

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

Monday, October 7, 2002

9:00 A.M. Worksession

**Minutes**

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman MaryAnn E. Black, Vice-Chairman Ellen W. Reckhow, and Commissioners Joe W. Bowser, Philip R. Cousin Jr., and Becky M. Heron

Absent: None

Presider: Chairman Black

**Citizen Comments—Jerry McClain**

Mr. Jerry McClain had requested time on the agenda to speak to the Commissioners regarding an incident concerning an ABC police officer.

Chairman Black called Mr. McClain to the podium to make his presentation and requested his name and address.

Mr. McClain gave his address as 4000 Fayetteville Street, Durham, NC 27713. He stated that he had four matters to present to the Board of County Commissioners for its consideration. The four items concern the Alcoholic Beverage Control Board (ABC). The four matters follow:

- Ron Allen, ABC Police Chief, should be fired.
- The ABC Police Force should be disbanded.
- Eric Michaux should be removed immediately from the ABC Board.
- The State Bureau of Investigation should conduct the investigation concerning the incident between Ron Allen and himself.

Mr. McClain presented to the Board of County Commissioners his opinion as to why his requests should be implemented.

Commissioner Heron stated her concern about the problem. She commented she would have expected the ABC Board to resolve this issue before now. She said she was disappointed that the ABC Board's only action was to send the officer to a public relations class, but did not know another recourse. Commissioner Heron advised she must consult with the County Attorney. She suggested that the Commissioners contact the ABC Board and advise it of the Commission's displeasure that Mr. McClain had to come to the County Commissioners with this concern.

Chairman Black asked the Commissioners if they would be willing to send a letter to Mr. Michaux recommending that he appear before the Board and advise what actions he had taken. The Board could also ask him about the anger management course suggested by Mr. McClain.

Commissioner Heron recommended that the Board inquire whether there have been other complaints against ABC Police Chief Ron Allen. She stated she did not believe proper action was taken.

Chairman Black asked County Attorney Kitchen what legal action this Board could take. Attorney Kitchen responded to Chairman Black's question.

Vice-Chairman Reckhow asked the Commissioners to convey to the ABC Board her concern that the letter sent by the Board's attorney to Mr. McClain did not really apologize for the treatment he received; it apologized for an inconvenience. She conveyed that Mr. McClain deserved more of a response than that received in this letter.

Vice-Chairman Reckhow questioned the need for a separate ABC police force since the Sheriff's Department could handle the ABC police duties. The Commissioners should discuss this with the ABC Board and investigate the possibility of combining the two operations.

Chief Deputy Wes Crabtree stated that in 1994 there was a proposal to move the ABC police program to the Sheriff's Department. There were cost issues that came up that were never resolved, and the proposal died on the table.

Chairman Black instructed the County's Legal Department to research and determine whether the County has the authority to do away with the ABC enforcement arm and move it to County Government. She relayed her wish to do whatever is necessary to make that happen.

Chairman Black instructed the County Manager to write a letter to Mr. Michaux to advise him that the Board is investigating the conversion of the ABC enforcement arm to County Government.

Chairman Black asked Attorney Kitchen to gather the information and advise the Board when and how a conversion could be done. The Commissioners should be informed when the information is ready. The ABC Board can come to the meeting when the matter is presented to the Board of County Commissioners.

Commissioner Heron wanted to put a time limitation on this project so that a resolution could follow quickly, since the situation has been ongoing for six months with Mr. McClain.

County Attorney Chuck Kitchen said he would report next Monday to the Board of Commissioners.

Chairman Black wanted to proceed with the suggestions made to the County Manager and County Attorney. This item will come back to the Board on Monday, October 14, 2002.

### **Child Support Follow-Up Report**

At the Board of County Commissioners meeting on August 29, 2002, the Board heard citizens' concerns regarding the Child Support unit at the Department of Social Services. The Board requested that the DSS Director, Dan Hudgins, meet with those citizens and other representatives of the Association for Children for Enforcement and Support (ACES) to discuss their concerns.

Mr. Hudgins will also present a Child Support Enforcement Plan of Action that the DSS Board approved at its meeting on September 25, 2002.

