the first payment for maintenance beginning June 30, 2008 or in the alternative one unreduced lump sum for the ten years.

VI. VIDEO SCREEN AND RELATED FACILITIES

Shaw desires to install, maintain, and utilize for its sole use, a video screen to be located adjacent to the scoreboard at the east end of the Stadium. The video screen will be approximately 17' x 23'. The infrastructure and equipment to operate the screen will include two beams, conduit to house cabling, a small cabinet to be housed in the press box or equipment room, and an 8 x 10 sq. ft. room to be located in the press box for operation of the screen while in use.

The parties acknowledge and agree that installation, maintenance, operation and use of the video screen will be the sole obligation of Shaw. Shaw shall coordinate the installation of the video screen with the County so that the conduit, beams, and associated specifications are included in the renovation and improvement design and schedule.

Shaw shall, at its sole cost and expense cause the video screen and related infrastructure and facilities (other than the press box control room) to be installed by the video screen manufacturer or authorized installation company pursuant to specifications agreed upon by the parties. The installation shall be coordinated with the County so that the conduit can be laid prior to the synthetic field turf and track installation and completion and other installation work can be performed at the times and in the manner not to otherwise interfere or delay with the Stadium renovations.

All maintenance costs related to the video screen shall be solely at the cost of Shaw University. Shaw shall be solely responsible for any liability resulting from the video screen. Any damage to the video screen or its related facilities shall be the responsibility of Shaw. Shaw shall indemnify and hold harmless the County and the Stadium Authority for any damage, loss, costs, and claims related to or arising from the video screen or its related facilities.

Neither the County nor the Stadium Authority shall have access to the use of the video screen unless otherwise set forth in an amendment to the Development Agreement.

Since the Stadium is a public facility, owned by the County and operated by the Stadium Authority, Shaw may not lease or rent for value or otherwise derive a monetary benefit from permitting other entities or persons to use the video screen at the Stadium.

VII. OWNERSHIP OF IMPROVEMENTS

Other than the video screen and its control equipment housed in the control cabinet, all renovations, improvements, infrastructure, fixtures and up fitting made to the Stadium pursuant to this agreement or otherwise, shall be and remain the sole property of the County of Durham. Nothing herein shall be deemed to create for Shaw an ownership interest in the Stadium, its facilities, fixtures, or equipment.

The video screen and its control equipment housed in the control cabinet shall be and remain the sole property of Shaw and may be removed by Shaw at anytime during this agreement. The removal of the video screen shall be coordinated with the other parties to this agreement in order to mitigate any interference or damage to the Stadium and its events. Any damage to the Stadium that does result from the video screen removal shall be repaired at Shaw's expense.

VIII. TERMINATION

Unless otherwise provided herein, the terms, conditions, covenants, and agreements herein contained shall survive the completion of construction of a particular Phase, expiring ten (10) years from the effective date of the Development Agreement. In consideration of the County and Stadium Authority renovating the Stadium to a collegiate level, Shaw University's obligations under this Agreement, including maintenance and operations costs shall survive the termination of this Agreement. In the event Shaw terminates this agreement prior to its expiration, Shaw shall be responsible for its share of construction and maintenance and operations costs for the term of this agreement.

Attachment A – Long Term Improvements

Attachment B – Annual Operating Costs

Attachment C – Shaw proposed annual uses

Consent Agenda Item No. c. Budget Ordinance Amendment No. 08BCC000011—Sheriff's Office—2007 G.R.E.A.T. Grant (approve \$47,950 for gang resistance education).

DURHAM COUNTY, NORTH CAROLINA

FY 2007-08 Budget Ordinance

Amendment No. 08BCC000011

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 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	\$362,021,908	\$47,950	\$362,069,858

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 47,710,310	\$47,950	\$ 47,758,260

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

This the 8th day of October, 2007.

Consent Agenda Item Removed for Discussion

Consent Agenda Item No. e. Budget Amendment No. 08BCC000012 for \$100,000 to the Durham Public Schools for the City of Medicine Academy Lease (approve with an appropriation of General Fund fund balance).

Vice-Chairman Heron removed this item from the consent agenda. She expressed that she has been very supportive of the City of Medicine Academy from the beginning. (There is money in the bond issue to cover this.) She expressed concern that this item was not

presented to the Board for discussion at a worksession prior to it being placed on tonight's consent agenda. Vice-Chairman Heron felt that negotiations and decisions were made without her input. She wanted to know why it appears that this item is being rushed through. She thought that the agreement was that the facility would be on the bond issue, the bond would hopefully pass, and then construction would begin on the Academy. Vice-Chairman Heron reiterated her support for the City of Medicine Academy, but expressed dissatisfaction in the way it was handled.

Chairman Reckhow asked County Manager Mike Ruffin and Hugh Osteen, Assistant Superintendent of Operational Services, to speak to Vice-Chairman Heron's concerns.

County Manager Ruffin stated that on the November ballot, of \$194+ million in bonds for the school system, \$7.1 million will be made available for the construction of the City of Medicine Academy, just west of Durham Regional Hospital and adjacent to the Oakleigh facility. The Board was notified that negotiations were occurring for lease space in the interim. Last week, details of the lease agreement were finalized at a point to where it could be brought to the Board. This would normally be brought to a worksession; however, DPS asked that it be placed on the earliest agenda possible as time was of the essence.

Vice-Chairman Heron asked the County Manager why the Board was not made aware of the negotiations at last week's worksession.

County Manager Ruffin replied that the Board was told that negotiations for an interim facility were taking place. It was not placed on the October 1 Worksession because the lease agreement was not complete; a couple of issues involving quite a few dollars were outstanding. The issues were worked through. This is the first meeting to occur since the details of the lease agreement were finalized.

Mr. Osteen discussed the timing issue with the Board. He stated that DPS has been searching for an appropriate location for quite some time, long before approval of the City of Medicine Academy item for the bond referendum. One of the primary goals and needs of this program is to be in a location that provides the greatest amount of accessibility to medical facilities, programs, and professionals. The ideal location was found in the latest moments of last week in terms of getting a lease agreement with an owner in close proximity to Durham Regional Hospital. The final deal points have recently been put together; time is of the essence for both parties (DPS and the landowner).

Chairman Reckhow requested information about the enrollment.

Mr. Osteen stated that the enrollment is in the upper 200s, close to 300, in the program that is now housed at Southern High School.

