

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

Monday, February 28, 2005

7:17 P.M. Regular Session

MINUTES

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

Present: Chairman Ellen W. Reckhow, Vice-Chairman Becky M. Heron, and Commissioners Philip R. Cousin Jr. and Michael D. Page

Absent: Commissioner Lewis A. Cheek

Presider: Chairman Reckhow

Chairman Reckhow apologized for the delay in starting the meeting, explaining that the Commissioners had two prior meetings: (1) a joint meeting with the City Council regarding the Comprehensive Plan, which was approved; and (2) a Closed Session (direction was given to staff; no action was taken).

Commissioner Cousin moved, seconded by Vice-Chairman Heron, to excuse Commissioner Cheek from the meeting due to an illness.

The motion carried unanimously.

Opening of Regular Session—Pledge of Allegiance

Agenda Adjustments

Chairman Reckhow conveyed that an announcement had been inadvertently placed in the Durham Herald-Sun newspaper that stated a budget public hearing would be held at tonight's meeting. As two persons had signed to speak, Chairman Reckhow suggested that the Board add a budget public hearing to the agenda to allow the citizens to comment.

Commissioner Page moved, seconded by Commissioner Cousin, to amend the agenda to add a Budget Public Hearing.

The motion carried unanimously.

Minutes

Chairman Reckhow noted the change in the February 14 minutes; student representatives on the Cultural Master Plan Advisory Board were changed from non-voting to voting members.

Commissioner Cousin moved, seconded by Vice-Chairman Heron, to approve as submitted the January 31, 2005 BOCC/City Council Minutes and the February 14, 2005 BOCC Regular Session Minutes with the noted amendment.

The motion carried unanimously.

February Anchor Award Winner – Brenda Watson

Chairman Reckhow announced that Brenda Watson, Branch Manager for the Stanford L. Warren Library, was selected to receive the February Anchor Award. Ms. Watson's commitment to her staff and the library was outstanding during preparations for Stanford L. Warren Library renovations.

Philip Cherry, Library Director, remarked about how Ms. Watson and her staff worked tirelessly to pack items for storage, discarding, disposal, and recycling during the renovation project. During this period, Ms. Watson also took on new departmental outreach services; thus, managing two areas at once. She did all this with a smile and a can-do spirit.

Priscilla Lewis, Library Branch Services Division Manager, commented that since Ms. Watson's employment, she has dedicated herself to improving library services in her community. She has employed a team that has shown exemplary customer service not only to their patrons, but also to other staff. She has spent a great deal of time attending community meetings and functions to make the community aware of the great asset they have in their community. She has used those forums to help pursue needed programs at her branch, as well as receiving suggestions. Ms. Watson's commitment to her staff and the library was put to the test with the preparation for renovation of the Stanford L. Warren Library. She successfully participated in the celebration for her branch closing by making sure that all of the community was included in the celebration. Ms. Watson will do whatever is necessary for the good of her unit, branch, and the library. She exemplified her commitment during this time to the library, Durham County Government, and the library profession.

Ms. Watson recognized the Stanford L. Warren team, Mr. Cherry, and Ms. Lewis for making the Stanford L. Warren move possible. She expressed gratitude for the award.

Chairman Reckhow presented the Anchor Award and the \$200 check to Ms. Watson, along with annotations of appreciation for her excellent work.

Consent Agenda

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

- *a. Renewal of the City of Durham and County of Durham Interlocal Cooperation Agreement for the Durham

- Environmental Affairs Board (approve as modified and authorize the County Manager to sign);
- *b. Renewal of the City of Durham and County of Durham Interlocal Cooperation Agreement for Open Space and Trails Planning (approve as modified and authorize the Manager to sign);
 - *f. Budget Ordinance Amendment No. 05BCC000039—Library—Gift Funds from Friends of the Durham County Library (\$17,250);
 - *h. Budget Ordinance Amendment 05BCC000041—Return Salary Funds to Redwood Volunteer Fire Department (approve to adjust the FY 2004-2005 Redwood Volunteer Fire Department budget);
 - *j. Approval to Purchase Emergency Safety Supplies and Equipment from Department of Homeland Security Part II Grant Program Funds (approve and authorize the County Manager to enter into a contract with Safeco Inc. for \$66,480.39);
 - *k. Set a Public Hearing to Consider the Transportation Improvement Program (TIP) for FY 2007-2013 (adopt the resolution to schedule a public hearing for March 14, 2005);
 - *l. Reimbursement Resolution for Voiceover IP-Telecommunications Project (adopt the resolution so the County can reimburse itself from the 160A-20 security interest financing in an amount not to exceed \$1,410,000);
 - *m. Budget Amendment No. 05BCC0000044—Employment of Lobbyist (approve hiring the firm of Nelson Mullins Riley & Scarborough LLP as lobbyist for the long session of the Legislature; appropriate \$50,000 from the Commissioners Contingency to the Board of Commissioners' budget for the proposed contract);
 - n. Engineering Services for Wastewater Treatment Plant Improvements (authorize the County Manager to: amend the contract with McKim & Creed for Phase 2 Improvements at a cost not to exceed an additional \$272,937; enter into a new Engineering Services contract with McKim & Creed for the Biosolids Treatment Facilities in the amount of \$1,060,670; and, approve amendments to the Bio-Solids Treatment Facilities contract from a contingency of \$100,000 for items that may be identified during the project); and
 - p. Service Contract for Program Administrator of the Community Development Block Grant Scattered Site Housing Program (authorize the Manager to enter into a contract with LEAH Consulting Group Inc. to provide grant administration services not to exceed \$40,000.00).

*Documents related to these items follow:

Consent Agenda Item No. a. Renewal of the City of Durham and County of Durham Interlocal Cooperation Agreement for the Durham Environmental Affairs Board (approve as modified and authorize the County Manager to sign).

City of Durham and County of Durham
Interlocal Cooperation Agreement
for the
Durham Environmental Affairs Board

This is an Interlocal Cooperation Agreement (hereinafter "Agreement") between the CITY OF DURHAM, a North Carolina municipal corporation, (hereinafter "City"), and the COUNTY OF DURHAM, a political subdivision of the State of North Carolina (hereinafter "County"). This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes. The Agreement is effective upon passage by both the City and County. The City and County agree as follows:

Section I. Policy

A. The City and County hereby find and declare that interlocal cooperation on issues concerning environmental quality is a necessity, and that such cooperation provides a mechanism for communications between the City and County on environmental standards and policies. The City and County therefore deem it to be in the public interest to establish an advisory board that will provide to them expert and comprehensive advice on various matters related to environmental quality and safety.

B. The purpose of this Agreement is to establish the advisory board to which reference is made in the preceding paragraph.

Section II. Authority and Purpose

A. Authority

Pursuant to the authority granted in N.C.G.S. 160A-146 and 153A-76, the City and County hereby reauthorize the advisory board known as the Durham City-County Environmental Affairs Board, (hereinafter "the Board").

