

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

Tuesday, May 29, 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 Commissioner Philip R. Cousin Jr.

Absent: Commissioners Lewis A. Cheek and Michael D. Page

Presider: Chairman Reckhow

**Opening of Regular Session**

Chairman Reckhow welcomed everyone to the regular meeting of the Board of County Commissioners, Tuesday, May 29, 2007. She requested that all in attendance rise for the recitation of the Pledge of Allegiance.

Commissioner Cousin moved, seconded by Vice-Chairman Heron, to excuse Commissioner Page from the meeting.

The motion carried with the following vote:

Ayes: Cousin, Heron, and Reckhow

Noes: None

Absent: Cheek and Page

Chairman Reckhow conveyed that Commissioner Cheek had been excused from this meeting at a previous meeting.

**Agenda Adjustments**

Chairman Reckhow requested that Item No. 5, Chancellor James H. Ammons Resolution, be moved to Item No. 7 or 8 since Chancellor Ammons had not yet arrived.

**Minutes**

Chairman Reckhow noted the correction to the attendance on the May 14, 2007 Regular Session minutes.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve as corrected the May 14, 2007 Regular

Session Minutes, and as submitted the May 21, 2007 County Stadium Community Meeting Minutes.

The motion carried with the following vote:

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

### **Employee of the Year—Deputy Shane Fowler**

Chairman Reckhow stated that the Board has the pleasure of recognizing the Employee of the Year which is done each spring. During National County Government Week 2007 (April 22-28), Deputy Shane Fowler was selected as Durham County's Employee of the Year. Deputy Fowler has been with the Sheriff's Office for four years and is currently assigned to the "Bomb Squad". Deputy Fowler is held in high esteem for his work ethic and his diligence in dealing with thieves and stolen property. Mr. Fowler was nominated by Sergeant Will Oakley.

Major Mike Andrews of the Sheriff's Office made comments about Deputy Fowler. He thanked him for a job well done and congratulated him for the designation of "Employee of the Year". Major Andrews stated that Deputy Fowler understands the responsibility and the authority given to him to serve and protect the citizens of Durham and the citizens of the state. Major Andrews praised Deputy Fowler on behalf of Sheriff Worth Hill, Deputy Chief Wes Crabtree, and the County for being selected.

Deputy Fowler thanked the citizens of Durham County and Major Mike Andrews for allowing him to do his job.

Chairman Reckhow called Deputy Fowler forward to accept his award.

### **May Anchor Award Winner—James Osborn**

Chairman Reckhow announced that the Commissioners also recognize an Anchor Award winner among County employees. This month, James Osborn, from The Durham Center, was selected to receive the May Anchor Award. Mr. Osborn was recognized for excellent leadership and initiative shown in completing all tasks and assignments with efficiency.

Chairman Reckhow called Ellen Holliman, Director of The Durham Center, forward for comments.

Ms. Holliman stated that she appreciated the opportunity to speak on behalf of Mr. Osborn, who has a Master's degree in psychology and has been employed by The Durham Center since 1997 as a staff psychologist. Ms. Holliman commended Mr. Osborn's work ethic, dependability, and positive attitude. Since his nomination for the Anchor Award, he has

moved from Director of the Utilization and Management Department within The Durham Center to Director of The Durham Center Access.

Mr. Osborn thanked Ms. Holliman and The Durham Center for the opportunity to serve on a great team and to be able to work with citizens who have mental health, substance abuse, and developmental disability issues.

Chairman Reckhow presented the May Anchor Award to Mr. James Osborn, along with congratulations of the entire organization.

### **Consent Agenda**

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

- \*a. Property Tax Releases and Refunds for Fiscal Year 2006-2007 (accept the property tax release and refund report for April 2007 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
- \*b. Budget Ordinance Amendment No. 07BCC000066— Approve Revenue Reclassification for The Durham Center for \$10,350,000 in revenues from “Charges for Services” and “Other Revenues” to “Intergovernmental”;
- \*c. Budget Ordinance Amendment No. 07BCC000067— Approve to Recognize \$13,366 in Additional Revenue from the Aid to Public Libraries Fund;
- d. Authorize the Execution of an Acoustical Design Contract Amendment with The Freelon Group, P.A. in the amount \$60,000 for the Proposed Durham County Human Services Complex. Project No.: DC070-48;
- f. Receive the Annual Report of the Design District Review Team;
- g. Receive the Annual Report of the Durham Environmental Affairs Board;
- \*h. Approve the Cultural Master Plan Interlocal Agreement Extension and an amendment to the Interlocal;
- i. Authorize the Manager to Execute the Standard Non-Reimbursable Utility Contract with United Therapeutics Corporation for the Extension of the County Sanitary Sewer System;
- j. Approve the Sale of County Surplus Property—605 Holloway Street to Howard Goldsmith of Baldwin Estates LLC for \$20,000, 1103 Linwood Avenue to Howard Goldsmith of Baldwin Estates LLC for \$18,000, 0 Redwood Road to Sampson Harrell for \$3,500, and 924 Ramseur Street to Perry Black of PKM LLC for \$435; and

- k. Approve revisions to the Work First Block Grant Plan for 2007-2009.

The motion carried with the following vote:

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

\*Documents related to these items follow:

Consent Agenda Item No. a. Property Tax Releases and Refunds for Fiscal Year 2006-2007 (accept the property tax release and refund report for April 2007 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report).

Due to property valuation adjustments for over assessments, listing discrepancies, duplicate listings, and clerical errors, etc., the report details releases and refunds for the month of April 2007.