Vice-Chairman Heron stated that Southern High School is very proud of its City of Medicine program; Durham is proud of the program, also. Great work has been done. She asked Mr. Osteen how the vacated space at Southern would be utilized.

Mr. Osteen responded that arrangements have recently been made for a school of engineering at Southern, which has a space crunch like most of Durham's high schools. The vacated space will provide some breathing space for Southern, as well as for the City of Medicine program, which is a source of pride for Southern and the entire district. Students from across the district are eligible to apply for the program. The new location will broaden the scope and the perception of the school being available to students in the entire county.

Vice-Chairman Heron stated that she would not vote against the budget ordinance amendment; however, she wished to air her feelings. She restated that she could not understand the rush. If the school board was in such a hurry, then it could have come forward with money from its fund balance instead of the County having to go to its fund balance. The bond issue is only a month away.

Chairman Reckhow stated that the bond issue cannot be used to pay for the short-term lease. DPS is going to pay \$200,000 in up-fit costs.

County Manager Ruffin commented that the school system has agreed to absorb the up-fit cost. That was one of the two details he was referring to regarding the lease details.

Vice-Chairman Heron asked that in the future, a project like this be brought to a worksession, so the Board can provide input at the onset. If the Board members are in agreement, then it can be placed on the consent agenda.

Chairman Reckhow voiced her opinion that this is a good move in the sense that the school will be more accessible for students across the community. This central location may attract more youth to this important program. In addition, it may alleviate some overcrowding at the high schools.

Commissioner Page asked about the length of the lease and whether the building was currently occupied.

Mr. Osteen responded that the lease is for three years; the building is currently empty. The new landlord is putting a significant amount of investment into the building to make it appropriate space for the County and other tenants.

Commissioner Page stated that he was glad to see this item move forward; however, he did agree with Vice-Chairman Heron that more information should be provided to the Commissioners before placing such items on the consent agenda.

Vice-Chairman Heron moved, seconded by Commissioner Page, to approve Budget Amendment No. 08BCC000012 for \$100,000 to the Durham Public Schools for the City of Medicine Academy Lease (with an appropriation of General Fund fund balance).

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2007-08 Budget Ordinance
Amendment No. 08BCC000012

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 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>			
Other Financing Sources	\$ 30,755,508	\$100,000	\$ 30,855,508

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Education	\$102,687,849	\$100,000	\$102,787,849

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

This the 8th day of October, 2007.

Public Hearing and Budget Ordinance Amendment No. 08BCC000010—Office of the Sheriff and City of Durham Police Department Acceptance of 2007 Edward Byrne Memorial Justice Grant (JAG)

Background

Durham County and Durham City have been jointly awarded the 2007 Edward Byrne Memorial Justice Grant (JAG). JAG blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs to provide agencies with the flexibility to support a broad range of activities to prevent and control crime based on their own local needs and conditions. The 2007 JAG application was presented to the County Manager and the County Commissioners on May 24, 2007 via e-mail. Approval was given to submit the application and to proceed with the Interlocal Agreement, which appoints the Sheriff's Office as fiscal agent for joint funds and agrees to a 50/50 split of the funds with the City.

One of the conditions of this grant award is to conduct a public hearing to receive public comment as to the use of these funds. To give proper notification, this public hearing has been advertised in The Herald-Sun on September 30, 2007, as well as on both the Durham Police Department and Sheriff's Office websites since June 1, 2007.

The Sheriff's Office funds will be used to fund (along with the Criminal Justice Resource Center) a case manager and supplies for a jail-based reentry program to support the Sheriff's Office Juvenile Assistance Program and to support the Durham County Gun Safety Team. The Police Department's funds will be used to support a gang prosecution attorney in the District Attorney's Office and to supplement the Crime Prevention and Victim Services Unit and the Special Operation's Division informant fund. No additional funding is required. The total award is \$214,278.00 to be budgeted in the FY 2007-08 budget; the Sheriff's Office and Police Department will each receive \$107,139.00 from the grant award.

Chairman Reckhow asked if anyone was present to give an overview of the item.

County Manager Mike Ruffin stated that several representatives of the Sheriff's Office are present, along with Gudrun Parmer for the reentry piece.

Captain Flamion, Sheriff's Office, stated that \$41,000 of the grant will be used for two years to operate the SOJA (School Office Juvenile Assistance) program, which lasts for four weeks in the summer where Deputy Sheriffs mentor inner-city juveniles in need of extra guidance.

Gudrun Parmer, Criminal Justice Resource Center (CJRC) Director, addressed the jail-based reentry program. The Sheriff's Office asked the CJRC to partner with them to start a very innovative program (the first in North Carolina) to work with individuals who are serving active time in the County Jail. Most of the inmates are in the jail for 30 to 90 days. These individuals will be targeted and taught employment skills, cognitive behavior interventions, and will be connected to community resources before their release.

Chairman Reckhow asked how much of the grant is going to the reentry program.

Ms. Parmer responded that \$61,039 will be used to fund a case manager to teach the classes at the jail and for additional supplies.

Chairman Reckhow asked how success will be monitored.

Ms. Parmer stated that re-arrest rates will be looked at of those who graduate from the program.

Commissioner Page inquired about the jail population that this program will serve.

Ms. Parmer replied that this program is for people serving an active time in the County jail. She restated aspects of the reentry program.

Per another question by Commissioner Page, Ms. Parmer replied that the position deleted from the budget was the after-care piece to this initiative to help teach employment classes at the CJRC after release.

Chairman Reckhow questioned the position which was added to the CJRC budget.

Ms. Parmer replied that the position was a laborer position.

Chairman Reckhow asked if there would be an attempt to get some money from the grant coming to Durham and Wake.

Ms. Parmer replied that the Comprehensive Anti-Gang Initiative (CAGI) grant is very specific; it targets gang-involved individuals coming out of prison.

County Manager Ruffin stated that some of the CAGI grant funds are supposed to be used for reentry.

Ms. Parmer replied that the CJRC will receive some money from the CAGI grant. The funds are to be used for reentry, but for persons serving time in the prison system who are classified as gang-involved. They are a different population from the population to be served in the reentry piece involving the JAG grant.

Commissioner Page asked if the CAGI grant will be able to address the need.

Ms. Parmer stated, "Not really. The anti-gang grant is so specific to the gang-involved population in the prison. This summer, we discussed increasing our employment program. By the time the reentry money is split between Raleigh and Durham and administrative costs and the research piece is subtracted, less than \$200,000 is left for three years."