B. Purpose and Duties

The general purpose of the Board is to advise and assist the City and County on matters related to the maintenance and improvement of the quality and safety of the environment.

C. Term

Unless terminated sooner as provided for in Section VI, below, this Agreement shall expire on March 1, 2010. However, the Agreement shall continue beyond the expiration date if neither body has indicated its intent to terminate the Agreement as hereafter provided.

D. Duties

The Board shall have the following duties:

1. To advise the City and County on environmental policy;
2. To educate the public and local officials on environmental issues;

3. To perform special studies and projects requested by the City and/or County on environmental questions;
4. To facilitate citizen participation in local government's consideration of matters involving the environment;
5. To promote intergovernmental and public/private cooperation and coordination;
6. To perform such other duties as may be assigned to it from time to time by the City and/or County;
7. To adopt Rules of Procedure, consistent with this Agreement, for the orderly dispatch of its business.

The duties prescribed by this section shall be construed to facilitate the Board's advisory responsibilities. By way of example and not limitation, the Board may consider any and all topics related to environmental quality in Durham County, such as: (i) hazardous and radioactive materials management and disposal; (ii) watershed protection; (iii) groundwater and surface water protection; (iv) erosion control; (v) storm water management; (vi) air quality; (vii) energy conservation; (viii) pollution prevention; (ix) solid waste management; and (x) public health impacts.

E. Limitation

The Board is an advisory board only, and shall have no authority to enforce regulations, rules, ordinances, or laws.

Section III. Membership

A. Composition

1. The Board shall consist of eleven (11) voting members and the seven (7) non-voting ex officio members named in paragraph 3 of this section. The City Council of the City (hereinafter "City Council") and the Board of Commissioners of the County (hereinafter the "County Commissioners") shall each have five (5) appointments to the Board, and shall consider recommendations for appointment from the Joint City-County Planning Committee. However, neither the City Council nor the County Commissioners are bound to follow any recommendation for appointment, which that Committee may make. The eleventh voting member shall be appointed by the Durham County Soil and Water Conservation District Board.

To be eligible for appointment and to remain a member, a candidate shall be a resident of the jurisdiction, either City or County, of the governing board making the appointment, and shall, at the time of appointment and at all times thereafter, be and remain current in payment of their property taxes to the City and County. Employees of the City and County shall not be eligible for appointment to the Board by any appointing authority. A voting member of the Board may be removed at any time, with cause, by the governing board, which made the appointment. Notice of any such removal shall be communicated to the other party to this Agreement.

2. The eleven voting members of the Board shall be composed of individuals representing certain vocations or professions and their appointment shall be divided among the appointing authorities as follows:

City Council

Law

Water Resources

Biological Sciences

Solid and Hazardous Waste

Energy and/or Transportation

County Commissioners

Air Resources

Public Health

Engineering

Public Policy

Education and/or Communications

Soil and Water Conservation District

Land Resources

Board of Supervisors

In the event that the pool of applicants representative of the identified categories ~~is~~ is insufficient to fill any one of the categories, then the City and/or County may appoint individuals who have demonstrated expertise and/or experience in that category. If, after filling a position in a particular category in this manner, the pool of applicants is still insufficient to fill the categories allotted to them, then the City and County may each make one or more at-large citizen appointment(s) to the Board.

3. The City and County shall appoint a new member at least 90 days in advance for any position openings coming due because of term expiration. All advertisements for position openings on the Board shall be circulated by email to all current members of the Board in addition to the standard methods of position advertisement. Selection of all Board members shall be done in an expeditious manner by the City and County to minimize the number of vacancies on the Board.

4. Persons serving in the following positions shall serve as ex officio members of the Board: (i) the City Director of Water Management; (ii) the City Director of Public Works; (iii) the County Engineer; (iv) the Director of the County Health Department; (v) the Director of the City-County Planning Department; (vi) a Soil and Water District Conservationist, and (vii) the City Director of Solid Waste. These members shall have no vote, and may appoint subordinates of their respective departments to serve in their places.

B. Terms

1. The term of a voting member shall be three (3) years, but if necessary, may continue beyond 3 years until a successor is appointed.

2. No member of the Board shall serve more than two consecutive three-year terms. Any vacancy occurring shall be filled by appointment of the appointing authority for that position for the remainder of the unexpired term.

C. Attendance

1. Any Voting member who has two unexcused absences in any twelve-month period is subject to being removed by the appointing authority.

2. Members shall attend sixty percent of regular Board meeting within a one-year period, counting both excused and unexcused absences.

D. Expenses

Members shall serve without pay. Expenses may be reimbursed if provided for in the approved budget and if within available funds provided by the governing bodies for the operation of the Planning Department and if prior authorization for reimbursement is given by the Planning Director.

Section IV. Organization

A. Officers

Each year, following the appointment or reappointment by the City and County, the Board shall elect a Chairperson, a Vice-Chairperson, such other officers as the Board shall

deem necessary. The Chairperson shall preside over all regular and special meetings, and shall exercise such other powers as the Board may prescribe in its Rules of Procedure. In the absence or disability of the Chairperson, the Vice-Chairperson shall preside and have all the powers of the Chairperson.

B. Meetings

The Board shall meet regularly at least six times per year on a regularly scheduled basis and at such time and place as may be prescribed in the Board's Rules of Procedure. The Chairperson or any six members may call a special meeting of the Board. Meetings may be held anywhere in or outside of Durham County, as circumstances reasonably require and shall generally be held in public spaces unless unique conditions mandate an alternative setting.

C. Quorum and Voting

A quorum shall consist of a majority of the voting members of the Board. All actions shall be decided by a majority vote of the voting members in attendance, a quorum being present.

D. Rules of Procedure

The Board shall formulate and recommend Rules of Procedure for the orderly conduct and functioning of the Board no later than six (6) months of its creation. These Rules of Procedure shall be sent to the governing boards of the City and County as a matter of information.

E. Committees

The Board may provide for the establishment of such committees as it deems necessary, either standing or temporary. The membership of said committee[s] (to include additional adjunct members with special knowledge and/or expertise) shall be determined by the Board, and the committee[s] shall function according to rules and procedures promulgated for it [them] by the Board.

F. Staff and Budget

The City-County Planning Department shall provide staff for the Board as specified in the annual Planning Department Work Plan and Budget approved by the City and County. Staff shall be responsible for preparing notices and agendas for the Board's meetings and keeping the record of the Board, including records of members' attendance.

G. Open Meetings and Public Records

The Board is a public body, and as such, shall be subject to the requirements of Chapter 132 and Article 33C of Chapter 143 of the General Statutes of North Carolina.

Section V. Amendments

This Agreement may be amended at any time upon mutual written agreement of the City and County. The City Council and County Commissioners shall be the final authority in approving all amendments.