Resource Person(s): Dan Hudgins, Director of the Department of Social Services

County Manager's Recommendation: The Manager recommended that the Board receive the presentation and ask any questions it may have regarding child support services at the Department of Social Services.

Mr. Daniel C. Hudgins, Director of the Department of Social Services, presented the Child Support follow-up report to the Board of County Commissioners.

Mr. Hudgins shared that he had promised to bring the Commissioners a Child Support Enforcement Plan of Action at this worksession. The Social Services Board approved the plan at its meeting last month.

The County Commissioners asked questions and made comments about the plan of action to which Mr. Hudgins responded.

No official action was taken on this agenda item.

### **Draft of Work First Block Grant Plan for 2003-2005**

Work First is the primary program in North Carolina for administering the Temporary Assistance for Needy Families (TANF) Program. Since Work First is administered locally in each county, North Carolina law (N.C.G.S. § 108A-27) requires each county to submit a County Work First Block Grant (WFBG) Plan every two years. This fall, each county began the development of a new WFBG Plan to become effective October 1, 2003.

The first stages of plan development include the appointment of a committee of local leaders (a Work First Planning Committee) to assist in the development of its WFBG plan, and a recommendation to the North Carolina Department of Health & Human Services (DHHS) for the county to be either an electing or standard county.

On August 12, 2002, the Board of County Commissioners approved the list of members for Durham's Work First Planning Committee and also voted to have Durham remain a standard county.

By November 1, 2002, the BOCC must submit its new WFBG to DHHS. The Work First Planning Committee has completed its first draft of the plan and received input and comments from Durham's Department of Social Services Board on September 25, 2002.

The committee is now submitting this draft to the Commissioners for review and comments. The committee will be prepared to discuss the plan at the October 7, 2002 Worksession. The plan will then be distributed for public comments during October 8-13, followed by a public hearing on October 14, 2002.

Resource Person(s): Jim Polk, Chair of the Work First Planning Committee; Dan Hudgins, DSS Director

County Manager's Recommendation: The Manager recommended that the Board receive the report, provide comments and input to the Work First Planning Committee, and schedule a public hearing for October 14, 2002.

Chairman Black asked Mr. Jim Polk, Chairman of the Work First Planning Committee, to present the Work First Block Grant Plan for 2003-2005 to the Board of County Commissioners for information, review, and comment. Mr. Polk commented that the committee members were present as a resource in support of the plan. It was his understanding that the Board had the plan and today would consider its submission to the State Human Resources Department by the November 1, 2002 deadline.

Chairman Black gave the Commissioners an opportunity to ask questions and make comments about the plan. The Commissioners asked several questions. Mr. Polk, County Manager Ruffin, and Mr. Hudgins responded to the questions and comments.

The Commissioners reviewed the plan and recommended several minor changes and corrections to be made.

Vice-Chairman Reckhow told the staff to schedule a hearing for October 14, 2002.

### **Presentation of New Elementary School Design**

Durham Public Schools is designing a new elementary school for southwest Durham. When the purchase of land for this school was approved, Commissioners asked that the

design of the new school be presented to them. Efforts have been made to be efficient with the use of land and to seek opportunities to co-locate with other public agencies.

Resource Person(s): Mr. Hugh Osteen, Assistant Superintendent for Operational Services, Durham Public Schools

Vice-Chairman Reckhow said that Mr. Hugh Osteen, Assistant Superintendent for Operational Services, Durham Public Schools, was present to discuss the school design.

Mr. Osteen came forward and presented the design for the new elementary school to the Commissioners as previously discussed and as a courtesy. He stated that much thought and enthusiasm had gone into the design. The design has thoroughly utilized the input of Principals, Central Staff, and principal occupants of the building. The Commissioners urged the Board of Education to be as efficient as possible with land use. School officials have met with the Parks and Recreation Department to talk about future joint location possibilities. They have also met with the Durham County Library system to find whether there might be a need for land in the area. The school would be a hub in the area and a focal point.

Mr. Osteen introduced Mr. Chris Brazer, who represented The Freelon Group Inc., to review the highlights of the design with the Commissioners.

Mr. Brazer made his presentation for the Board. His comments covered the site plan, floor plans, the overall look of the school facility, and the elevations.