Commissioner Page stated that he is glad that Durham is receiving the grant money; it will make a significant difference. He contended, however, that the funds are insufficient to address the real problem in the community which is employment. He expressed hope that by the end of the year, strides will be made in that regard.

Ms. Parmer reiterated and further explained the employment portion of the jail-based reentry program. CJRC staff is attending a workshop tomorrow to hear priorities from the Governor's Crime Commission for funding for next year to determine if other grants exist to fill in gaps within the entire structure.

Chairman Reckhow stated that the County may wish to look at Workforce Development funds that must be spent this year to support the employment initiative mentioned by Commissioner Page.

Ms. Parmer agreed to speak with Alan DeLisle, Director of the Office of Employment and Economic Development.

Vice-Chairman Heron spoke about job skills training for the inmates.

Ms. Parmer stated that some inmates have job skills, but a number of inmates have substance abuse issues, which must be addressed. Project Restore is a 12-week program being operated by CJRC, Durham Technical Community College, the City of Durham, and Durham

Affordable Housing Coalition, where 13 offenders are offered soft skills and basic construction skills. CJRC works diligently trying to place former inmates in some type of employment at the end of the cycle. There are some skills programs, but more are needed.

Vice-Chairman Heron stated that CJRC has a tough job. The Commissioners really appreciate their efforts. Vice-Chairman Heron voiced strong support for skills training.

Chairman Reckhow thanked Ms. Parmer for the overview. She then requested information about Durham County Gun Safety Team.

Captain Flamion stated that the \$5,000 will go to the Gun Safety Team to help educate the community on gun safety and safe storage of firearms.

Chairman Reckhow asked for further questions.

No one responded.

Chairman Reckhow opened the public hearing that was properly advertised. As no one requested to speak on the item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve Budget Ordinance Amendment No. 08BCC000010—Office of the Sheriff and City of Durham Police Department Acceptance of 2007 Edward Byrne Memorial Justice Grant (JAG).

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

DURHAM COUNTY, NORTH CAROLINA
FY 2007-08 Budget Ordinance
Amendment No. 08BCC000010

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 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>
<i>GENERAL FUND</i>			
Intergovernmental	\$361,914,769	\$107,139	\$362,021,908

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 47,603,171	\$107,139	\$ 47,710,310

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

This the 8th day of October, 2007.

Public Hearing—Zoning Map Change—3905 Page Road (Z06-63)

Chairman Reckhow recognized and welcomed Steven L. Medlin, AICP, Interim City-County Planning Director.

Mr. Medlin stated that staff wished to certify for the Board that proper notification has been made in accordance with the provisions of the UDO and State Statutes. Copies of the affidavit are available for public review in the case files.

Mr. Medlin stated that MDRT Holdings LLC is requesting to change the zoning designation of a 13.12-acre parcel located at 3905 Page Road, on the east side of Page Road, west of Airport Road and the Wake County line, from Residential Rural (RR) to Industrial Light (IL). The request is consistent with the future land use designation of the *Comprehensive Plan* which designates the site for Industrial. Uses in the area consist of single-family, agricultural, and vacant land; zoning is RR and Commercial Center (CC). There is a small area of flood fringe in the southern area of the parcel. There are no other identified environmental or physical constraints on this site. The *Comprehensive Plan* designates this property as Industrial. The request is in compliance with all the Plan policies and the Future Land Use Map. Mr. Medlin pointed out for the Board that this is an area that the Durham Chamber of Commerce has identified as prime industrial land in its report from 2006. Staff recommends approval, based on consistency with the *Comprehensive Plan* and considering the information provided in the report. Planning Commission Recommendation and Vote: Denial, 0-13 on August 14, 2007. The Planning Commission found that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission does not believe this request is reasonable or in the public interest in light of the information in the staff report and comments received during the public hearing. The Commission recommended denial based on inconsistency with neighboring land uses, concerns regarding impacts on the environment, and the lack of a development plan in order to determine if adequate facilities and infrastructure is proposed.

Commissioner Cousin asked the County Attorney if the Board is in a position to deny the request since staff has recommended approval based on consistency with the *Comprehensive Plan*.

County Attorney Chuck Kitchen stated, "The short answer is 'yes'; the reason being that this is a legislative matter. The Board is given wide latitude and discretion upon applying rezoning. The one issue being if it's arbitrary and capricious, then that will not lie. One of

the things you do look at is, what the Comprehensive Plan says about the development of the area in the future. However, that is only one of the issues. The other issue is what the changes have been in the area since the property was zoned. In other words, the applicant needs to show why there should be a change in that area to show that there is a need for rezoning the property. One of the other issues is if it is in compliance with the *Comprehensive Plan*; obviously it is. The other issue, I'm not thinking of at the moment. But essentially you have to show that the property has been changed, that what you are trying to change it to is appropriate for the area considering the surrounding neighborhood. That was the one I was trying to think of. In other words, you can look at a particular piece of property, and in this particular situation, you would look at what is surrounding the property. You have, in this case, areas to the southwest that are RR, Commercial to the west; you do have Light Industrial somewhat north of the property and Light Industrial somewhat to the southwest. To a large extent, then it become incumbent upon the Board to decide with the surrounding area, taking into consideration the various factors, is this an appropriate thing for the community considering the public health, welfare, and safety. Looking at things like transportation, schools...schools would not be an issue in this, transportation could be. You look at all those various factors. That's why it is a legislative decision. It's not an easy 'yes' or 'no', this should be or this shouldn't be. That's why you have a wide range of discretion in these matters."

Chairman Reckhow opened the public hearing that was properly advertised. As no one requested to speak on the item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Chairman Reckhow voiced concern because the main abutting uses are single-family residential. It would be preferable to have a development plan so the Board can understand any potential impact on the surrounding uses. She stated that the Board should be very careful in fitting a relatively small, Light Industrial site into a surrounding residential area.

Chairman Reckhow responded to a question by Commissioner Page that the Commissioners did not initiate the rezoning. It was initiated by the owner or applicant, MDRT Holdings LLC.

Mr. Medlin stated that the property was purchased a couple of years ago potentially for the current owner's place of business, which unfortunately did not come to fruition because of potential delays in the rezoning request originally submitted. They then decided to place the business elsewhere. The owners have decided to move forward with this speculative rezoning in recognition of the fact that the *Comprehensive Plan* defines the use as Industrial.

Commissioner Page stated that he does not feel comfortable about approving the request. He wants to make certain that the Board is not violating any policies.