Releases & Refunds for 2007 Taxes:

|                               |          |
|-------------------------------|----------|
| Personal                      | \$ 91.59 |
| Total for 2007 Taxes and Fees | \$ 91.59 |

Releases & Refunds for 2006 Taxes:

|                               |              |
|-------------------------------|--------------|
| Real Estate                   | \$ 14,236.38 |
| Personal                      | \$ 3,443.65  |
| Registered Vehicles           | \$ 39,547.78 |
| Vehicle Fees                  | \$ 760.00    |
| Total for 2006 Taxes and Fees | \$ 57,987.81 |

Prior years' (2002-2005) releases and refunds for April 2007 are in the amount of \$12,922.90. The total current year and prior years' releases and refunds amount to \$71,002.30.

---

Consent Agenda Item No. b. Budget Ordinance Amendment No. 07BCC000066—Approve Revenue Reclassification for The Durham Center for \$10,350,000 in revenues from “Charges for Services” and “Other Revenues” to “Intergovernmental”.

DURHAM COUNTY, NORTH CAROLINA  
FY 2006-07 Budget Ordinance  
Amendment No. 07BCC000066

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2006-07 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   | \$321,564,725         | \$10,350,000             | \$331,914,725         |
| Service Charges     | \$ 23,800,642         | -\$10,100,000            | \$ 13,700,642         |
| Other Revenues      | \$ 1,010,857          | -\$ 250,000              | \$ 760,857            |

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

This the 29<sup>th</sup> day of May, 2007.

---

Consent Agenda Item No. c. Budget Ordinance Amendment No. 07BCC000067—Approve to Recognize \$13,366 in Additional Revenue from the Aid to Public Libraries Fund.

DURHAM COUNTY, NORTH CAROLINA  
FY 2006-07 Budget Ordinance  
Amendment No. 07BCC000067

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2006-07 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   | \$331,914,725         | \$13,366                 | \$331,928,091         |

Expenditures:

| <u>Function</u>       |               |          |               |
|-----------------------|---------------|----------|---------------|
| <u>GENERAL FUND</u>   |               |          |               |
| Cultural & Recreation | \$ 11,218,951 | \$13,366 | \$ 11,232,317 |

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

This the 29<sup>th</sup> day of May, 2007.

---

Consent Agenda Item No. h. Approve the Cultural Master Plan Interlocal Agreement Extension and an amendment to the Interlocal.

AMENDMENT TO Durham City-County Interlocal Agreement  
to Implement the Durham Cultural Master Plan  
and  
Establish a Cultural Master Plan Advisory Board

This Interlocal Cooperation Agreement (“Amendment”) is made, dated and entered into as of the 29<sup>th</sup> day of May 2007, between City of Durham, a North Carolina municipal corporation

(hereinafter "City"), and County of Durham, a political subdivision of the State of North Carolina (hereinafter "County").

The City of Durham and County of Durham entered into an agreement titled "Durham City-County Interlocal Agreement to Implement the Durham Cultural Master Plan and Establish a Cultural Master Plan Advisory Board," dated June 10, 2005 (hereinafter, "Original Agreement"). The Original Agreement is amended as follows:

1. SECTION 3. Paragraph C. Delete the first sentence and replace with: "Currently appointed members shall continue to serve their existing terms through June 30, 2008 ("Term")."
2. SECTION 6. Paragraph B. Delete the first four sentences and replace with the following "A budget of the Office of Economic and Workforce Development regarding the Plan Implementation ("Budget") shall be effective only if approved by the Board of County Commissioners. The Budget to extend the project through June 30, 2008 shall be effective upon approval of the Board of County Commissioners. A draft of the Budget (extended to June 30, 2008) is attached as Revised Exhibit 1."
3. SECTION 6. Paragraph C. Delete the second sentence and replace with "It is expressly understood and agreed by the City that Implementation Funds available for this project will not exceed the maximum sum of \$500,000 for the full term of the Agreement (as amended), extended through June 30, 2008, plus any additional sum as may be agreed to by the City and County."
4. SECTION 6. Paragraph C. 1. In the first sentence, replace "Exhibit 1" with "the approved Budget to extend the project through June 30, 2008."
5. SECTION 7. Delete the first sentence and replace with "This Agreement shall be effective as of the date first written above and shall be in effect (as amended) until June 30, 2008."

IN WITNESS WHEREOF, the City and County have authorized this Agreement to be executed and attested by their undersigned officers, to be effective from and after the date first written above.

ATTEST:  
/s/ Vonda C Sessoms  
Clerk to the Board

COUNTY OF DURHAM  
/s/ Michael M. Ruffin  
County Manager

ATTEST:  
/s/ Ann Gray  
City Clerk

CITY OF DURHAM  
/s/ Patrick Baker  
City Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

/s/ George Quick  
Durham County Finance Officer

**Consent Agenda Item Removed for Discussion**

Consent Agenda Item No. e. Receive the Annual Report of the Durham City-County Appearance Commission.

Vice-Chairman Heron removed this item from the consent agenda to compliment the City-County Appearance Commission, particularly in its excellent choice of Hildegard Ryals as the recipient of the 2007 Golden Leaf Award Winner in the “Outstanding Individual” category. Vice-Chairman Heron stated that all ten award recipients were well chosen. She voiced appreciation to the Durham City-County Appearance Commission for a first-class Golden Leaf Awards Ceremony. She congratulated John Felton, Chairman of the Appearance Commission, and all persons who worked with him. Vice-Chairman Heron also praised Chairman Reckhow for representing the County so well while speaking at the Awards Ceremony.