Section VI. Termination

Either the City or County may terminate this Agreement by giving written notice of such termination to the other party at least ninety (90) days prior to beginning of the fiscal year in which termination is to take effect.

Section VII. Entire Agreement.

This document contains the entire agreement of the parties, and there are no additional terms or conditions except those reflected herein. This Agreement supersedes all prior understandings and agreements relating to the subject matter hereof.

Section VIII. Governing Law

This Agreement shall be governed by the laws of the State of North Carolina and all actions regarding the Agreement shall be brought in the General Court of Justice in the County of Durham.

Section IX. Agreement Not Divisible

This Agreement is not divisible. The obligations exchanged by the parties constitute consideration for each part of this Agreement.

Section X. Headings

The heading within this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any its provisions.

Consent Agenda Item No. b. Renewal of the City of Durham and County of Durham Interlocal Cooperation Agreement for Open Space and Trails Planning (approve as modified and authorize the Manager to sign).

City of Durham and County of Durham
Interlocal Cooperation Agreement for
Open Space and Trails Planning

This is an Interlocal Cooperation Agreement between Durham County, a political subdivision of the State of North Carolina, and the City of Durham, a North Carolina municipal corporation. This Agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes. This Agreement is effective upon passage by both the City and County. Durham County and the City of Durham agree as follows:

Section I. Policy

The County and City hereby find and declare that interlocal cooperation for open space, urban trails and greenways planning and implementation allows for more orderly, efficient, and coordinated efforts. This coordination provides for consistent analysis of problems and opportunities, and consistent implementation of programs across political boundaries. Therefore, such coordinated planning provides a sounder basis for decisions which affect both governmental entities. The County and City recognize that coordinated planning and implementation are vital to the public interest. The purpose of this Agreement is to reaffirm the joint open space and trails planning process and the advisory commission to implement this goal.

Section II. Definitions

The words defined in this section shall have the meanings indicated when used in this Interlocal Cooperation Agreement.

"Board" shall mean the Board of County Commissioners of Durham County.

"City" shall mean the City of Durham.

"Council" shall mean the City Council of the City of Durham.

"County" shall mean Durham County.

"Commission" shall mean the Durham Open Space and Trails Commission.

"Governing Bodies" shall mean the Board of County Commissioners of Durham County and the City Council of the City of Durham collectively.

Section III. Authority and Purpose

A. Authority.

Pursuant to the authority granted in N.C.G.S. 160A-146 and 153A-76, the County and City hereby reauthorize the advisory board, which is named the Durham Open Space and Trails Commission.

B. Purpose and Duties.

The primary purpose of the Commission shall be to provide advice to the Council and Board on matters relating to open space preservation and trail development. In order to provide recreational and environmental benefits for the citizens of Durham County, the Commission shall promote the preservation of valuable open spaces, the preservation of natural vegetation and stream valleys within the urban and rural environment, and the development of trails and other appropriate recreational and transportation facilities for pedestrians and bicycles. The Commission shall promote the protection of the natural environment where appropriate to serve the public interest, with equal consideration for long-term care of the environment and the short-term pressures of growth. In doing so, the Commission shall foster the wise use of the County's natural resources and shall strive to involve all segments of the Durham community.

In achieving these purposes, the Commission shall have the following specific powers and duties related to open space preservation and trails development:

1. To formulate and recommend to the Governing Bodies plans, goals, objectives, policies, standards, programs and priorities.
2. To advise the Council and Board on public and private development decisions.
3. To formulate and recommend to the Governing Bodies proposals for acquisition and capital improvements.
4. To educate the citizens of Durham County about the City and County's programs.
5. To submit an annual report to the Council and Board about the activities of the Commission.
6. To encourage gifts, donations, bequests and easements and to raise funds for open space and trail purposes through the sale of items which increase public awareness about City and County programs.
7. To assist in the management of the County's Matching Grants Program.
8. To advise the City and County administrative staff.
9. To perform any other duties as the Council and/or Board may from time-to-time delegate to the Commission.
10. To adopt By-Laws for the proper conduct of business.

C. Term

This Agreement shall be effective as of the date it is passed by both Governing Bodies. Unless terminated sooner, it shall expire at 12:01 AM, April 1, 2010. If the Agreement is not reauthorized or replaced as of the termination date, however, the Agreement shall continue unless the City of the County, through its respective manager,

indicated in writing the intent of their respective jurisdictions to terminate the Agreement, as hereafter provided.

D. Limitation

The Commission is an advisory board only, and shall have no authority to enforce regulations, rules, ordinances, or laws.

Section IV. Structure of Appointments

A. Composition

The Commission shall be composed of a minimum of sixteen (16) voting members, and a maximum of thirty (30) voting members, the exact number to be determined by the Commission. All members must reside in Durham County; moving out of Durham County shall disqualify the member from membership. Moving out of the ward or township that a member represents shall be cause for removal of the member, although the member may become one of the Commission's appointments. The Commission membership shall be based upon the following:

1. Eight (8) members shall be appointed by the Board, representing:

- (1) Oak Grove/Carr Township
- (1) Mangum Township
- (1) Lebanon Township
- (1) Triangle Township
- (4) At Large (May Be City Residents)

However, in the event that after reasonable advertisement, no qualified candidates for a township appointment come forward, then the Board shall not be bound by the township representation requirement and may instead appoint one or more additional at-large member.

2. Eight (8) members shall be appointed by the Council from within the Durham City limits, and representative of:

- (1) Ward 1
- (1) Ward 2
- (1) Ward 3
- (5) At Large

However, in the event that after reasonable advertisement, no qualified candidates for a ward appointment come forward, then the Council shall not be bound by the ward representation requirement and may instead appoint one or more additional at-large member.

3. One (1) member shall be appointed from each of the following elected or appointed boards:

- a. The Durham Board of County Commissioners, appointed by the Chairman of the Board;
- b. The Durham City Council, appointed by the Mayor;
- c. The Durham Planning Commission, appointed by the Chairman of the Planning Commission; and
- d. The City of Durham Parks and Recreation Advisory Committee, appointed by the Chairman of the Advisory Committee.

4. Up to ten (10) members may be appointed by the Commission. These members may represent a special interest or professional focus which the Commission feels would be helpful in fulfilling its duties and responsibilities.

5. Persons serving in the following positions shall serve as ex-officio members of the Commission:

- a. The Director of City Parks and Recreation Department, or his or her designee;
- b. The Director of the City-County Planning Department, or his or her designee; and
- c. The County Matching Grants Program Administrator.
- d. The County Open Space & Real Estate Administrator.

The ex-officio members shall not have the power to vote on decisions by the Commission.

B. Terms, Expenses.

1. Regular Terms

The term of office for Commission members shall be three (3) consecutive years ("Term"). A member may be reappointed for a second Term. After two consecutive Terms, a member shall be ineligible for reappointment by the appointing Governing Body until one calendar year has elapsed from the date of termination of his or her second Term. A Term shall continue until a successor is appointed by the appropriate Governing Body.