County Attorney Kitchen again explained to the Board why it could make the decision not to approve the rezoning request. Although a property is designated for a particular use in the *Comprehensive Plan*, other things must be taken into consideration i.e. transportation, water, sewer. Zoning for each property can be decided on an individual basis. He concluded by

stating that whether this rezoning for this particular property is a matter for the Board's discretion.

Chairman Reckhow called for a motion.

Vice-Chairman Heron asked when the developer could come back to the Board with a plan.

Mr. Medlin responded that the applicant has a right to submit a significantly different application, which means he could reapply for IL district with a development plan if he so chooses.

Vice-Chairman Heron asked if there would be a time limit.

After reviewing the Ordinance, Mr. Medlin stated that the applicant can submit a new application if there is a significant change, i.e. development plan; however, without a significant change, there is a prescribed waiting period. Mr. Medlin stated that he would communicate to the applicant that the Board has a desire to see a greater level of detail.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to deny Zoning Map Change—3905 Page Road (Z06-63) due to the lack of a development plan and the fact that the major surrounding use in the area is Single-Family Residential.

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

Public Hearing—Plan Amendment, Davis Park West (A07-11)

Steven L. Medlin, AICP, Interim City-County Planning Director, stated that staff wished to certify for the Board that proper notification has been made in accordance with the provisions of the UDO and State Statutes. Copies of the affidavit are available for public review in the case files. This is a request by Patrick Byker with Kennedy Covington for approval of a change to the land use designation on the Future Land Use Map of the *Durham Comprehensive Plan* from Research and Research Applications to Commercial and from Suburban Tier to Compact Neighborhood Tier. The parcel is located west of Davis Drive and north of Hopson Road. The total land area to be affected is 4.56 acres including right-of-way. The Durham County Board of Commissioners voted unanimously on April 23, 2007 to de-annex the Parcel from RTP. The applicant's justification is based on changes of conditions because of de-annexation, in addition to meeting the four criteria for plan amendment. City-County Planning Department recommends approval based on the justification and also recommends approval by a vote of 13-0 on August 14, 2007, based on information provided in the staff report and the justification and meeting the criteria for plan amendments.

Chairman Reckhow stated that this relatively small parcel is in an awkward location between a proposed limited access freeway and Davis Park, which was part of the rationale given by the Research Triangle Foundation in de-annexing the parcel several months ago.

Chairman Reckhow opened the public hearing that was properly advertised. As no one requested to speak on the item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Cousin moved, seconded by Commissioner Page, to approve Plan Amendment, Davis Park West (A07-11).

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

BOARD OF COMMISSIONERS RESOLUTION
AMENDING DURHAM COMPREHENSIVE PLAN
Davis Park West (A07-11)

WHEREAS, The Durham County Board of Commissioners has adopted long range land use plans, to help guide the future development of land within the County's jurisdiction; and

WHEREAS, changed community conditions, the age of the adopted plan, development activity within the planning area, and other factors may warrant a change to an adopted plan; and

WHEREAS, the Durham County Board of Commissioners has adopted a resolution that requires that the Board consider changes to adopted land use plans when requested rezoning substantially conflicts with the adopted land use plan.

NOW THEREFORE BE IT RESOLVED BY THE DURHAM COUNTY BOARD OF COMMISSIONERS:

SECTION 1

That the Future Land Use map of the *Durham Comprehensive Plan* be amended by designating as Commercial, the following parcel, as shown on the attached map: 0737-03-95-9189.SPL (partial).

SECTION 2

This change shall become effective upon the adoption of this resolution.

This 8th day of October, 2007.

Public Hearing—Plan Amendment, Finsbury II (A07-12)

Steven L. Medlin, AICP, Interim City-County Planning Director, stated that the Board is requested to conduct a public hearing on a plan amendment for Finsbury II (A07-12) and to approve the requested change to the land use designation on the Future Land Use Map of the *Durham Comprehensive Plan* from Research and Research Applications to Medium Density Residential (6-12 DU/Ac.) and from Suburban Tier to Compact Neighborhood Tier. The request is by Mary Beerman, with the John R. McAdams Company Inc. The parcel is located west of Davis Drive, north of Hopson Road, and east of the future Triangle Parkway. The total land area to be affected is 7.08 acres including right-of-way. City-County Planning Department recommends approval based on the justification and meeting the criteria for plan amendments. The Planning Commission recommended approval by a vote of 13-0 at the August 14, 2007 meeting based on information provided in the staff report, the justification, and meeting the criteria for plan amendments.

Chairman Reckhow asked for questions of staff.

Mr. Medlin clarified for Vice-Chairman Heron that this property is not a part of the Davis development. It is a piece that has been sold off.

Chairman Reckhow opened the public hearing that was properly advertised. As no one requested to speak on the item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Page moved, seconded by Commissioner Cousin, to approve Plan Amendment, Finsbury II (A07-12).

The motion carried unanimously.

BOARD OF COMMISSIONERS RESOLUTION
AMENDING DURHAM COMPREHENSIVE PLAN
Finsbury II (A07-12)

WHEREAS, The Durham County Board of Commissioners has adopted long range land use plans, to help guide the future development of land within the County's jurisdiction; and

WHEREAS, changed community conditions, the age of the adopted plan, development activity within the planning area, and other factors may warrant a change to an adopted plan; and

WHEREAS, the Durham County Board of Commissioners has adopted a resolution that requires that the Board consider changes to adopted land use plans when requested rezoning substantially conflicts with the adopted land use plan.

NOW THEREFORE BE IT RESOLVED BY THE DURHAM COUNTY BOARD OF COMMISSIONERS:

SECTION 1

That the Future Land Use map of the *Durham Comprehensive Plan* be amended by designating as Medium Density Residential (6-12 DU/Ac.), the following parcel, as shown on the attached map: 0737-01-96-8069.000 (partial).

SECTION 2

This change shall become effective upon the adoption of this resolution.

This 8th day of October, 2007.

Public Hearing—Unified Development Ordinance (UDO) Text Change—Portable On-Site Storage Units (TC07-06)

Steven L. Medlin, AICP, Interim City-County Planning Director, introduced Julia Mullen, Planner in the Research and Public Information group, City-County Planning Department.