Chairman Reckhow agreed with Vice-Chairman Heron’s comments about the excellent ceremony. She mentioned that the “Explore the Wild” Exhibit at the N.C. Museum of Life & Science (which the County funds) won an award.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve consent agenda item No. e to receive the Annual Report of the Durham City-County Appearance Commission.

The motion carried with the following vote:

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

**Chancellor James H. Ammons Resolution**

Chairman Reckhow welcomed Chancellor James H. Ammons. Since June 1, 2001, Dr. Ammons has served as chancellor of North Carolina Central University (NCCU). Dr. Ammons, who became the ninth chief administrator of NCCU, served admirably for six years and will be leaving on July 2 to become president of Florida A&M University. The Commissioners wished to recognize Dr. Ammons in a formal manner with a resolution.

Chairman Reckhow read the following resolution into the record:

RESOLUTION

WHEREAS, Dr. James H. Ammons became the ninth chief administrator of North Carolina Central University (NCCU) on June 1, 2001 and served for six years; and

WHEREAS, NCCU's enrollment reached an all-time high during Chancellor Ammons' administration, climbing from 5,476 in 2000-2001 to 8,675 in 2006-2007—a 58.4-percent increase. NCCU is currently the fastest growing institution in the University of North Carolina System; and

WHEREAS, NCCU realized many successes in fundraising under Chancellor Ammons' leadership, receiving more than \$40 million in private gifts to support the construction of facilities, scholarships, faculty development, and outreach programs; and

WHEREAS, in 2003, Chancellor Ammons worked to establish the Josephine Dobbs Clements Early College High School Program to increase the number of minority and female students who might pursue advanced studies and careers in mathematics, science, engineering, and technology; and

WHEREAS, Chancellor Ammons also has managed the \$121 million 2000 Capital Bond Program, which yielded a \$36 million science complex. The complex was approved for an additional wing that will house a new Biomanufacturing Research Institute and Technology Enterprise (BRITE) Center of Excellence; and

WHEREAS, Dr. Ammons was actively involved in the Durham community and received many honors including the Carlie B. Sessoms Human Rights Award from the City of Durham, the Willie E. Gary "Making a Difference Award," and the "Citizen of the Year Award" from the Beta Phi Chapter of Omega Psi Phi Fraternity Inc. to name a few; and

WHEREAS, Dr. Ammons – a scholar, teacher, and researcher – honorably served the students, faculty, and staff of NCCU, and citizens of Durham, operating in the spirit of community, responsibility, and civic leadership:

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Durham County Board of Commissioners, do hereby resolve to pay tribute to

DR. JAMES H. AMMONS

for his visionary leadership and sincere dedication to North Carolina Central University and the entire Durham community.

This the 29<sup>th</sup> day of May, 2007.

---

Dr. Ammons thanked the Commissioners and the County Manager for the recognition. He spoke about the remarkable success at NCCU during the past six years. He paid tribute to his staff for their outstanding work. He thanked the Commissioners for their support in bringing the Biomanufacturing Research Institute and Technology Enterprise (BRITE) Center of Excellence to NCCU. He stated that he and his wife will always have a special place in their hearts for Durham, Durham County, NCCU, and the state of North Carolina.



**Public Hearing—Unified Development Ordinance Text Amendment—Animated or Motion Signs (TC06-20)**

Chairman Reckhow recognized Frank M. Duke, AICP, City-County Planning Director to present the item.

Mr. Duke stated that the Board has been requested to hold a public hearing to receive comment on Unified Development Ordinance Text Amendment—Animated or Motion Signs (TC06-20), and to adopt Unified Development Ordinance Text Amendment—Animated or Motion Signs (TC06-20). The amendment would permit animated signs to be located downtown, as well as provide language dealing with off-premise signs to clarify that off-premise billboards are not permitted to use an animated sign face.

Mr. Duke stated that the Joint City-County Planning Commission reviewed the ordinance. The Planning Commission and staff have recommended approval. City Council approved the amendment at its May 21 meeting.

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 Unified Development Ordinance Text Amendment—Animated or Motion Signs (TC06-20).

The motion carried with the following vote:

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

**AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE  
CONCERNING ANIMATED AND MOTION SIGNS, AND TO CLARIFY THE INTENT  
OF THE ORDINANCE REGARDING SIGNS WITH CHANGING FACES AND  
NONCONFORMING OFF-PREMISE SIGNS**

WHEREAS, the Durham County Board of Commissioners (“the Commissioners”) wishes to amend certain provisions regarding signs in the Unified Development Ordinance to better promote the community’s health, safety, and welfare, in particular by promoting downtown revitalization; and

WHEREAS, it promotes the health, safety, and welfare, and the creation of stable property values in the downtown area to allow the design of varied and interesting signage in Durham’s downtown, in keeping with the eclectic character of downtown, and the desire to promote downtown nightlife and activities, and to allow certain animated and moving signs,

and signs with changing faces, after particular review of the effect of such signs within their context area; and

WHEREAS, the Downtown Durham Master Plan envisions vibrant downtown architecture and a vibrant streetscape; and

WHEREAS, the Durham County Board of Commissioners also wishes to clarify certain aspects of the existing sign ordinance to ensure that the prohibition on moving effects that is currently in place encompasses the Commissioners' original intent that signs that have changing faces be prohibited; and

WHEREAS, the Durham County Board of Commissioners also wishes to clarify existing restrictions on nonconforming off-premise signs to ensure that such nonconforming signs not be improved in a manner that would defeat the intent of prior ordinances requiring removal of billboards, and restricting their improvement, and prior ordinances generally restricting improvements to nonconformities, which ordinances required that nonconforming off-premise signs only be repaired and or modified to restore their original condition, but not otherwise be improved;

NOW, THEREFORE, be it ordained that Article 11 "Sign Standards" of the Unified Development Ordinance is amended to make the following changes and to add the following clarifications:

#### SECTION 1

Modify 11.2.8.B "Nonconforming Off-Premise Signs" by eliminating subsection 2 in its entirety, and making the following clarifications, shown in strike-outs and underlining below, to existing 11.2.8.B.1.