The Commissioners asked questions and made comments to which Mr. Osteen and Mr. Brazer responded.

Vice-Chairman Reckhow requested that Mr. Osteen contact the City of Durham Parks and Recreation Department to determine if there was any interest in enlarging the gymnasium so that older children and adults could play basketball.

No official action was taken on this agenda item.

### **Staff Presentation—Status of the Comprehensive Plan**

The City-County Planning Staff initiated an update on the community's Comprehensive Plan in the fall of 2001. Updating the Comprehensive Plan is a joint effort of Durham County Government, the City of Durham, and the Durham Public Schools. The Plan update will be based on smart growth principles and engages public participation. Staff will update the Board on the status of the Plan update and respond to any questions presented by the Board.

Resource Person(s): Frank M. Duke, AICP, Durham City-County Planning Director.

County Manager's Recommendation: The Manager recommended that the Board receive the staff presentation on the status of the Comprehensive Plan Update.

Mr. Frank Duke, AICP, made the presentation on the Comprehensive Plan Update for the Board of County Commissioners. The status report included the summary, background, issues, key tasks and completion dates, and recommendations and alternatives.

Durham, as part of the Triangle region, is experiencing rapid growth and is expected to gain an additional 89,000 people in the next 20 years. The Comprehensive Plan, using Smart Growth principles, is a joint effort of Durham County, the City of Durham, and the Durham Public Schools.

Mr. Duke ended his presentation by stating he would be willing to answer the Commissioners' questions.

The County Commissioners asked questions and made comments about the Comprehensive Plan update to which Mr. Duke responded.

No official action was taken on this agenda item.

#### **American Tobacco Trail—Safety Precautions**

Chairman Black commented that safety precautions are needed and should be installed at the intersection of Barbee and Fayetteville Roads on the America Tobacco Trail.

#### **Request City of Durham to Initiate Rezoning of Neal Farm**

During the September 30, 2002 Joint City-County Planning Committee (JCCPC) meeting, residents of American Village, Greenway, and Lenox subdivisions expressed concern about the zoning of the adjacent property known as Neal Farm. The property is zoned RM-12, which is inconsistent with the "Low Density Residential" designation of the property in the *West-Northwest Durham Plan*.

Resource Person(s): Commissioner Ellen Reckhow, Chairman, JCCPC; Frank Duke, Director, Durham City-County Planning

County Manager's Recommendation: Suspend the rules and consider a request that the Durham City Council initiate an amendment to the Official Zoning Map to rezone the property to a designation consistent with the *West-Northwest Durham Plan*.

Vice Chairman Ellen W. Reckhow presented the agenda item to the Board of County Commissioners.

The Joint City/County Planning Committee meeting of September 30, 2002 was held but was not official because there was not a quorum. It did convene, and residents of three

subdivisions—American Village, Greenway, and Lenox—were heard. The residents expressed concern about the zoning of the adjacent property known as Neal Farm.

Vice-Chairman Reckhow presented details concerning the agenda item. She said that the residents came to the Committee meeting and asked that amendments to zoning ordinances be added to help them out. There was some discussion about the possibility of rezoning the property to make it closer to the Land Use Plan designation. The residents had heard that the developer was to submit a revised site plan in the next week or two. The Committee was asked by the residents to consider initiating a rezoning. It is on the agenda for this to be done. The Commissioners cannot take action on this. The most appropriate thing to do is to ask City Council to consider the rezoning.

The Commissioners asked questions to which Mr. Duke responded.

After a lengthy discussion, the following actions were taken:

Commissioner Cousin moved, seconded by Vice-Chairman Reckhow, to suspend the rules in order to take a vote on rezoning Neal Farm.

The motion carried unanimously.

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Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to send a letter to City Council requesting it to consider this rezoning at the earliest possible time (Thursday of this week) and that this letter be faxed to Mayor Bell, Members of City Council, the City Manager, and Frank Duke.

The motion carried unanimously.

**Presentation—Report for the Durham County Justice Center Programming and Pre-Design Project No: DC066-30**

The Board was requested to provide comments and direction based on the programming and pre-design report for the proposed Durham County Justice Center.