Ms. Mullen explained the request by stating that the proposed text amendment originated in discussions with representatives of the Triangle Portable Storage and Moving Association (TPSMA), with whom staff have met on multiple occasions. In March 2007, the TPSMA requested two modifications to the current UDO provisions: 1) that a temporary use permit for a portable on-site storage unit be required after 30 days rather than after 72 hours; and 2) that sites with active building permits be exempt from temporary use permit requirements. The Joint City-County Planning Committee (JCCPC) initiated a text amendment at its April 30, 2007 meeting to require a temporary use permit after 14 days and exempt sites with building permits as requested.

Staff prepared TC07-06 and placed it on the Planning Commission agenda for June 12, 2007. At the City Council worksession on June 7, 2007, a citizen discussed a portable on-site storage unit that has been located in his neighbor's driveway for more than two years and complained about exemption from ordinance requirements for "grandfathered" units. City Council accordingly requested that TC07-06 include language requiring residents with existing units to come into compliance within a specific amount of time. The City Attorney's Office also advised staff to distinguish portable on-site storage units from buildings or structures. At the Planning Commission meeting on June 12, staff requested a continuance to address these issues; the Commission continued the matter for two cycles. Staff drafted new text and met with TPSMA representatives on July 17, 2007. On July 23, the TPSMA submitted a request for an additional ordinance modification setting a cubic foot, rather than unit number, cap on units allowed under a temporary use permit. Staff presented the original proposed amendment to TC07-06 at the JCCPC meeting on August 1, 2007; the JCCPC directed staff to initiate the amendment with two additional changes. First, the 14-day time limit before a temporary use permit is required would be changed to 30 days. Second, the cap on the number of units allowed under a temporary use permit, currently one, would be removed. The Planning Commission held a public hearing on this proposed text amendment

on August 14, 2007 and recommended approval by a vote of 9-4. Ms. Mullen stated that staff wished to certify for the Board that proper notification has been made in accordance with the provisions of the UDO and State Statutes. Copies of the affidavit are available for public review in the case files.

Per a question posed by Chairman Reckhow, Ms. Mullen responded that there is no cap on the number of units for 30 days (before a permit is required). The number of units would vary according to the size of the property, the length of the driveway, etc.

Chairman Reckhow stated that hopefully the price of renting will dictate that people will not scatter numerous portable storage units on their site.

Ms. Mullen stated that the JCCPC discussed the need for flexibility for citizens.

Ms. Mullen clarified for Vice-Chairman Heron that a permit is not required until a unit has been on a site for 30 days.

Chairman Reckhow opened the public hearing that was properly advertised. As no one requested to speak on the item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

County Attorney Chuck Kitchen stated that, for the record, the Clerk should insert today's date in Sec. 5.5.2.I.1.c of the ordinance.

Commissioner Cousin moved, seconded by Commissioner Page, to approve Text Change— Portable On-Site Storage Units (TC07-06), and adopt an ordinance amending the Unified Development Ordinance, incorporating revisions to Article 5, Use Regulations.

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
CONCERNING PORTABLE ON-SITE STORAGE REQUIREMENTS

WHEREAS, the Durham County Board of Commissioners wishes to amend certain provisions regarding portable on-site storage requirements in the Unified Development Ordinance; and

WHEREAS, it is the objective of the Durham County Board of Commissioners to have the UDO promote regulatory efficiency and the health, safety, and general welfare of the community.

NOW, THEREFORE, be it ordained that Article 5, Use Regulations, of the Unified Development Ordinance is amended to make the following changes:

SECTION 1

Modify Section 5.5.2, Specific Temporary Uses, paragraph I, Portable On-Site Storage, by substituting new text in paragraph 1.a; modifying the existing text of paragraph 1.a and renumbering it as paragraph 1.b; modifying the existing text of paragraph 1.b and

renumbering it as new paragraph 1.c; modifying paragraphs 2.a and 2.b; and modifying paragraph 3, all as set forth below.

Sec. 5.5.2 Specific Temporary Uses

I. Portable On-Site Storage

1. General

- a. A portable on-site storage unit is any container designed for the storage of personal property and for transport by commercial vehicle that is typically rented to owners or occupants of property for their temporary use. A portable on-site storage unit is not a building or structure.
- b. A portable on-site storage unit may be located anywhere on a residential property without a temporary use permit while the property is the job address listed on an active building permit issued by the Durham City-County Inspections Department.
- c. A portable on-site storage unit not authorized under Section I.1.b above and located on a residential property for more than 30 days shall require a temporary use permit pursuant to Sec. 3.12, Temporary Use Permit, except that a portable on-site storage unit placed on a residential property before October 8, 2007 without a temporary use permit, or as authorized by a temporary use permit that is complete or void on that date, shall require a temporary use permit within 30 days of that date.

2. Location

a. Single-Family Residences

Except as authorized under Section I.1.b above, a portable on-site storage unit for a single-family residence shall be located in the driveway or in the side or rear yard at least 5 feet from any property line.

b. All Other Types of Residences

Except as authorized under Section I.1.b above, a portable on-site storage unit for any residential housing types other than single-family residence shall be located in an on-site vehicular use area and shall not obstruct any drive aisle or block any required parking space.

3. Permitted Timeframe

A temporary use permit for a portable on-site storage unit shall be limited to a maximum of 30 days. Such permit may be renewed one time for a maximum of 30 days provided renewal occurs prior to expiration of the original temporary use permit.

SECTION 2

That the Unified Development Ordinance shall be renumbered as necessary to accommodate these changes and clarifications.

SECTION 3

That this amendment of the Unified Development Ordinance shall become effective upon adoption.

Public Hearing—Unified Development Ordinance (UDO) Text Change—Vehicle Stacking (TC07-03)