2. Expenses

Members shall serve without pay. Expenses may be reimbursed if provided for in the approved budget and if within available funds provided by the governing bodies for the operation of the Planning Department, and if prior authorization for reimbursement is given by the Planning Director

Section V. Organization

A. Officers

Each year the Commission shall elect its own officers. The Commission shall elect a Chairperson, a Vice-Chair, and a Secretary. The Chairperson shall preside over all regular and special meetings, and shall exercise such other powers as the Commission may prescribe in its By-Laws. No member may serve as Chairperson for more than two (2) consecutive Terms. The Commission shall establish further procedures in its By-Laws regarding the election and length of terms of said officers.

B. Meetings

The Commission shall establish a regular monthly meeting time. All meetings shall be subject to the applicable provisions of the North Carolina Open Meetings Law, NCGS Chapter 143, Article 33C. The Commission shall keep permanent minutes of its meeting. The minutes shall include the attendance of its members and its resolutions, findings, recommendations and other actions. Meetings may be held anywhere in or outside of Durham County as circumstances reasonably require, but shall generally be held in public places. Notice of such meetings shall be given as required by law.

C. Quorum and Voting

A quorum shall consist of a majority of the voting members of the Commission. All actions shall be decided by a majority vote of the voting members in attendance, a quorum being present.

D. Vacancies and Removal

Upon resignation or removal of any member of the Durham Open Space and Trails Commission, the governing body or other entity that appointed that member shall appoint a successor to fill the remainder of the unexpired term.

E. Committees

The Commission may establish committees that it deems necessary for the conduct of business of the Commission. These committees may include additional citizens as associate

members. The Chairperson of a committee shall be a member of the Commission, and shall be appointed by the Chairperson of the Commission.

F. Attendance

It is expected that members appointed to the Commission will regularly attend its meetings. The Commission shall establish within its By-Laws conditions which constitute an excused absence. Members may forfeit the remainder of their terms and may be replaced under the following conditions:

1. Any member who has two (2) unexcused absences of regular Commission meetings within a one-year period.

2. A member who has missed forty percent of regular Commission meetings within a one-year period, counting both excused and unexcused absences.

When it is determined that a member has not met the attendance requirements or has violated the ethics or conflict of interest standards set forth herein, the Chairperson shall notify the appointing governing body or other appointing entity so that appropriate action can be taken.

G. Conduct of Business

The Commission shall adopt and may from time to time amend its By-Laws for the conduct of its business. Such By-Laws shall be consistent with this Agreement and applicable County and City ordinances.

H. Annual Report

The Commission shall prepare an annual report and submit it to the Board and the Council by March 1 of each year. The annual report shall include a comprehensive review of the Commission's activities, problems, and actions of the Commission; plans for the upcoming year; attendance records of Commission members and any budget requests or other recommendations.

I. Administration

The Durham City-County Planning Department shall provide staff for the Commission and for open space and trail programs as specified in the Department's Annual Work Program and Budget. Staff shall be responsible for preparing notices and agendas for the Commission's meetings and keeping the records of the Commission, including records for member's attendance.

J. Ethics and Conflict of Interest

All appointees to the Commission are subject to the Durham County Ethics Policy.

Other than to provide information, no Commission member shall take part in any discussion, consideration, determination or vote concerning a property in which the Commission member or a close relative (spouse, sibling, child or parent):

- a. Is the applicant before the Commission;
- b. Owns property within 600 feet of the subject property; or
- c. Has a financial interest in the subject property or improvements to be undertaken thereon.

Other than to provide information, no Commission member shall take part in any discussion, consideration, determination or vote concerning a property in which an employer or a business entity which the Commission member owns an interest of five percent or greater:

- a. Is the applicant before the Commission;
- b. Owns property within 600 feet of the subject property; or

- c. Has a financial interest in the subject property or improvements to be undertaken thereon.

In situations that involve a non-profit or private organization for which a Commission member is an officer, he or she shall be required to publicly disclose that association and shall not take part in any discussion, consideration, determination or vote concerning said situation.

Violation of this ethics and conflict of interest provision shall be cause for removal of a Commission member.

K. Removal of Members

A member of the Commission may be removed by the body that appointed that member for any of the following reasons:

- a. Violation of the attendance provisions of Section V.F. Attendance.
- b. Violation of the ethics and conflict of interest provisions of Section V.J. Ethics and Conflict of Interest.
- c. Moving out of the ward or township that a member represents.
- d. Non-payment of taxes.

In addition, a member of the Commission may be removed at any time by the appointing body for behavior that impairs the public trust or the ability of the member to serve effectively as a Commission member.

Section VI. Amendments

This Agreement may be amended at any time upon mutual written agreement of the City and County. The Commission may recommend to the Governing Bodies amendments to this Agreement. The City Council and County Commissioners shall be the final authority in approving all amendments.

Section VII. Termination of Agreement

Either the City or County may terminate this Agreement by giving written notice of such termination to the other party at least ninety (90) days prior to the beginning of the fiscal year in which termination will take effect.

Section VIII. Entire Agreement

This document contains the entire agreement of the parties, and there are no additional terms or conditions except those reflected herein. This Agreement supersedes all prior understandings and agreements relating to the subject matter hereof.

Section IX. Governing Law

This Agreement shall be governed by the laws of the State of North Carolina and all actions regarding the Agreement shall be brought in the General Court of Justice in the County of Durham.

Section X. Agreement Not Divisible

This Agreement is not divisible. The obligations exchanged by the parties constitute consideration for each part of this Agreement.

Section XI. Headings

The headings within this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

Consent Agenda Item No. f. Budget Ordinance Amendment No. 05BCC000039—Library—Gift Funds from Friends of the Durham County Library (\$17,250).

Chairman Reckhow recommended that a letter of thanks be written to the Friends of the Library Board Chairman for the gift funds.

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000039

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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>			
Miscellaneous Income	\$ 3,816,356	\$17,250	\$3,833,606

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Cultural & Recreation	\$ 8,057,835	\$17,250	\$8,075,085

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

This the 28th day of February, 2005.

Consent Agenda Item No. h. Budget Ordinance Amendment 05BCC000041—Return Salary Funds to Redwood Volunteer Fire Department (approve to adjust the FY 2004-2005 Redwood Volunteer Fire Department budget).

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000041

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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>Redwood Fire District Fund</u>			
Other Financing Sources	\$55,000	\$50,000	\$ 105,000

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$40,731,680	(\$50,000)	\$40,681,680
Other	\$ 3,681,789	\$50,000	\$ 3,731,789
<u>Redwood Fire District Fund</u>			
Public Safety	\$ 429,898	\$50,000	\$ 479,898

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

This the 28th day of February, 2005.