This facility was recommended in the Justice Center Master Plan, completed in 1990, and was identified in the Durham County Facility Master Plan, completed in 2000, as the County's highest priority building need. Based on the occupancy outlined in the Master Plan, a building of approximately 255,000 square feet was proposed along with a parking deck containing 1,200 spaces. Both of these projects were included in the Capital Improvement Plan (CIP). It was estimated that, depending on how the building and

parking deck are configured on the site adjacent to the current Detention Facility, the building would be 4 to 6 stories in height.

During the (CIP) development and approval process in 2001, the Board directed that the size of the building be evaluated and possibly reduced by locating some agencies associated with the court system in other buildings. During programming, the current and future space needs of each potential building occupant were determined and used as the basis for the building design. This also allowed various occupancy scenarios to be evaluated.

On November 26, 2001, the Board of County Commissioners authorized the County Manager to enter into a contract with O'Brien/Atkins Associates, P.A., to provide professional services for programming and pre-design of the proposed Durham County Justice Center. The report has been completed and will be reviewed with the Board.

Resource Person(s): Wendell M. Davis, Deputy County Manager and Glen Whisler, P.E., County Engineer, Engineering Department. Design Team: Kevin Montgomery, O'Brien/Atkins; Doug Kleppin, HLM Design; Howard Geisler, GSA; Patricia Harris, New Synergy

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

Mr. Wendell Davis, Deputy County Manager, made introductory remarks about the proposed Durham County Justice Center project. He provided the Commissioners a brief background on this project and its progression.

Mr. Davis turned the presentation over to Mr. Glen Whisler, P. E., County Engineer, to give the County Commissioners an overview of the project.

The Building Committee has involved a number of representatives from the Court System and County staff. Mr. Whisler introduced the committee members present. Several members of the design team served on the Building Committee and were on the panel today. Mr. Whisler introduced those design team members. Mr. John Atkins of O'Brien/Atkins was also present.

The Building Committee had met with the design team as a group on nine occasions in a series of workshops. There were individual meetings held with each of the building occupants. The result of all this effort is the Programming & Pre-Design Report.

Mr. Whisler asked Mr. Kevin Montgomery and the other members of the design team to review the report that was prepared. He advised the Commissioners that the group would answer any questions they might have.



Mr. Montgomery stated that Howard Geisler would talk about programming, Patricia Harris would talk about siting issues, and Doug Kleppin would talk about building deployment issues. Mr. Montgomery would join with Mr. Kleppin to talk about this building's special requirements and conclude by talking about the budget and schedule.

The design team began the presentation that included the following:

- Building Mission
- Departments to be Assigned
- Building Occupancy Options
- Building Staffing
- Courtroom Distribution
- Building Space Summary
- Parking Needs
- Site Analysis
- Parking Deck
- Stacking and Blocking
- Massing Studies
- Specialized Requirements
- Cost Analysis
- Schedule

The Board of County Commissioners asked questions and made comments about the Programming & Pre-design report. The panel before the Commissioners responded to the questions and comments.

The Commissioners and County Attorney made several suggestions to the design team and asked that the team consider them in the building's final design and construction specifications.

The Board of County Commissioners gave the following suggestions and directives to the staff:

- Chairman Black wanted the building to be built such that it would last a long time. It should be constructed in a manner to ensure that new technology can be incorporated throughout the life of the building.
- Commissioner Cousin stated that if the Board wished to talk about the building, it should also talk about going ahead with the site as well.
- Vice-Chairman Reckhow wanted to include a comprehensive review of County facilities. The buildings in review would be the Judicial Center and the First Union building. She requested more follow-up materials as projections are made as to what departments would be housed in these two buildings. An exit strategy is needed. She stated she wanted a "game plan" to ensure that appropriate areas are housed there. She said she wanted to avoid a problem at 201 East Main Street (Judicial Building) in terms of having empty facilities and parking spaces. She requested a list of pros and

cons as to where juvenile probation could be located, including the implication of the program being located somewhere else. She requested a scenario of the juvenile probation program remaining in the First Union Building.