Julia Mullen, Planner in the Research and Public Information group, City-County Planning Department, provided an overview of the agenda item. She stated that staff wished to certify for the Board that proper notification has been made in accordance with the provisions of the UDO and State Statutes. Copies of the affidavit are available for public review in the case files. Ms. Mullen stated that on February 9, 2007, the City-County Planning Department received a request from Commercial Site Design, PLLC (CSD) on behalf of McDonald's Corporation to amend the UDO to revise the vehicle stacking requirements for drive-through restaurants that contain multiple order points. At the Joint City-County Planning Committee (JCCPC) meeting on March 6, 2007, staff presented the request and the JCCPC directed staff to initiate an amendment in coordination with the Transportation Division of the Public Works Department to amend the drive-through stacking requirements. Staff from City-County Planning and City Public Works met with representatives of CSD and McDonald's Corporation, and worked together to craft an amendment that addressed CSD's concerns as well as other issues that became apparent in the discussions. The Planning Commission held a public hearing on this proposed text amendment on August 14, 2007 and recommended approval by a vote of 12-0. The UDO vehicle stacking requirements are contained in Section 10.6, Vehicle Stacking Areas. Section 10.6.2, Minimum Number of Spaces, specifies the minimum number of off-street vehicle stacking spaces required for a variety of activity types. A restaurant drive-through must currently provide six stacking spaces measured from the order box, and four stacking spaces between the order box and pick-up window. Section 10.6.3, Design and Layout of Stacking Spaces, requires that each space be at least 25 feet in length. McDonald's Corporation provided two alternative drive-through designs involving multiple order boxes with its text amendment request, one with parallel order lanes that merge before the pickup window and one with two order boxes in one lane. Sec. 10.6.2 does not address a design with multiple order boxes and can be interpreted to require six stacking spaces for each order box, or twelve stacking spaces in addition to the four required to the pick-up window. McDonald's asked that the language clarify that six stacking spaces are not required for each order box. Vehicle stacking requirements are intended to protect the health and safety of the public by ensuring that drive-through lanes contain sufficient space for customers without obstructing traffic at any given time. An adequate stacking area prevents waiting vehicles from blocking traffic in rights-of-way, and from blocking parked cars or vacant parking spaces in adjacent parking lots. Staff analyzed the McDonald's request, other existing and potential drive-through scenarios, and requirements imposed by other municipalities, and determined that the critical measures are the overall capacity per pick-up window and the capacity from the drive-

through entrance to the first point at which vehicles stop. The proposed text amendment therefore requires minimum stacking per pick-up window and from the drive-through entrance to the first order point, and assigns appropriate numbers to each. To address other issues experienced by staff in applying Sec. 10.6.2, the proposed text amendment also: 1) clarifies the number of spaces required at a gasoline fueling station; 2) specifies the requirements for an activity type that is not identified on a plan; 3) revises the definition of restaurant to include a business that sells food or drink from a drive-up window; and 4) makes typographical and terminology corrections for consistency.

Chairman Reckhow opened the public hearing that was properly advertised. As no one requested to speak on the item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Page moved, seconded by Vice-Chairman Heron, to approve Text Change— Vehicle Stacking (TC07-03), and adopt an ordinance amending the Unified Development Ordinance, incorporating revisions to Article 10, Off-Street Parking and Loading, and Article 16, Definitions.

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
CONCERNING MINIMUM OFF-STREET STACKING REQUIREMENTS

WHEREAS, the Durham County Board of Commissioners wishes to amend certain provisions regarding minimum off-street stacking requirements in the Unified Development Ordinance; and

WHEREAS, it is the objective of the Durham County Board of Commissioners to have the UDO promote regulatory efficiency and the health, safety, and general welfare of the community.

NOW, THEREFORE, be it ordained that Article 10, Off-Street Parking and Loading, and Article 16, Definitions, of the Unified Development Ordinance are amended to make the following changes:

SECTION 1

Modify Section 10.6.2, Minimum Number of Spaces, and Section 16.3, Defined Terms, as forth below.

10.6.2 Minimum Number of Spaces

Off-street stacking spaces shall be provided as follows:

Activity type	Minimum stacking spaces (includes the space at the point of service)	Measured from the stacking lane entry to the following point of service:
Automated teller machine (drive-up)	3	Teller machine
Bank teller lane	4	Teller window
Car wash bay, full-service	6	Bay
Car wash bay, self-service	3	Bay
Dry cleaning/laundry drive-through	3	Cleaner/laundry window
Gasoline fueling	2	Fueling position
Gatehouse, staffed	4	Gatehouse
Gate, unstaffed	2	Gate
Pharmacy pick-up	3	Pharmacy window
Restaurant drive-through with combined order/pick-up window(s)	6 per window	Order/pick-up window
Restaurant drive-through with separate order point(s) and pick-up window(s)	4 in addition to either	Each pick-up window
	6	Order point closest to stacking lane entry for each undivided order lane
	or	
	4	Order point closest to stacking lane entry for each divided order lane
Valet parking	3	Valet stand
Other	Determined by Development Review Board in consideration of an approved study prepared by a registered engineer with expertise in Transportation Engineering.	

A drive-through facility with unspecified activity type shall comply with the most stringent stacking requirement(s) applicable in the zoning district in which the facility is located as determined by the Planning Director.

Sec. 16.3 Defined Terms

Restaurant: An establishment where food and drink are served as a principal activity, including the dispensing of food or drink to patrons who remain in vehicles.

SECTION 2

That the Unified Development Ordinance shall be renumbered as necessary to accommodate these changes and clarifications.

SECTION 3

That this amendment of the Unified Development Ordinance shall become effective upon adoption.

Quasi-Judicial Public Hearing—Transportation Special Use Permit—The Worship Center (T06-01)

Chairman Reckhow announced that the Board would now hold a quasi-judicial hearing to consider a Transportation Special Use Permit for Traffic Impact, in association with consideration of a Major Site Plan for development of a place of worship at the southwest corner of Lumley Road and Page Road. PIN 0759-04-51-0649

Chairman Reckhow stated that the quasi-judicial hearing was judicial in nature and would be conducted in accordance with special due process safeguards.

Chairman Reckhow directed all persons who had signed to testify in the case to go to the Clerk's station to be sworn in or to give affirmation. (Those persons who had not signed earlier on the special sheet and wished to speak were directed to sign the sheet and participate in the swearing-in.) After being sworn in, persons were to return to their seats.

The Clerk to the Board administered the oath to everyone who had signed up to speak.

Before opening the hearing, Chairman Reckhow gave the Board members a chance to reveal possible conflicts and to withdraw from the proceeding if necessary. Board members can explain conflicts or any biases and withdraw if they wish. Conflicts are not limited to financial ones. A member who withdraws should sit somewhere else during the hearing and not participate at all. Chairman Reckhow asked if any Commissioner had a conflict as it relates to this hearing. Do you know any information in advance? Do you have any financial interest? Any information or interest needs to be declared at this time.

No one responded.

Chairman Reckhow asked the Commissioners if they could rule fairly and impartially.

None of the Commissioners revealed conflicts.

Chairman Reckhow continued by stating, "In this hearing, we will first hear from the Planning staff and other County witnesses, then from the applicant and their witnesses, and then from any opponents to the request. Parties may cross-examine witnesses after the witness testifies when questions are called for. If you want the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced during or at the end of his or her testimony. We cannot accept reports from persons who are not here to testify. Attorneys who speak should not give factual testimony but may summarize their client's case. Before you begin your testimony, please clearly identify yourself for the record."