"Certain off-premise signs, as defined in Sec. 11-3, Prohibited Signs, that were made nonconforming by previous ordinances but were allowed to continue beyond the amortization period in force for other off-premise signs may continue to exist in substantially the same form as when erected until such point that compensation is not required for their removal under federal law, subject to the following restrictions, which are carried forward from previous ordinances, or are clarifications of such ordinances:

1. The signs and supporting structures may not be enlarged, moved to a different location in the City or County where a sign of the same size and construction has not previously existed, or improved through replacement by substantially different materials or in any other manner;
2. Lights and/or other electric or electronic features may not be added, and the intensity of lighting may not be increased;
3. The signs must operate in compliance with all other restrictions in Article 11, and the UDO, and other local regulations, including but not limited to prohibitions on sign operation and sign features contained in

Sec. 11.3.1 and 11.3.2 and prohibitions on dilapidated and damaged signs contained in 11.3.6 and 11.3.7.

4. The signs shall be removed if repair or damage to the sign and structure exceeds 25% of the lesser of the declared value when the sign permit was originally obtained or the replacement value;
5. The signs shall operate in compliance with all restrictions contained in federal and/or state law and regulation; and
6. The owner of such signs shall maintain all necessary records and documents, including permits, required to be obtained under previous ordinances and/or State law or regulation, to demonstrate that the sign may continue to exist under the provisions of Section 11.3.5.

The restrictions contained in this section, 11.2.8.B shall not be interpreted to prohibit the City or County from requiring removal of any nonconforming off-premise sign when removal is accomplished in accordance with applicable law, including but not limited to federal and/or state requirements regarding compensation.”

## SECTION 2

Modify Section 11.3 as set forth in the underlined language below:

### 11.3 Prohibited Signs

The following signs shall be prohibited, and may neither be erected, created, nor maintained:

#### 11.3.1. Animated or Motion Signs

##### A. General Prohibition

In all tiers other than the Downtown Tier, signs with animated, blinking, chasing, flashing, or moving effects (including but not limited to sign faces that periodically change to show different images or messages) are prohibited, with the exception of signs that alternate the display of time or temperature.

##### B. Exception for Downtown Tier

In the Downtown Tier, signs with animated, blinking, chasing, flashing, or moving effects, including sign faces that periodically change to show different images or messages, may be approved on a case by case basis by the Planning Director, after a favorable recommendation by the DDRT. The applicant for such a sign shall submit a detailed plan showing the proposed sign and moving effects; all buildings and signs within a context area defined by the Planning Department; nearby existing residences that could be impacted by the sign; and nearby streets where the speed limit exceeds 35 mph. The proposed sign shall be allowed upon the determination that it meets the following considerations: it complements the surrounding built-upon area; it is spaced so as to not lead to excessive animated signage in an area; it does not negatively impact traffic safety; it has artistic or historic merit or other design qualities that will have a positive impact on the downtown; and it does not unduly disturb existing residences in the area. Adjustments in brightness, frequency of movement, colors, or other qualities may be required after installation.”

### SECTION 3

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

### SECTION 4

That this amendment of, and clarification to, to the Unified Development Ordinance shall become effective upon adoption.

### **Commissioner Comments Regarding Consent Agenda Item No. k**

Consent Agenda Item No. k. Approve revision to the Work First Block Grant Plan for 2007-2009.

Vice-Chairman Heron requested that the County Manager obtain additional information about the accomplishments of the Work First Plan regarding the number of jobs secured for the clients.

Chairman Reckhow stated that the County Manager has noted the request.

### **Public Hearing—Zoning Map Change—Treyburn Commons (Z06-37)**

Chairman Reckhow recognized Frank M. Duke, AICP, City-County Planning Director to present the item.

Mr. Duke stated that the item before the Board of Commissioners is to approve a request by First Carolina Properties for a zoning map change for a 16.927-acre site located at 308 Orange Factory Road at the intersection of Orange Factory Road and North Roxboro Road. PIN 0836-03-02-4349 (partial). Request: PDR 2.240 to CC(D)

Mr. Duke read the following development plan committed elements which are considered binding on the property should the zoning be approved:

1. The erosion and sedimentation control plan for the project will be designed to exceed the current NC Division of Land Resources standards by the following:
  - Design capacity of sediment traps and basins for the 25-year, 24-hour storm peak runoff;
  - Utilize “surface skimmer” as the primary release device for the sediment basin; and
  - Utilize flocculant [a substance that clarifies polluted water] within the sediment basin, diversion ditches, and stormwater system to increase efficiency in removing suspended solids.
2. The development will waive its ability to reduce the width of the perimeter landscape buffers outlined in the Unified Development Ordinance.
3. Provide a 25-foot minimum street yard width setback from the right-of-way of North Roxboro Road to the parking lot back of curb line.