- Vice-Chairman Reckhow supported splitting parking decks between both sides of Mangum Street. She requested further analysis of the Transportation Demand Management (TDM) program regarding aggressive implementation of alternative modes of transportation. Transportation in downtown Durham should be researched.
- Vice-Chairman Reckhow expressed concern regarding the streetscape on Mangum and Roxboro Streets. Landscaping will be critical. She requested a list of the pros and cons of building a pedestrian skyway over Mangum Street and called for creativity concerning that street.
- Vice-Chairman Reckhow called for durable materials to be used in the hallways and restrooms in the new Justice Center to survive the rough treatment to which the building will be subjected.
- Vice-Chairman Reckhow requested cost figures and possible dollar savings if durable materials were used as opposed to wallcoverings.
- Vice-Chairman Reckhow requested information to determine whether the Guardian Ad Litem program should be housed in the Justice Center or First Union Building.
- Vice-Chairman Reckhow requested that a cost benefits analysis be prepared for the First Union Building when the Justice Center is completed.
- Commissioner Heron wanted to know how much space the County currently leases and by what departments and programs. Once the Justice Center is complete, there may be space available in County buildings for those departments and programs.
- Commissioner Heron remarked that the streets around the Justice Center and the American Tobacco Complex should be pedestrian-friendly.
- Commissioner Heron stated that the entire Justice Center should have durable materials on the interior walls of the structure.
- Commissioner Heron asked whether there would be enough judges to utilize the number of courtrooms planned.
- Commissioner Heron stressed that cost figures for the project should be kept in mind during the planning process.
- Commissioner Heron requested information on the site being considered for location of the Justice Center.

A lengthy discussion was held about the Durham County Justice Center.

No official action was taken on this agenda item.

### **Adoption of Third One-Half Cent Local Option Sales Tax**

The Board of Commissioners was requested to adopt the third one-half cent local option sales tax in Durham County. The County has lost \$9,740,135 from the reimbursements that have been withheld this fiscal year. The one-half cent sales tax would replace approximately \$3,964,648 of this amount, leaving a deficit of \$5,775,487. Fortunately,

the County only budgeted \$2,900,000 for the Inventory Tax reimbursement, which was not expected to be withheld.

Notice of the intent to adopt this resolution has been properly given at least 48 hours in advance of the meeting. The proposed resolution is included, which would make the tax effective on December 1, 2002 in Durham County.

Resource Person(s): Chuck Kitchen, County Attorney; Mike Ruffin, County Manager.

County Manager's Recommendation: Adopt the resolution in order to replace a portion of the reimbursements from the State.

Chairman Black asked County Attorney Chuck Kitchen to take the lead on this agenda item.

The Chairman stated that when Durham County adopts the resolution, the North Carolina Association of County Commissioners is to be notified.

Vice-Chairman Reckhow wanted the County Attorney to include a statement in the "Whereas" section that the resolution does not apply to food.

County Attorney Chuck Kitchen added the following statement in the resolution: "Whereas, this additional one-half cent sales tax will not apply to food, with limited exceptions, pursuant to N.C.G.S. 105-519."

Commissioner Cousin asked that the record include his statement, "I feel that it is very unfortunate that the state will put us in this kind of position, particularly in light of the upcoming holiday season, and we have to look at an increase in the Sales Tax for Durham County. But we are left with no alternative given the position we have been put in by the State."

The Commissioners agreed with Commissioner Cousin.

Chairman Black called for a motion to suspend the rules so that a vote could be taken on this item.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to suspend the rules to vote on the resolution levying the third One-Half Cent local option Sales Tax.

The motion carried unanimously.

Commissioner Heron stated that the following was one motion that she would not want to make, but somebody must, though reluctantly.

Commissioner Heron moved that the Board levy the third One-Half Cent Sales Tax. The motion was seconded by Commissioner Cousin.

The motion carried unanimously.

The resolution is recorded below.