Chairman Reckhow opened the hearing on Case T06-01 and asked for the testimony from the County staff.

Staff requested that the staff report and all attachments and exhibits, including the Traffic Impact analysis submitted by the applicant and reviewed by NCDOT and the City Transportation Division, be entered as a part of the permanent record. It should also be noted that all required mail and newspaper notification, along with required posting on the subject site has taken place in accordance with Ordinance requirements. Summit Consulting Engineers, on behalf of Harvest Time LLC, requests approval of a transportation special use permit (TSUP) associated with a proposed Major Site Plan (D06-555) for a place of worship at the southwest corner of Page Road and Lumley Road. The project received a minor special use permit from the Board of Adjustment on June 26, 2007 for the establishment of a place of worship in a residential zoning district. A transportation special use permit is required for projects that generate at least 600 vehicle trips in a single peak hour. This proposed project exceeds this threshold; generating an estimated 800 peak hour trips. A Traffic Impact Analysis (TIA) was prepared by the applicant's traffic consultant, Rummel, Klepper & Kahl LLP. It was reviewed by the Transportation Division of the City of Durham Public Works Department and the North Carolina Department of Transportation (NCDOT). Their evaluations of the TIA with the associated road improvements are as indicated within the staff report and TIA memos submitted as part of the agenda item. All of the improvements have been provided by the applicant as indicated on the associated site plan. These improvements are as follows:

- a. Re-stripe Lumley Road to provide a westbound left-turn lane at the Site Drive with adequate storage and taper.
- b. Construct the site drive with a two-lane cross-section.
- c. Construct a northbound left-turn lane on Page Road at the Site Drive with adequate storage and taper.
- d. Construct a southbound right-turn lane on Page Road at the Site Drive with adequate storage and taper.
- e. Construct the Page Road Site Drive with a three-lane cross-section (one ingress lane and two egress lanes).

All of the roadway improvements have been agreed to by the applicant and are identified on the major site plan associated with the request. As a reminder, the Board of Commissioners must make findings of fact under Section 3.3.8D of the Unified Development Ordinance, as specifically identified within the staff report. Staff will provide a recommendation to the Board at the conclusion of testimony for this case. Staff members of the City Transportation Division are present to answer questions about the TIA memo.

Chairman Reckhow asked if any Commissioner had a question for Planning staff.

No questions were asked.

Chairman Reckhow asked about the findings of the TIA that a traffic signal at Page and Lumley Roads was not necessary at this time, but that the traffic being generated at the intersection should be monitored.

William E. Judge, PE, City Transportation Division, Department of Public Works, stated that the intersection was reviewed. The applicant prepared a signal warrant analysis and

determined that a traffic signal is not warranted with this development at this time; therefore, a traffic signal was not recommended as an improvement. It will continue to be monitored.

Chairman Reckhow asked if the applicants wish to question the staff.

Jim Parker, Summit Consulting Engineers, stated that he was present to answer questions. He thanked the Commissioners for considering the request.

Chairman Reckhow asked for testimony on behalf of the applicant.

No one offered testimony. No one had questions.

As no one requested to speak, Chairman Reckhow referred the matter back to the Board.

Chairman Reckhow noted the draft Order Granting, Upon Certain Conditions, a Transportation Special Use Permit, which had been distributed. The conditions were the improvements to the surrounding roads, mainly Lumley and Page Roads.

Vice-Chairman Heron asked if the TIA had taken into consideration the traffic that the Worship Center would generate.

Mr. Judge responded that site traffic is added to existing counts. With the additional site traffic, the traffic signal is not warranted based on the information collected. At this point, DOT will not approve unwarranted signals. DOT has very detailed warrants and standards for installing traffic signals.

Vice-Chairman Heron asked if DOT would permit a traffic signal funded by the developer.

Mr. Judge responded in the negative.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve the Order Granting, Upon Certain Conditions, a Transportation Special Use Permit (The Worship Center (T06-01)).

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow

Noes: None

Absent: Cheek

At the request of County Attorney Chuck Kitchen, Chairman Reckhow closed the quasi-judicial hearing.

The order follows:

ORDER GRANTING, UPON CERTAIN CONDITIONS,
A TRANSPORTATION SPECIAL USE PERMIT

The Worship Center (T06-01)

The Board of Commissioners of the County of Durham, having conducted a hearing on “The Worship Center” (T06-01), concerning a proposed project generating over 600 trips per peak hour, on October 8, 2007 and having considered all written and oral evidence presented at such hearing, hereby determines that the Ordinance requirements for the granting of a Transportation Special Use Permit in this case have been met, and that the Use Permit should be granted upon certain conditions.

THE BOARD OF COMMISSIONERS HEREBY MAKES THE FOLLOWING FINDINGS AND CONCLUSIONS, based on the evidence presented at the public hearing:

The proposed project, as described in the application, with such further conditions as may be described below, meets the requirements of Sections 3.3.8D of the Unified Development Ordinance, and:

1. The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impacts include:
 - a. Substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or
 - b. The need to widen local residential streets which would detract significantly from the character or basic function of the nearby streets.
2. Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.
3. The traffic generated by the proposed development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impacts shall include but not be limited to undue concentration of air pollutants, or excessive noise or vibrations.
4. The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed as part of the development application. Proposed mitigation measures shall become conditions of the special use permit. The adopted level of service for the adjacent roadways may be considered in making this determination but shall not be the sole factor considered by the Board of Commissioners.

IN SUPPORT OF THESE FINDINGS AND CONCLUSIONS, THE BOARD OF COMMISSIONERS finds as fact that the descriptions and statements of fact set forth in the staff report presented as evidence to the Board of Commissioners are the facts describing the

proposed use, surrounding conditions, and ordinance requirements, and the Board of Commissioners adopts by reference and includes in this decision and order all such facts as if set forth herein.

THEREFORE, THE BOARD OF COMMISSIONERS HEREBY GRANTS THE TRANSPORTATION SPECIAL USE WITH THE CONDITIONS THAT MAY BE SET FORTH BELOW:

1. The project shall be completed in accordance with an approved site plan, including any additional corrections and verification.
2. That the road improvements indicated below are indicated as special conditions of the site plan and completed prior to the issuance of a certificate of occupancy. These road improvements are:
 - f. Re-stripe Lumley Road to provide a westbound left-turn lane at the Site Drive with adequate storage and taper.
 - g. Construct the site drive with a two-lane cross-section.
 - h. Construct a northbound left-turn lane on Page Road at the Site Drive with adequate storage and taper.
 - i. Construct a southbound right-turn lane on Page Road at the Site Drive with adequate storage and taper.
 - j. Construct the Page Road Site Drive with a three-lane cross-section (one ingress lane and two egress lanes).