Consent Agenda Item No. j. Approval to Purchase Emergency Safety Supplies and Equipment from Department of Homeland Security Part II Grant Program Funds (approve and authorize the County Manager to enter into a contract with Safeco Inc. for \$66,480.39).

Durham County Bid Tabulation
 IFB #05-014
 Safety Supplies & Equipment

BIDDER	PRODUCT	TOTAL
Safeco Inc.	Supplies & Equipment	\$66,480.39
Julius Draft Company Inc.	Supplies & Equipment	\$71,470.48
Fisher Scientific Co. LLC	Supplies & Equipment	\$83,729.52

Consent Agenda Item No. k. Set a Public Hearing to Consider the Transportation Improvement Program (TIP) for FY 2007-2013 (adopt the resolution to schedule a public hearing for March 14, 2005).

A RESOLUTION SETTING A PUBLIC HEARING
 TO CONSIDER THE COUNTY TRANSPORTATION IMPROVEMENT PROGRAM
 [TIP] FOR FY 2007-20013

WHEREAS, the Durham Board of County Commissioners are concerned about transportation improvements in the County; and

WHEREAS, the Transportation Improvement Program [TIP] determines how state and federal transportation funds will be spent; and

WHEREAS, the TIP process begins with the establishment of local priorities for transportation projects that are partially funded or have not been funded; and

WHEREAS, the identification of locally important transportation projects includes projects in the current TIP and additional priority projects to be considered for inclusion in the development of the 2007-2013 TIP.

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

That Monday, March 14, 2005 at 7:00 p.m. be fixed as the time and date for a public hearing to be held on the 2nd Floor of the County Administration Building, 200 East Main Street, Durham, NC 27701 to receive public comment on setting priorities for the funding of transportation projects for Durham County for the new Transportation Improvement Program [TIP].

Consent Agenda Item No. 1. Reimbursement Resolution for Voiceover IP-Telecommunications Project (adopt the resolution so the County can reimburse itself from the 160A-20 security interest financing in an amount not to exceed \$1,410,000).

RESOLUTION OF THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF DURHAM, NORTH CAROLINA,
DECLARING ITS INTENTION TO REIMBURSE SAID
COUNTY FROM THE PROCEEDS OF ONE OR MORE
TAX-EXEMPT FINANCINGS FOR CERTAIN
EXPENDITURES IN CONNECTION WITH THE
VOICEOVER IP - TELECOMMUNICATIONS PROJECT

WHEREAS, the County of Durham, North Carolina (the "County"), is a political subdivision organized and existing under the laws of the State of North Carolina; and

WHEREAS, the County has paid, beginning no earlier than December 14, 2004, and will pay, on and after the date hereof, certain expenditures in connection with purchasing certain software and hardware for the replacement of the County's enterprise resource planning system (the "Project"); and

WHEREAS, the Board of Commissioners for the County (the "Board") has determined that certain moneys of the County previously advanced no earlier than December 14, 2004 and to be advanced on and after the date hereof by the County to pay such expenditures (the "Expenditures") are available only for a temporary period and it is and will be necessary to reimburse the County for the Expenditures from the proceeds of one or more tax-exempt financings in the form of one or more private placement tax exempt financing pursuant to N.C.G.S. §160A-20 that are expected to be authorized in the amount of \$1,410,000 (collectively the "Tax-exempt Financings");

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

Section 1. The Board hereby declares the County's intent to reimburse the County with the proceeds of the Tax-exempt Financings for the Expenditures made on and after December 14, 2004, which date is no more than 60 days prior to the date hereof. The County reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Tax-exempt Financings.

Section 2. Each Expenditure was or will be (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to the Tax-exempt Financings, (c) a nonrecurring item that is not customarily payable from current revenues or (d) a grant to a party that is not related to or an agent of the County so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the County.

Section 3. The maximum principal amount of the Tax-exempt Financings expected to be entered into with respect to the Project is \$1,410,000.

Section 4. The County will make a reimbursement allocation, which is a written allocation by the County that evidences the County's use of proceeds of the Tax-exempt Financings to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The County recognizes that exceptions are available for certain preliminary expenditures, costs of issuance, certain de minimis amounts, expenditures by small issuers (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least five years.

Section 5. This resolution shall take effect immediately upon its passage.

Consent Agenda Item No. m. Budget Amendment No. 05BCC0000044—Employment of Lobbyist (approve hiring the firm of Nelson Mullins Riley & Scarborough LLP as lobbyist for the long session of the Legislature and appropriate \$50,000 from the Commissioners Contingency to the Board of Commissioners' budget for the proposed contract).

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000044

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 Budget Ordinance is hereby amended to reflect budget adjustments.

Expenditures:

<u>Activity</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
General Government	\$24,989,924	\$50,000	\$25,039,924
Other	\$ 3,771,662	(\$50,000)	\$ 3,721,662

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

This the 28th day of February, 2005.

Consent Agenda Items Removed for Discussion

Consent Agenda Item No. c. Appointment of the 2005 Equalization and Review Board Members (appoint a special E&R Board, designate membership, appoint Chair and Vice Chair, and establish rate of compensation at \$50.00 per session and \$15.00 per hour after the three-hour session).

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, requested removal of this item from the consent agenda to receive information about the E&R Board.

Ken Joyner, Tax Administrator, explained that pursuant to general statute, the Board of County Commissioners comprises the E&R Board unless the Commissioners pass a resolution to appoint a special E&R Board. The recommended 2005 E&R Board members have much real estate and legal background and have served at least one full year.

Commissioner Page asked for clarification about the “new” E&R Board.

Mr. Joyner responded that each year the Board of County Commissioners is required to appoint or reappoint members. The five 2004 E&R Board members have been recommended for reappointment to the 2005 E&R Board.

Chairman Reckhow explained that the appointees are technically a “new” board as NCGS requires that a new board be convened each year.

Mr. Joyner presented the following information:

Appointments to the 2005 Board of Equalization and Review

Chairman George A. Scott
909 Brandon Road
Durham NC 27713
596-8370
appointed by Michael D. Page
(served as 2004 Chair)

Vice-Chairman Kelly Motherly
2701 Pickett Road
Durham NC 27705
489-1740 (h) 489-2195 (w)
appointed by Ellen W. Reckhow
(served as 2004 Vice-Chair)

Robert E King Jr., Attorney
1104 Lansing Ave
Durham NC 27713
598-0043 596-6168 (fax)
appointed by Lewis A. Cheek

Warren Robinson
705 Wellingham Drive
Durham NC 27713
730-7008
appointed by Philip R. Cousin

Virginia E. Thomas
1802 West MLK Parkway
Suite 208
Durham NC 27707
489-7147
appointed by Becky M. Heron

Commissioner Cousin moved, seconded by Vice-Chairman Heron, to approve the appointments to the 2005 Equalization and Review Board.