RESOLUTION LEVYING THE THIRD ONE-HALF CENT ( $\frac{1}{2}\text{¢}$ )  
LOCAL GOVERNMENT SALES AND USE TAX AND PRESCRIBING  
THE METHOD OF DISTRIBUTION OF THE PROCEEDS  
WITHIN THE COUNTY OF DURHAM

WHEREAS, the General Assembly has authorized the boards of commissioners in the State of North Carolina to levy a one-half percent ( $\frac{1}{2}\text{¢}$ ) local sales and use tax by enacting N.C.G.S. § 105-517(b) in Section 34.14(a) of Session Law 2001-424, as amended by Session Law 2002-123, "An Act to Accelerate the Additional One-half Cent ( $\frac{1}{2}\text{¢}$ ) Local Option Sales and Use Tax and to Make Conforming and Technical Changes"; and

WHEREAS, proper notice of the intent of the Board of Commissioners to consider this resolution, pursuant to Section 10 of Session Law 2002-123, has been given; and

WHEREAS, this additional one-half cent sales tax will not apply to food, with limited exceptions, pursuant to N.C.G.S. § 105-519; and

WHEREAS, Durham County has lost \$9,740,135 in funds made available by the State of North Carolina to replace revenue lost because of legislative action: (1) to repeal sales taxes imposed on purchases made with Food Stamps; (2) to repeal property taxes imposed on inventories held by manufactures, retailers, and wholesalers; (3) to repeal taxes on intangible personal property; and (4) to reduce taxes levied on residential property owned by low-income elderly taxpayers; and

WHEREAS, the Board of Commissioners hereby finds that, particularly in light of the circumstances cited herein, the levy of "The Third One-Half Cent ( $\frac{1}{2}\text{¢}$ ) Local Government Sales and Use Tax" is necessary to adequately finance the operations of the county and the cities and towns herein.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH RESOLVE:

1. There is hereby imposed and levied within Durham County the third one-half cent ( $\frac{1}{2}\text{¢}$ ) Local Government Sales and Use Tax authorized by Section 34.14(a) of Session Law 2001-424, as amended by Session Law 2002-123, and codified as Article 44 of Chapter 105 of the General Statutes of North Carolina. The tax hereby imposed and

levied shall apply to the same extent and be subject to the same limitations as are set forth in said Session Law 2001-424.

2. Collection of the tax by the North Carolina Secretary of Revenue, and liability therefore, shall begin and continue on and after the first day of December 2002.
3. The net proceeds of the tax levied herein shall be distributed by the Secretary of Revenue to Durham County as prescribed by N.C.G.S. § 105-520. The amount distributed to Durham County shall be divided among the county and the municipalities herein in accordance with the method by which the one percent (1%) sales and use tax levied in Durham County, pursuant to Article 39 of General Statutes Chapter 105, are distributed.
4. This Resolution is effective upon its adoption, and a certified copy hereof shall be forwarded to the North Carolina Secretary of Revenue.

Adopted, this the 7<sup>th</sup> day of October, 2002.

(SEAL)

Teste: A true copy.

/s/ Garry E. Umstead  
Clerk to the Board

#### **Quasi-Judicial Appeal—Helen Bass v. County of Durham**

The Sedimentation and Erosion Control Division of the County Engineer's Office has assessed a civil penalty against Steven and Helen Bass, the registered owners of property located at 4310 Bennett Memorial Road. The amount of the civil penalty assessed is \$67,041.50. Mrs. Bass filed a petition for a contested case with the Office of Administrative Hearings (OAH), challenging the penalty, and then moved the OAH to dismiss the penalty assessed, on the grounds that she was not personally served with the Notice of Civil Penalty Assessment (Assessment). Durham County filed a motion to dismiss Mrs. Bass' appeal on the grounds that it was untimely, having been filed almost a year after service of the Assessment. Both of these pre-hearing motions before the OAH were grounded in the fact that the Assessment sent to Mrs. Bass via certified mail was signed for by her husband but differed as to the legal effect of that fact. The OAH held it was not legally sufficient to establish service of the Assessment on Mrs. Bass and entered a recommended decision dismissing the civil penalty assessed. The OAH then forwarded its recommended decision to the Board for entry of a final decision. The motions of both parties were supported by affidavits and the deposition testimony of Mrs. Bass.