THIS SPECIAL USE PERMIT SHALL BECOME NULL AND VOID UPON DETERMINATION BY THE APPROPRIATE OFFICIALS DESIGNATED BY ORDINANCE THAT THE ABOVE CONDITIONS HAVE NOT BEEN COMPLIED WITH.

Major Site Plan—The Worship Center (D06-555)

Steven L. Medlin, AICP, Interim City-County Planning Director, stated that the request before the Board is the Major Site Plan including a landscape variation for “The Worship Center” submitted by Summit Engineering Inc., on behalf of William C. Logan, Sr. and Joe H. Call, for a 30,500-square-foot place of worship with a 4,536-square-foot accessory caretaker’s building on a 9.10-acre site zoned Rural Residential (RR). The landscape variation is requested to allow the applicants to plant street trees five feet from the edge of a required utility easement, which will result in the trees being more than 30 feet from the right-of-way of Lumley Road. [The property is located at 5334 Lumley Road, at the southwest corner of Lumley and Page Roads. PIN 0759-04-51-0649] The Development Review Board recommended approval of the site plan and landscape variation based on the unique site conditions created by a Duke Energy easement along Lumley Road, on April 27, 2007 by a vote of 8-0. Planning staff recommends approval because of the recent approval of the transportation special use permit.

Vice-Chairman Heron requested information regarding the size of the building, the use of the building for a school, and the caretaker's building.

Mr. Medlin stated that the 30,500-square-foot facility would be two stories high. It could not be used as a charter school or a private school, which would require a different kind of special use permit and that it go back to the Board of Adjustment as a minor special use permit. The facility may house a Sunday school associated with a place of worship. The only reason this request is before the Board this evening is that it requires a transportation special use permit because of the traffic generation rates. The site plan is presented because of the requirement in the UDO which states that a use permit requiring governing body approval must also have site plan approval by the authority as well. This would have stayed in the realm of a minor site plan (which would have been approved at the Development Review Board level) if there were no need for the transportation special use permit. Mr. Medlin requested that Mr. Call address Vice-Chairman Heron's questions about the 4,536-square-foot accessory caretaker's building.

Vice-Chairman Heron expressed concern about the building as it relates to Health Department requirements.

Mr. Call, Director of the Worship Center, informed Vice-Chairman Heron that the caretaker's building would be living quarters with utilities for a couple to watch over the property for security reasons. About one-half of the building will be used for storage. The building is a traditionally designed, colonial type building which will fit very well with the adjacent neighborhood. The building will improve the property values due to its size and appearance.

County Manager Mike Ruffin clarified that the caretaker's building is not the principal use of the property; it is the subordinate use.

Chairman Reckhow stated that the plan is a very attractive, landscaping plan. The retention of the existing landscaping on the buffers is good.

Vice-Chairman Heron, moved seconded by Vice-Chairman Heron, to approve Major Site Plan—The Worship Center (D06-555).

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

Camp Butner Joint Land Use Study

Steven L. Medlin, AICP, Interim City-County Planning Director, stated that the North Carolina National Guard is preparing a Camp Butner Joint Land Use Study to identify

actions that will ensure the long-term health, safety, and wellbeing of neighboring communities while maintaining the mission and viability of the Camp. Durham County is being asked to adopt a resolution in support of the process and appoint a member of the Board of Commissioners to the Study Planning Committee. Planning Department recommends that the Board of Commissioners receive the report about the Camp Butner Joint Land Use Study, adopt the Resolution in support of the project, and appoint a Board member to serve on the Study Planning Committee.

Chairman Reckhow stated that she is pleased with the study, which includes 4,940 acres in northeastern Durham County. She stated her willingness to represent the Board.

Commissioner Cousin moved, seconded by Commissioner Page, to adopt the resolution regarding the Camp Butner Joint Land Use Study and to appoint Chairman Reckhow to the Study Planning Committee.

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

Vice-Chairman Heron mentioned that concern has been expressed from northern Durham citizens, particularly from Bahama and north of Bahama, about the Land Use Study and the facility.

Chairman Reckhow clarified, for the record, that the Land Use Study does not relate to the National Bio- and Agro-Defense Facility (NBAF) proposal.

The resolution follows:

BOARD OF COMMISSIONERS RESOLUTION
Camp Butner Joint Land Use Study

WHEREAS, the North Carolina National Guard operates Camp Butner and recognizes that continued operation of the Camp Butner is important to both the local economy and the economy of north central North Carolina, and that its future operational capacity should be protected; and

WHEREAS, Camp Butner and the North Carolina National Guard are interested in preparing a Joint Land Use Study (JLUS) to coordinate future planning efforts of Camp Butner and surrounding local governments; and

WHEREAS, Camp Butner and the North Carolina National Guard recognize that participation in development of a JLUS will benefit the health, safety, and general welfare of

the residents of Durham County, Granville County, the Town of Butner, the Town of Stem, and the North Carolina state agencies in the area;

NOW THEREFORE BE IT RESOLVED BY THE DURHAM COUNTY BOARD OF COMMISSIONERS:

SECTION 1

Durham County agrees to participate in the development of a JLUS with Camp Butner and the North Carolina National Guard, Granville County, the Town of Butner, the Town of Stem, and the North Carolina state agencies in the area; and

SECTION 2

Durham County agrees to appoint a representative to the Policy Committee; and

SECTION 3

Durham County commits to a good faith effort to implement the Camp Butner JLUS recommendations.

This 8th day of October, 2007.

Closed Session

Commissioner Page moved, seconded by Commissioner Cousin, to adjourn to closed session to consider the conditions of initial appointment of a public officer pursuant to N.C.G.S. § 143-318.11(a)(6).

The motion carried with the following vote:

Ayes: Cousin, Heron, Page, and Reckhow
Noes: None
Absent: Cheek

Reconvene to Open Session

Chairman Reckhow announced that the Board met in closed session, direction was given to staff; no action was taken.

Adjournment

There being no further business, Commissioner Reckhow adjourned the meeting at 9:17 p.m.

Respectfully submitted,

Vonda Sessoms, CMC
Clerk to the Board