4. Provide a 75-foot minimum street yard width setback from the right-of-way of Orange Factory Road to the parking lot back of curb line.
5. Reserve a location for a transit stop shelter within the development should DATA request a transit stop for the site anytime during the life of the project.
6. The maximum building floor area for a single tenant will be 60,000 square feet.

Mr. Duke stated that additional committed elements involve a series of road improvements to North Roxboro Road, Orange Factory Road, the intersection of US 15-501 and Snowhill Road/Mason Road, the intersection of Orange Factory Road and the site driveways, and the intersection of US 15-501 and site driveways. Staff has reviewed the report with consistency with the UDO and the *Comprehensive Plan* has recommended approval. The Planning Commission recommended approval, 8-4 vote, on February 13, 2006.

Chairman Reckhow asked whether the committed elements in italicized print were added subsequent to the Planning Commission meeting.

Mr. Duke responded that the items (2 – 5) were added **at** the Planning Commission hearing. He explained that members of the Planning Commission write their comments prior to the public hearing and try to get them included at the hearing.

Chairman Reckhow inquired about the potential school impact of the proposed project.

Mr. Duke replied that under Durham's Zoning Ordinance, multi-family residential or apartments are allowed in properties zoned CC. Planning staff does the analysis as though it might take place.

Chairman Reckhow requested that future staff reports state in parenthesis that school impact is "possible" under the existing zoning.

Vice-Chairman Heron spoke to the traffic impact analysis (TIA) study area which included four intersections in the vicinity of the proposed site. She asked about the one signalized intersection and the three unsignalized intersections.

Mr. Duke stated that pursuant to the ordinance, the parameters of the area to be impacted by the project are worked out by the Durham Transportation Division and the applicant. The TIA indicates that one intersection has a traffic signal; the remaining intersections do not have traffic signals. The TIA recommends that a traffic signal be installed at one of the unsignalized intersections.

Chairman Reckhow pointed out that the additional signal light is referenced in item No. 7 of the committed elements.

Mr. Duke added that committed element No. 13 speaks to signal timing modification to manage better the flow of traffic.

Vice-Chairman Heron asked about the maintenance regarding committed element No. 1, Bullet 3, "Utilize flocculant [a substance that clarifies polluted water] within the sediment basin, diversion ditches, and stormwater system to increase efficiency in removing suspended solids."

Glen Whisler, County Engineer, replied that flocculant does not have to be added daily to the sediment basin, but must be added during the life of the project, i.e. during construction throughout the land disturbing activity.

Mr. Duke stated that he must acknowledge for the public record as required by NCGS that he has the certifications that all public notices were provided as required by law.

Chairman Reckhow opened the public hearing that was properly advertised and recognized the following speakers:

Ronald Horvath, 16 Consultant Place, Durham, NC 27707, represented Carolina Properties. He reiterated many of the comments of Mr. Duke relating to the rezoning request in order to build a neighborhood shopping center. Mr. Horvath stated that regarding the school impact issue, the intent is to develop the property as commercial; however, he would like the option for a possibility of combined uses (1<sup>st</sup> floor commercial and 2<sup>nd</sup> floor residential) later on.

Per a question by Chairman Reckhow, Mr. Horvath agreed to commit to a commercial element and a minor residential element.

Mr. Horvath also spoke about the maximum building floor area for a single tenant of 60,000 square feet, the traffic issue, and flocculant logs.

Marc Hamlen, 1707 Sassafras Hill Street, Durham, NC 27712, area resident, voiced his support for the shopping center.

Michael Porter, 1722 Haddington Drive, Durham, NC 27712, Treyburn resident, supported the zoning change for a "convenient" shopping center for the Treyburn residential area, as well as for those who work in the Treyburn corporate area.

David Decker, 17 Fairwoods Drive, Durham, NC 27712, resident of Treyburn since 1999 and past president of the homeowners' association, strongly favored the project.

Joe Morgan, 2601 Vintage Hill Court, Durham, NC 27712, Treyburn resident, also strongly approved the proposed project. He requested that persons stand if they were in attendance to support the project.

Chairman Reckhow mentioned that she received 15 to 20 emails over the past few days on this issue.

Sally Burke, 1202 E. Pointe Drive, Durham, NC 27712, Treyburn resident, supported the project but stressed the importance for the developer to preserve the character and beauty of the community.

As no one else requested to speak on the agenda item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Per a request by Chairman Reckhow, Mr. Horvath explained how item Nos. 2-4 of the committed elements would satisfy Ms. Burke's concerns.

Mr. Duke noted that no buffer requirements exist under the ordinance along Roxboro Road or Orange Factory Road because of the width of the rights-of-way. The proffer is that the rights-of-way would have green lawns with street trees. Mr. Duke stated that regarding the intention of Mr. Horvath to have shrubs planted as well, there is no requirement nor is it committed or proffered.

Mr. Horvath made a commitment to increase the number of street tree plantings by 50 percent along Roxboro Road and Orange Factory Road.

Commissioner Cousin asked for a definition of a "street tree".

Mr. Duke replied that a street tree is any species of tree authorized in the Durham landscape guidelines that is required to be located within the street yard of any development between that structure and the street. The intention is to help frame the street to create visual interest and help provide a traffic calming measure.

Vice-Chairman Heron asked the diameter of the street trees.

Mr. Duke could not recall.

Mr. Horvath stated that the width of the street trees must be at least 2½ inches in diameter—about 12 to 14 feet high at planting.

Mr. Duke concurred with Mr. Horvath that larger trees at planting do not grow as rapidly or as well as smaller trees.

Mr. Horvath explained for Vice-Chairman Heron that a sufficient amount of grading will take place; however, the majority will take place in pasture land. Very little grading will take place in tree-vegetated areas.