The motion carried unanimously.

Consent Agenda Item No. d. Adoption of Substance Abuse Treatment Analysis and Plan for Durham County.

Commissioner Cousin removed the item to commend Ellen Holliman, Interim Director, The Durham Center, for the exceptional work in compiling the report and helping the County Commissioners make strides towards their commitment to make substance abuse treatment a priority. He applauded The Durham Center for working to ensure that the African-American community will provide a share of the services since African-Americans suffer from the brunt of the substance abuse problem.

Chairman Reckhow encouraged the Commissioners to attend the Health Summit on Monday, April 11, which will focus on substance abuse.

Commissioner Cousin moved, seconded by Commissioner Page, to adopt the Substance Abuse Treatment Analysis and Plan for Durham County.

The motion carried unanimously.

Consent Agenda Item No. e. Changes to the Memorandum of Understanding (MOU) Between the Board of Elections and the County of Durham (approve the Board of Elections' request to change the MOU to place the Director of Elections on the County's compensation plan).

Chairman Reckhow pointed out the error in the memorandum on Page 1, Section 1 ("under the rules, regulations and procedures applicable to Durham County Employees" was repeated).

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, highly praised Elections staff and wished to know whether the staff would receive salary increases as well as the Director.

Chairman Reckhow responded that all County employees are eligible for either a 3.25 or 4.25 percent increase. This memorandum places the Elections Director in the same pay plan as staff. In previous years, the Director was not included in the County's pay plan; therefore, his prior increases were approved by the Board of County Commissioners. Chairman Reckhow remarked that the Human Resources Department is performing a market study; adjustments will be made in positions where salaries are inconsistent with the market.

Vice-Chairman Heron moved, seconded by Commissioner Page, to approve Changes to the Memorandum of Understanding (MOU) Between the Board of Elections and the County of Durham.

The motion carried unanimously.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE BOARD OF ELECTIONS OF DURHAM COUNTY
AND THE DURHAM COUNTY BOARD OF COMMISSIONERS

WHEREAS, the County of Durham (hereinafter "the County") is a body politic and corporate; and

WHEREAS, the County has a Personnel Ordinance and a system of personnel management and administration for County employees as authorized by North Carolina General Statutes Chapter 153a; and

WHEREAS, the County's Personnel Ordinance and personnel system apply automatically only to employees of Durham County government, its agencies and departments; and

WHEREAS, the Durham County Board of Elections is an independent governmental unit established pursuant to Article 4 of the North Carolina General Statutes Chapter 163; and

WHEREAS, the Durham County Board of Elections recommends the appointment and removal of the Director of Elections to the State Board of Elections and who upon the recommendation of the Director of Elections directly appoints and removes staff employees who are supervised by the Director of Elections; and

WHEREAS, the Durham County Board of Elections does not have a personnel office nor a formal system of personnel administration; and

WHEREAS, the Durham County Board of Commissioners may provide personnel administration services to employees of governmental agencies who are not Durham County employees upon written agreement with Durham County, except to the extent that such agreement conflicts with the law.

THEREFORE, the Board of Elections and the Durham County Board of Commissioners mutually agree as follows:

Section 1. The County of Durham will, by and through its Human Resources Department and its enabling authority, the Durham County Personnel Ordinance, assist the Director of Elections in providing a uniform system of personnel administration for the director and all other employees of the Durham County Board of Elections under the rules, regulations and procedures applicable to Durham County Employees.

Section 2. Durham County will administer leave policies, position classification, and compensation and benefits for employees of the Durham County Board of Elections.

Section 3. The Durham County Board of Elections and the Durham County Director of Elections will observe Durham County's policies and procedures concerning general employment rules and regulations, and conditions of employment in a manner consistent with the Board's enabling legislation and the Personnel Ordinances. This agreement does not affect the Durham County Board of Elections' statutory authority to appoint and remove employees.

Section 4. Durham County's policies and procedures concerning disciplinary actions against employees and employee grievances will govern this aspect of personnel administration; however, any grievances/appeals from employment or personnel decisions made by the Durham County Director of Elections will be heard and disposed of only by the Durham County Board of Elections.

Section 5. The Director of Elections shall represent the Board when signing all county correspondence to include Budget, Finance and Personnel Action Forms for the Board.

Section 6. This Memorandum of Understanding will be effective when signed by all parties involved. It will continue in force from year to year until modified or terminated by

written mutual agreement of the parties hereto, or upon ninety-(90) days written notice by any party.

Consent Agenda Item No. g. Budget Ordinance Amendment No. 05BCC000040—Fire Marshal/Emergency Management—FY 2004 State Homeland Security Grant Program Citizen Corps Grant Award (apply the \$9,500 Grant Award received through the NC Department of Crime Control and Public Safety for expenditure in FY 2004-2005).

Ms. Victoria Peterson, P.O. Box 101, Durham, NC, asked if the grant award is a federal or state allocation. She expressed her concern that monies designated for “crime” are not being utilized for rehabilitation.

Jeff Batten, Fire Marshal, responded that the grant is dedicated entirely for emergency response training in accordance with federal guidelines. The monies are allocated through the NC Department of Crime Control and Public Safety, **Division of Emergency Management**.

Vice-Chairman Heron moved, seconded by Commissioner Page, to approve Budget Ordinance Amendment No. 05BCC000040—Fire Marshal/Emergency Management—FY 2004 State Homeland Security Grant Program Citizen Corps Grant Award.

The motion carried unanimously.

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000040

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$262,181,219	\$ 9,500	\$262,190,719

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 40,722,180	\$ 9,500	\$ 40,731,680

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

This the 28th day of February, 2005.

Consent Agenda Item No. i. Budget Ordinance Amendment No. 05BCC000042—The Durham Center—Acceptance and Allocation of Funds from Multiple Grants (appropriate \$200,000, \$387,900, and \$23,500).

Chairman Reckhow removed the item to permit Interim Area Director Ellen Holliman to describe the Mobile Crisis service, which is an initiative with the Police Department to help children in a crisis. She wished to give the initiative some exposure.

Ms. Holliman stated that the \$200,000 allocation in state Mental Health Trust Funds is for the Juvenile Justice Initiative. These funds will be used to establish or expand services to children with substance abuse and mental health problems involved in the Juvenile Justice System in Durham County. 1) The Mobile Crisis service will establish a new outreach capacity, teaming clinical staff with law enforcement officers from the Durham Police Department, initially for PAC 1. In this new service, clinicians will be available to respond to family crises, helping children and their families gain access to rapid assessment and mental health/substance abuse services through Child and Family Teams. This new service is a partnership between a private provider highly experienced in this model, The Durham Center, Durham Police Department, the local Department of Juvenile Justice and Delinquency Prevention, and juvenile court. Grant funding is being sought through the Governor's Crime Commission to continue the service on a long-term basis. 2) In-Detention Mental Health and Substance Abuse services will include the services of a part-time child psychiatrist dedicated to the Durham Youth Home/Detention Center, which will significantly intensify the clinical assessment and service capacity for youth incarcerated in the Detention Center. Incarcerated youth will also receive highly-integrated clinical and support services through Child and Family Teams, partnering clinical, Detention staff, and Court Counselors. Special training in Evidence-Based Interventions known to be effective for youth involved in gang activities will be provided, resulting in a cross-system team of clinical/justice experts. 3) Crisis Residential Services for youth with Mental Health and Substance Abuse issues who are involved in the juvenile justice system will be provided through expansion of the Rapid Response Home network, which provides immediate placements for youth in highly-trained, family-based homes in the community.