Durham County has filed exceptions and objections to the recommended decision asserting that the OAH decision is not supported by the evidence in the record and is

affected by errors of law. It requests that you reverse the decisions of the OAH which (1) granted Mrs. Bass' motion dismissing the civil penalty assessed and (2) denied Durham County's motion to dismiss Mrs. Bass' petition for a contested case on the grounds it was untimely. Mrs. Bass has filed a motion requesting you dismiss the exceptions and objections filed by Durham County under the theory that the decision of the OAH was a final decision over which you do not have authority. Durham County filed a response to the motion asserting both that the Board does have authority to render a final decision in this matter and that Mrs. Bass' motion is an untimely exception and objection to the recommended decision. Mrs. Bass has also filed a document entitled "Helen Bass Response and Plea for Justice," contending that the decision of the OAH should be upheld.

The Board is required to review this matter based on the record produced at OAH. The Board must first make a determination on Mrs. Bass' motion regarding whether or not it has jurisdiction to review this matter. Should the Board decide that it does have that authority, it must either (1) accept the decision of the OAH, or (2) enter a decision rejecting the recommended decision and dismissing Mrs. Bass's petition for a contested case.

This is a quasi-judicial proceeding in which the Board sits as an appellate body and determines the matter without hearing additional evidence. The entire record of the proceedings, including all previously filed briefs, motions, affidavits, and the deposition of Mrs. Bass, is available to the Board, if desired, but was not reproduced due to its size and the fact that the filings of both parties do not appear to require a reading of the record. The attachments to this Agenda Action Form are:

- (1) Recommended Decision of OAH
- (2) Respondent's Submission of Exceptions and Objections to the Decision of the Office of Administrative Hearings
- (3) Helen Bass Response and Plea for Justice
- (4) Mrs. Bass' Motion to Dismiss
- (5) Response to Petitioner's Motion to Dismiss

The County Attorney cannot make a recommendation to the Board because one of the Assistant County Attorneys represented the County in this matter before the OAH.

Resource Person(s): Mike Ruffin, County Manager

County Manager's Recommendation: Select from the above options based on the Board's review of the OAH's Decision and filings of the parties.

County Manager Mike Ruffin commented that he must take the lead in this agenda item because one of the Assistant County Attorneys represented Durham County in the matter before the Board. Therefore, Attorney Kitchen cannot participate in this agenda item.

The County Manager stated that the County Attorney could not advise the Board on the matter. The Commissioners could, however, discuss this in any way among themselves. Because the record was closed, there was no more evidence to be taken. A full copy of the evidence had been sent to the Board. The briefs of both parties were included in the agenda package for the Board's information.

County Manager Ruffin instructed the Board in its requirements. (His instructions are in the third paragraph of the Agenda Action Form.)

County Manager Ruffin said his recommendation was based on the evidence he had reviewed and specifically in Attorney Massey's brief or response. County Manager Ruffin offered to enter the brief or response into the record. He instructed the Board to first determine that it does have jurisdiction. Second, he recommended that the Board enter a decision rejecting the recommended decision and dismissing Ms. Bass' case for a contested hearing.

The County Manager reviewed the case with the Board of County Commissioners and explained why he made the recommendation that he did.

Vice-Chairman Reckhow moved to approve the County Manager's recommendation and noted that in Attorney Massey's brief it does say under the rules for certified mail that a person may accept on behalf of someone else if they are of suitable age and discretion residing in the addressee's dwelling, house, or usual place of abode. She expressed the opinion that the Board had a reasonable case.

The motion was seconded by Commissioner Cousin.

The motion carried unanimously.

Attorney Kitchen stated to Chairman Black that, if it were suitable with the Board, the Attorney's office would prepare an order for the Board's formal adoption on the Consent Agenda.

### **Closed Session**

Chairman Black said the Board of Commissioners was requested to adjourn to Closed Session to consider the performance of public officers pursuant to N.C.G.S. § 143-318.11(a)(6).

Chairman Black stated that the Commissioners would talk briefly with County Staff about an issue that occurred in the Tax Office. Then the Board would reconvene into open session and discuss that issue in full. The personnel portion would be discussed in Closed Session.

Commissioner Heron moved, seconded by Commissioner Cousin, to adjourn to Closed Session to consider the performance of public officers pursuant to N.C.G.S. § 143-318.11(a)(6).

The motion carried unanimously.

### **Recover Into Open Session**

Chairman Black reported that no action was taken by the County Commissioners during Closed Session.