Chairman Reckhow asked about the donor parcel for the impervious surface transfer to this site.

Mr. Horvath replied that Terry Sanford Jr. has a commercial site to be leased to the shopping center development. This will make up the bulk of the land needed. Other adjacent parcels will make up the additional 20+ acres that are needed.

Chairman Reckhow questioned Mr. Duke about the ordinance requirement of a formal conservation easement on the donor property for the impervious surface credits.

Mr. Duke explained that the requirement of a formal conservation easement depends on where the donor parcels are located. If they can be linked through a site plan or plat

(immediately contiguous), the transfer can be recorded on the plat. If they are within the larger (Treyburn) single development plan, the transfer can be recorded at the Planning Department. If they are from a property that is not part of the larger development, then a formal conservation easement is required either in favor of the County or in favor of an independent land protection entity.

Mr. Horvath reaffirmed for Commissioner Cousin that 130 acres of impervious area is needed to meet the 6 percent requirement if everything shown on the shopping center is developed.

Mr. Duke suggested adding under general notes, "Utilization of this development plan will require transfer of impervious surface pursuant to Article 8 of the Durham UDO."

Mr. Horvath had no problem with the addition under "general notes".

Commissioner Cousin questioned if the site plan would come back before the Commissioners.

Mr. Duke stated, "Possibly. It will depend on whether it trips any of the thresholds under the ordinance for a site plan coming back to a governing body. Those are defined in the ordinance. I cannot give you a definitive answer to that at this point. I will need to discuss this with the County Attorney at a later date."

Chairman Reckhow asked about the thresholds.

Mr. Duke stated that the thresholds relate to the amount of impervious surface proposed for the site (may apply to this project [capped at 6%]), to filling a floodplain (not applicable to this project), and to some of the utilizations within a stream buffer (not applicable to this project).

Vice-Chairman Heron opined that she would like to see the site plan.

Chairman Reckhow requested that Mr. Duke restate the additional note and the additional committed elements.

Mr. Horvath acknowledged each of the following to be added to the development plan as stated by Mr. Duke:

- Additional general note: "Utilization of this development plan will require transfer of impervious surface pursuant to Article 8 of the Durham UDO."
- Additional committed element: "There will be no independent, free-standing residential structures located on the site."
- Additional committed element: "The developer will provide 50% more street trees than required by ordinance."



Commissioner Cousin moved, seconded by Vice-Chairman Heron, to approve Zoning Map Change—Treyburn Commons (Z06-37) with the additional note and committed elements listed above.

The motion carried with the following vote:

Ayes: Cousin, Heron, and Reckhow

Noes: None

Absent: Cheek and Page

### **Capital Improvements Program (CIP)**

Chairman Reckhow stated that the CIP is updated every two years. It is a ten-year plan that includes 31 projects for FYs 2008-2017; it is one of the more important functions that the Board undertakes. Chairman Reckhow recognized County Manager Ruffin to say a few words.

County Manager Ruffin stated that the CIP is important. The CIP provides a spending plan to facilitate the construction of and renovations to facilities in which County-sponsored programs and services are provided. The County's annual budget is approximately \$760 million and the ten-year CIP is \$901 million. Every two years, due to construction price escalations, new projects, completed projects, and needed revisions, the County conducts a biennial review. Final biennial revisions to the County's ten-year CIP were completed by the Board of Commissioners during its May 21, 2007 Worksession. This ten-year CIP includes projects such as a new courthouse, human services building, new schools and renovations to existing schools, and improvements at the campuses of Durham Technical Community College and the Museum of Life and Science. In order to support the proposed spending plan, the CIP includes three bond referenda—2007, 2009, and 2113.

County Manager Ruffin thanked the Commissioners for their work on the CIP.

Chairman Reckhow clarified that Durham County Stadium is included in the plan for \$4.5 million in improvements. The Commissioners and staff have been very creative in how tax payers' money is being used in this regard. The original proposal for the Stadium was \$2.3 million; however, the Commissioners agreed that the Stadium needed a higher level of improvements. The Commissioners requested that Durham Public Schools eliminate the stadium that was planned for the new high school, which will schedule its games at Durham County Stadium, along with Northern High School on alternate Friday nights. The \$2 million that would have been used for the new high school stadium has been moved into the capital spending for the County Stadium. As a result, major upgrades will take place at the Stadium for only \$200,000 more. This is a very cost-effective approach to provide a flexible and upgraded facility for all the citizens of Durham County.

Commissioner Cousin moved, seconded by Vice-Chairman Heron, to approve the Capital Improvements Program for FYs

2008-2017.

The motion carried with the following vote:

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

Chairman Reckhow thanked the County Manager and staff for their work on the CIP.

**Major Site Plan—Becton Dickinson Expansion (D06-858)**

Chairman Reckhow stated that about one month ago she was at the ground-breaking for Becton Dickinson. She was very impressed by the existing facility at which an exciting, new expansion has been planned. She asked Frank M. Duke, AICP, City-County Planning Director, to describe the site plan.

Mr. Duke commented that this is a request for the Board to approve a major site plan for “Becton Dickinson Expansion” submitted by HadenStanziale Associates PLLC, on behalf of Becton Dickinson Corporation, for a 53,000-square-foot expansion to an existing 188,000-square-foot-manufacturing facility for a total of 241,000 square feet on a 114.97-acre site, zoned IL and F/J-A. The site plan utilizes the high-density option within the critical area of a watershed overlay, which requires approval of the Board of Commissioners under Section 8.7.4 of the Unified Development Ordinance. (The property is located west of International Drive, north of Old Oxford Highway within the Treyburn Corporate Park. PIN 0845-03-33-8356) The expansion meets all ordinance requirements. The Development Review Board recommended approval on March 2, 2007 by a vote of 7-3.