Commissioner Page inquired as to whether the service will help children whose parents are abusing substances.

Ms. Holliman stated that the Mobile Crisis services would identify and help those children in need.

Commissioner Page moved, seconded by Commissioner Cousin, to approve Budget Ordinance Amendment No. 05BCC000042—The Durham Center—Acceptance and Allocation of Funds from Multiple Grants.

The motion carried unanimously.

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000042

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$262,190,719	\$611,890	\$262,802,609

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$321,177,592	\$611,800	\$321,789,392

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

This the 28th day of February, 2005.

Consent Agenda Item No. o. Approve Grant Application from the Criminal Justice Resource Center to the NC Department of Correction, Division of Community Corrections, for Criminal Justice Partnership Program Funds (a recurring grant application and approval process the County participates in each year).

Ms. Victoria Peterson, P.O. Box 101, Durham, NC, requested information about the budget (an attachment to the grant application). She voiced concern that the County only collaborates with the nonprofit Criminal Justice Resource Center to combat crime in the African-American community. Ms. Peterson asked if the Criminal Justice Resource Director is a legal U.S. citizen.

Chairman Reckhow clarified that the Criminal Justice Resource Center is a Durham County Government department, not a nonprofit organization.

Gudrun Parmer, Criminal Justice Resource Center Director, commented that the application is the annual request to the NC Department of Correction, Division of Community Corrections, for funding of counties under the Criminal Justice Partnership Act that instituted in 1994. The Criminal Justice Partnership Advisory Board was established at that time to oversee Criminal Justice Resource Center operations. The Advisory Board has approved the grant application. Grant money is specifically designated for intermediate punishment offenders. The funding is allocated for the Substance Abuse Counselor's salary and for portions of the Client Service Coordinator and Clerical salaries. The other part of the funding is for staff training, contractual agreements, and operating costs including clients' bus tickets, clothing, and fees associated with taking the GED and classes at Durham Technical Community College.

Chairman Reckhow asked how many clients are currently being served.

Ms. Parmer replied that there are 40 to 50 Day Reporting Center clients and an additional 25 re-entry clients. Approximately 200 to 230 clients are served annually.

At the request of Commissioner Page, Ms. Parmer conveyed that the Criminal Justice Resource Center collaborates with community agencies. Interested citizens may participate in various groups and/or meetings to address clients' needs. Ms. Peterson has visited the Center several times and has requested and received information.

Vice-Chairman Heron moved, seconded by Commissioner Page, to approve "Grant Application from the Criminal Justice Resource Center to the NC Department of Correction, Division of Community Corrections, for Criminal Justice Partnership Program Funds".

The motion carried unanimously.

Consent Agenda Item No. q. Budget Ordinance Amendment No. 05BCC000043—Sheriff's Office—Governor's Crime Commission Grant to Access Justice Xchange (to support the Sheriff's Office initiative to gain access to the national database, Justice Xchange).

Ms. Victoria Peterson, P.O. Box 101, Durham, NC, aired concern that "crime" dollars are allocated to the Sheriff's Department instead of being used to address crime in the African-American community.

Chairman Reckhow informed Ms. Peterson that these monies are designated only for this project; they are not available for other purposes.

Teresa McKinney, Director of Planning and Development, Sheriff's Office, expounded that the Governor's Crime Commission contacted the Durham County Sheriff's Department to pilot this project for possible statewide implementation.

Commissioner Heron vehemently disagreed with a statement made by Ms. Peterson that "...there is a conspiracy going on in this county to lock up as many black men as possible to cause them to get a criminal record so the county doesn't have to hire them...". Vice-Chairman Heron voiced her respect and support for the Sheriff's Department.

Commissioner Page moved, seconded by Commissioner Cousin, to Budget Ordinance Amendment No. 05BCC000043—Sheriff's Office—Governor's Crime Commission Grant to Access Justice Xchange.

The motion carried unanimously.

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000043

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$262,802,609	\$46,603	\$262,849,212

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u> Public Safety	\$ 40,681,680	\$46,603	\$ 40,728,283

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

This the 28th day of February, 2005.

Chairman Reckhow directed the Clerk's office to write letters to Environmental Affairs Board and Open Space and Trails Commission members for notification of the attendance requirement increase (from 50% to 60% of the annual meetings) due to modifications in the interlocal agreements (see consent agenda item Nos. a and b).

Budget Public Hearing

Chairman Reckhow opened the public hearing for the purpose of receiving comments on the FY 2005-2006 budget.

Gloria Turner, 205 Broadway Street, Durham, NC 27701, representing CAARE Inc., appealed to the County Commissioners to make HIV/AIDS a funding priority. Ms. Turner presented pertinent statistics for Durham County.

Pat Amaechi, 205 Broadway Street, Durham, NC 27701, Executive Director of CAARE Inc., augmented Ms. Turner's comments about CAARE Inc. and its work to identify persons with HIV/AIDS.

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, spoke about the seriousness of the HIV/AIDS epidemic and requested that the Commissioners provide as much funding as possible to address the problem.

Chairman Reckhow closed the public hearing, stating that the citizens' comments would be considered.

Public Hearing on the Community Block Grant—2005 Scattered Site Housing

Wendell M. Davis, Deputy County Manager, provided an overview of the item. Mr. Davis stated that the State Department of Commerce—Division of Community Assistance has made \$400,000 in grant funds available to the County of Durham for rehabilitating low-income housing. The funds can be used only in unincorporated areas of the County. The primary objective of the Community Development Block Grant Scattered Site Housing Program is to improve housing conditions of very low-income households at or below 50 percent of area median income. Recent changes by the General Assembly now provide that eligible counties receive these funds every three years on a noncompetitive basis. As lead agents, counties receive funds by submitting a detailed plan describing how funds will be distributed to meet housing priorities. The application deadline for receiving funds from the State Department of Commerce—Division of Community Assistance is today. The application has been completed and was submitted on February 25.

An informal RFP was posted on the County website. Proposals were solicited until February 10, 2005 for hiring a consultant to administer the Scattered Site Housing Program. The selection committee met to review the proposals and recommends that the Board award the contract to Leah Consulting Group.