### **Sealed Minutes**

Commissioner Cousin moved, seconded by Vice-Chairman Reckhow, to seal the minutes of the October 7, 2002 Closed Session concerning personnel issues.

The motion carried unanimously.

### **FY 2002-2003 Budget Shortfall, Mitigation Plan, and Media Strategy**

Chairman Black asked County Manager Mike Ruffin to make the presentation concerning the budget shortfall, mitigation plan, and the media strategy.

The County Manager distributed the material for review with the County Commissioners. He also distributed a news release.

County Manager Ruffin used the news release to explain to the Commissioners the budget shortfall, mitigation plan, and the media strategy. The news release follows:

NEWS RELEASE  
DURHAM COUNTY DISCOVERS ERROR IN CALCULATION OF  
PROPERTY TAX VALUES  
October 7, 2002

An error in the calculation of property values for the 2002 Tax Year has resulted in a property tax shortfall for Durham County. The property tax shortfall is calculated to be \$6,925,000. Because of the error, County Manager Mike Ruffin today announced significant steps to modify the adopted 2002-2003 operating budget in order to accommodate the substantial reduction in property tax values.



In a memo to the Board of County Commissioners, Ruffin detailed the events that led to the miscalculation in the Tax Office. Simply put, Durham County's total valuation was overestimated by \$811 million. The result of that error produced a shortfall in property taxes of approximately \$5,925,000. In addition, the mistake was compounded when an additional \$1,000,000 for prior years taxes projected to be collected was added to the estimate. That means that the total shortfall is expected to be \$6,925,000.

Ruffin's memo emphasized that in handling the deficit situation, the County's Fund Balance will be protected. He noted that the County has experienced multimillion-dollar shortfalls previously, a reference to the fact that the state's continuing budget crisis has resulted in a loss of expected funds for two years in a row. He added, "In the prior two years, my staff and I have put together plans that successfully managed these shortfalls to the extent that the County's Fund Balance actually increased in both of the fiscal years in which they occurred. The plan that I am recommending this year embraces that very same philosophy."

As a result, Ruffin recommends the following expenditure reductions that total \$5,505,000:

- Freeze hiring through the end of this fiscal year (June 30, 2003)
- Freeze Overnight Travel and Training
- Postpone Technology Replacement Plan until FY 04
- Postpone New Justice Center until FY 04
- Reduce Benefit Dollar increase for employees
- Postpone Reclassifications/Reorganizations
- Postpone Employee Benchmark Study until FY 04
- Postpone Internal Equity Plan-Phase III until FY 04
- Non-Department Salary—Related Reductions
- Cut Non-Departmental Funds
- Make minor Operational and Capital reductions in selected departments
- Reduce Expansion of Security Program
- Postpone 2 Durham Technical Community College Capital Projects until FY 04
- Reduce Court-Ordered Care
- Reduce funds for Open Space Land Acquisition

According to Ruffin's memo, the new ½-cent sales tax, scheduled to take effect on December 1<sup>st</sup>, is anticipated to generate an additional \$1,064,000 which will be applied to the deficit. Finally, a school district tax fund that existed before merger was found in the amount of \$356,000. He recommends closing the fund and transferring the proceeds to the

County's General Fund. This funding strategy will net the dollars necessary to completely mitigate the shortfall.

The Commissioners asked questions and made comments about the agenda item. Staff and the County Manager responded.

Vice-Chairman Reckhow suggested that the County Manager consider additional financial controls that could be installed for possible future needs.

Commissioner Cousin remarked that the Commissioners need more financial details on a regular basis. The Commissioners need more information than they have been receiving.

Chairman Black requested the Manager provide a monthly financial statement to the Commissioners beginning October 1, 2002.

After a lengthy discussion about the situation in the Tax Administration Office, the following motion was approved.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, that the Board support the County Manager's recommended adjustments to the budget with the understanding that the details would be brought back latter.

The motion carried unanimously.

### **Suspend the Rules to Vote**

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to suspend the rules to vote on the last action concerning the monthly financial statements.

The motion carried unanimously.

### **Adjournment**

Chairman Black adjourned the meeting at 2:55 p.m.

Respectfully submitted,

Garry E. Umstead, CMC  
Clerk to the Board