Chairman Reckhow remarked that this impressive facility manufactures the laboratory supplies that are utilized by many hospitals and bio-tech firms.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve Major Site Plan—Becton Dickinson Expansion (D06-858).

The motion carried with the following vote:

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

**Major Site Plan and Preliminary Plat—Blenheim Woods (D06-958)**

Chairman Reckhow recognized Planning Director Frank Duke to introduce the item.

Mr. Duke stated that this particular item is a request by The John R. McAdams Company Inc. on behalf of Meadowmont Farms LLC for approval of a major site plan and preliminary plat for a 56-lot single-family residential development on a 20.82-acre site, zoned PDR 2.690 and F/J-B. [The property is located on the west side of George King Road, north of N.C.54 and south of Ephesus Church Road. PIN 0709-03-02-6159] The case was submitted utilizing the zoning ordinance and is considered a major site plan. Under the UDO, this would be a minor site plan that would be reviewed by the Development Review Board. Staff determined that the request as submitted does meet ordinance requirements; therefore the Development Review Board accordingly recommended approval on April 27, 2007, by a vote of 9-0.

Mr. Duke noted an error in the staff report on Page 3, which indicated two proposed stormwater ponds; there are actually three proposed stormwater ponds.

Chairman Reckhow recognized the following citizens who signed up to speak to the item:

Roger Perry, 190 Finley Road, Chapel Hill, NC 27517, communicated that several homeowners in the "Oaks" (Oaks III Homeowners Association) have raised concerns about the site plan review in regards to the following three issues: (1) the buffer where the property is adjacent to the Oaks [a commitment was made at the time of rezoning that a fence would be built along the border of the property in addition to the natural buffer]; (2) connectivity [interest was expressed by several Oaks homeowners for a cul-de-sac; it was clear that connectivity was the will of the commission; it is a part of the overall Southwest Durham Drive Plan; many subsequent public hearings have been held since this property was rezoned]; and (3) mass grading [this site will not be mass graded; each lot will be individually prepared for the home that will be built on it; Maida Vale, an adjacent neighborhood which was mass-graded, has various erosion control issues. Mr. Perry mentioned that several public meetings were held. Notice was sent to all Oaks Homeowners Association members, who were later contacted by email to inform them of the public hearings with the design review board and, subsequently, the County Commissioners. Engineering approval has been given. Mr. Perry asked that the request be approved, not delayed, at tonight's meeting, as the annexation approval must be obtained at City Council's June 30 meeting or the project will be delayed one year.

Patrick Byker, 2614 Stuart Drive, Durham, NC 27717, stated that this project meets the intent and the letter of the zoning ordinance. The Planning Commission and the County Commissioners have previously given the development plan unanimous approval. If the site plan is denied because of the issues recounted by Mr. Perry, the site plan that would be approved under the City's ordinances will not resemble the development plan unanimously approved by the Commissioners last fall. Mr. Byker respectfully requested Commissioner approval of the major site plan and preliminary plat.

Bob Woodruff, 209 Nottingham Drive, Chapel Hill, NC 27517, mentioned that he is the managing partner with Roger Perry and the Cedars of Chapel Hill Development, is a member of the Oaks III Homeowners Association, and neighbor and good friend of Phil Post. Mr. Woodruff expressed that in his opinion connectivity allows for appropriate disbursement

of traffic. He could not understand why people would use the proposed private street connection as a short-cut from George King Road.

Phil Post, 104 St. Andrews Place, Chapel Hill, NC 27517, representing Oaks III Homeowners Association, expressed concerns about the development regarding stormwater runoff and erosion control. New concerns relate to street alignments. (The collector street plan was formally adopted less than 30 days ago [subsequent to the neighborhood meetings with the developer]). The neighbors do not believe that the street alignment in the proposed development fully complies with the intent of the collector street plan. In addition, a fence promised by Mr. Perry is not a committed element. Mr. Post requested that consideration of the site plan be deferred until June 26.

Everett Kemp, 208 New Castle, Chapel Hill, NC 27517, President of Oaks III Homeowners Association, asked the Commissioners to consider the needs of the current residents before moving the item forward. He expressed concerns regarding the street alignment, clear-cutting, and increased traffic. Mr. Kemp also requested that the Commissioners delay their vote until they look in detail at the committed items.

Jeff Prather, 108 Wicklow Place, Chapel Hill, NC 27517, resident of Oaks III, expressed concern about area flooding. He requested that the stormwater runoff going into the stream be minimized.

Chairman Reckhow asked Mr. Byker and Mr. Perry to respond to concerns expressed by the citizens, specifically stormwater runoff. She asked whether an analysis has been done to determine whether the three ponds which are strategically located around the creek will prevent flooding, whether they will commit to building a fence, and whether it can be added as a committed element.

Mr. Perry stated that the original plan called for 60 lots as opposed to the current 56 lots. The lots which buffer the "Oaks" were enlarged, and two lots were lost in complying with the Southwest Durham Plan. Maida Vale Subdivision's water runs through the proposed development. The stormwater collection system is designed in such a way that there will be no greater discharge off of the proposed site than currently exists.

Brandon Plunkett, Civil Design Engineer with the John R. Adams Co. Inc., spoke to the stormwater plan that was on the development plan and the site plan. He confirmed the comments of Mr. Perry that Maida Vale Subdivision's water runs through the proposed development.

Chairman Reckhow questioned whether the three ponds would relieve the runoff problem in Maida Vale.

Mr. Plunkett explained that the proposed project would not affect Maida Vale.

Per questions posed by Chairman Reckhow, Mr. Duke responded that Maida Vale's stormwater system was reviewed and approved by the City Division of Stormwater Services,

which determined that it met all of the City ordinance requirements. In some areas, the County's ordinance requirements are more stringent; in other areas, the City's requirements are more stringent; it is a case by case issue.

County Attorney Chuck Kitchen commented that the intensity of the storm determines whether the flooding is worse or better. If this property is annexed into the City, there will not be as much protection under the City's ordinance.

Chairman Reckhow stated that Mr. Duke conveyed to the Board in an email that if this project is delayed and annexation occurs, under the City's ordinance, no stream buffer would be required on this site. She expressed that this is a very important issue for the Board to consider.

Mr. Duke interjected that Chairman Reckhow's comments were correct.

Mr. Perry reiterated that a one-month delay in approval would amount to a one-year delay in the project. Much interaction has occurred between area residents and the developer in order to satisfy their concerns.

Chairman Reckhow asked Mr. Perry if he is willing to commit to the fence.

Mr. Duke cautioned the applicant that the fence could not be built through the area designed as tree cover nor could shrubs be added in the area. (The roots of the trees may be damaged.) If the applicant chooses to redesign the tree cover area to a landscaped area, the site must be reassessed to determine if there is sufficient tree cover to meet the requirements.

After discussion regarding the fence, Mr. Duke recommended that the applicant agree to erect the fence between the proposed subdivision and the tree save area.

Mr. Perry committed to placing the fence on the back boundary of the lot lines (the side lot line of Lot 19 and the back lot line of Lots 20, 21, and 22).

For clarity, Mr. Duke stated that the applicant is willing to add a note under "special conditions" to provide a fence along the rear lot lines of Lots 20, 21, and 22 and the side lot line of Lot 19 closest to the Town of Chapel Hill.

County Attorney Chuck Kitchen questioned whether the area along Lot 19 is sufficient to build the fence.

Mr. Duke replied that the area is adequate.

Chairman Reckhow added wording to the special conditions "consistent with the fencing height restrictions."

Vice-Chairman Heron asked if the residents are opposed to the development or to the collector street.

Mr. Duke responded to a question about whether a requirement could be made of the developer to mitigate the flooding. He met with County stormwater representatives. They are aware of the concerns and looking at options. The developer cannot be required to deal with the current flooding issue.

Chairman Reckhow asked County Engineer Glen Whisler to discuss this issue with his peer at the City and report back.

Chairman Reckhow stated that this is a case in point as to why the City and the County's stormwater regulations should be unified as follow-up of the UDO.

In response to a question by Chairman Reckhow, the County Attorney advised the Commissioners that the developer cannot be required to remedy a situation (flooding) created by another developer and a different jurisdiction.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve Major Site Plan and Preliminary Plat—Blenheim Woods (D06-958) with the additional special condition of approval related to fencing.

The motion carried with the following vote:

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

Vice-Chairman Heron directed County Engineer Glen Whisler to meet with the City's stormwater staff to look into the stormwater runoff issue in the Maida Vaile subdivision.

### **Board and Commission Appointments**

Vonda Sessoms, CMC, Clerk to the Board, distributed ballots to the Board to vote on appointments to boards and commissions.

Vice-Chairman Heron suggested that the Clerk re-advertise the opening on the Nursing Home Community Advisory Committee, as only one application was submitted.

Chairman Reckhow mentioned that Mr. Greuling has been serving on the Open Space and Trails Commission and attending regularly. This appointment will move Mr. Greuling to an at-large position from the eastern Durham position.

The Commissioners made the following appointments:

#### **Civic Center Authority**

Bill Ruffin (Recommended by Civic Center Authority)

Criminal Justice Partnership Advisory Board

Alan D. Goldstein (“Criminal Defense Attorney”)

Industrial Facilities & Pollution Control Authority

Doreen L. Johnson

Open Space & Trails Commission

William A Greuling (Recommended by Joint City-County Planning Committee)

**Closed Session**

Commissioner Cousin moved, seconded by Vice-Chairman Heron, that the Board of Commissioners adjourn to closed session to instruct the staff concerning the position to be taken in negotiating the terms for the potential acquisition of real properties pursuant to G.S. § 143-318.11(a)(5). The properties and owners are: James and Robert E. Lee, owner of 0 Johnson Mill Road; Mishew and Alton B Smith Jr., owner of 8211 Johnson Mill Road.

The motion carried with the following vote:

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

**Reconvene to Open Session**

Chairman Reckhow announced that the Board met in closed session; direction was given to staff. She suggested a motion to approve the offer to purchase the Lee property on the Little River (ID #190123) for \$8,500 per acre. Terms in the proposed Offer to Purchase Contract specify:

- a closing by January 31, 2008;
- a contingency that the County receives grant assistance for at least 50% of the value of the property; and
- the County obtains a satisfactory Phase I Environmental Site Assessment on the Property.

The Board would authorize the County Manager to execute the contract.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, the motion as suggested by Chairman Reckhow.

The motion carried with the following vote:

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

**Adjournment**

There being no further business, Commissioner Reckhow adjourned the meeting at 9:28 p.m.

Respectfully submitted,

Vonda Sessoms, CMC  
Clerk to the Board