The first of two public hearings was held on February 14, 2005 for receiving citizen comments on the County's intentions of receiving this grant and awarding a contract to one of the consulting firms. No public comment was received at that meeting.

Chairman Reckhow opened the public hearing to allow comments from signed speaker Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702.

Dr. Allison inquired about the following:

- owner-occupied versus rental unit rehabilitation;
- projected number of units to be rehabilitated; and
- clarification of the unincorporated areas.

Mr. Davis responded as follows:

- the funds are allocated for owner-occupied housing, not rental property;
- between 12 to 13 houses are projected for rehabilitation; no more than \$29,999 can be spent on any given property; and
- unincorporated areas are all areas outside of the City limits; the monies cannot be spent within municipal boundaries (the City receives the federal HUD Community Development Block Grant funds).

As no one else requested to speak, Chairman Reckhow closed the public hearing and stated that no action was required of the Board. She asked Mr. Davis to keep the Board apprised as to how the grant progresses.

Time Warner Cable-Raleigh/Durham Division—Cable Television Rate Report

Chairman Reckhow announced that this item was discussed about a month ago, at which time the Board adopted Action Audits' rate report and tabled Time Warner Cable's rate order. She called Robert Sepe, President, Action Audits, LLC, forward to speak on the matter.

Robert Sepe, Cable Television Consultant through Triangle J, reported that Action Audits took issue with the upgrade charge because Time Warner Cable (TWC) was allowed to collect in advance, from Years 1995 to 2000, \$180 from each Durham County cable subscriber (\$1.8 million) to pre-capitalize the upgrade. Additionally, Time Warner began the upgrade and was allowed under the rate rules the cost of its investment beginning in Year 2000 through today. Action Audits requested that TWC provide an accounting of the balance to be paid, but to date, has not received an accounting. Mr. Sepe's recommendation was that the Board adopt the rate order, compel TWC to produce the financial information, and suspend collection of the charge.

Vice-Chairman Heron requested clarification about Mr. Sepe's recommendation.

Mr. Sepe gave details regarding his recommendation. On September 30, 2004, TWC submitted a Federal Communications Commission (FCC) Form 1240—Basic Cable Service Tier to set a new regulated rate for basic cable service. It requested to continue the rate set in its initial FCC Form 1235—Abbreviated Cost of Service Network Upgrade Charge filed five years ago. TWC also submitted Form 1205—Equipment and Installation Charges to set new regulated rates for equipment rental and installation services. These documents were submitted to the County for approval. The proposed Basic Service and Equipment and Installation rates comply with the FCC's rate rules; however, the Form 1235 "Add-on" (upgrade) rate submitted by Time Warner does not comply with the rules and should be rejected.

Vice-Chairman Heron asked Mr. Sepe about differing cable rates in sections of Durham County.

Mr. Sepe responded that two different rates are the result of two different franchises because, at some point in the past, Durham County had two cable operators. TWC must petition the FCC to consolidate the two franchise areas.

Mr. Sepe explained to Commissioner Cousin the County and FCC's roles regarding the rate order. Congress gave the authority to local governments to review the rates. The FCC role is that of an arbiter. If the cable company disagrees with the local government's finding, it can appeal to the FCC, which will make a determination either for the cable company or the local government. If the FCC finds for the cable company, it will remand the rate order back to the local government and direct changes. If the FCC finds for the local government, it directs the cable company to adjust its rates.

Brad Phillips, representing TWC, explained that the FCC is very clear about how TWC may calculate and administer its rates. He stated that in 2000, the Commissioners approved the

1235 upgrade. In 2003, the Commissioners denied TWC's rate filing. TWC appealed to the FCC, which upheld its appeal; subsequently, the Commissioners rescinded its earlier order and approved TWC's rate filing. Mr. Phillips spoke to Vice-Chairman Heron's question about why cable rates vary within the County.

Vice-Chairman Heron asked Mr. Phillips if TWC provides lower rates for senior citizens.

Mr. Phillips responded in the negative.

Chairman Reckhow stated that citizens within a statewide income threshold qualify for a property tax exemption (Homestead exemption). A mechanism could be established whereby these citizens could provide proof of exemption to TWC to save administrative costs for providing such a discount.

Mr. Phillips stated that TWC would be happy to meet in regards to this issue. He asked the Board to approve the 1240—Basic Cable Service Tier rates but take no action on the 1235 “add-on” rate.

Chairman Reckhow suggested that the County Manager arrange a meeting with TWC.

Commissioner Page agreed with the recommendations of Chairman Reckhow and Vice-Chairman Heron.

Mr. Sepe responded to comments made by Mr. Phillips. He recommended that TWC extend its potential rate discount to all low-income families, not only to homeowners.

Chairman Reckhow pointed out that the most compelling issue is that the 1235 “add-on” rate was approved five years ago and is no longer timely. It is relying on old capital investment recovery amounts. She suggested that the Board approve FCC Form 1240—Basic Cable Service Tier rates and Form 1205—Equipment and Installation Charges and reject Form 1235—Abbreviated Cost of Service Network Upgrade Charge (add-on rates).

Chairman Reckhow stated that decreased rates for senior citizens, low-income families, etc. could be considered during franchise renewal discussions.

Commissioner Cousin moved, seconded by Vice-Chairman Heron, to approve the rate order as drafted.

The motion carried unanimously.

COUNTY OF DURHAM
NORTH CAROLINA

Accepting the Rates Contained in the FCC Form 1240 and Form 1205 Filed by Time Warner Cable for 2005 and Rejecting the Form 1235 Rate Requested by Time Warner Cable Because the Form FCC1235 “Add-on” Rate No Longer Complies with the FCC's Cost of Service Rate Rules and Ordering That a Revised Form 1235 and Financial Upgrade Cost Recovery

Summary Statement Be Presented to the County of Durham within 30-days from the Date of This Rate Order. Further, the County of Durham Adopts the Report Prepared by Action Audits, LLC., as its Own.

WHEREAS, Durham County, North Carolina (“County”) has initiated the regulation of rates and charges for the provision of basic service, equipment and installation of cable television pursuant to the Cable Television Consumer Protection and Competition Act of 1992;

WHEREAS, the County is certified by the FCC to regulate basic service tier rates and permitted to regulate rates for basic cable service, equipment and installation;

WHEREAS, Time Warner Cable is a duly franchised cable operator for the County and whose rates for basic service, equipment and installation are regulated by the County;

WHEREAS, on September 30, 2004 the County received the following forms: 1240, 1235; and 1205 from Time Warner Cable;

WHEREAS, the County has received and carefully considered a report from Action Audits, LLC (hereinafter referred to as “Report”) which reviewed the forms 1240, 1235, and 1205;

WHEREAS, the Report states that the form 1240 sets the regulated rate for the Basic Service Tier;

WHEREAS, the Report states that the form 1240 rate calculations properly calculate inflation, programming, copyright fees;

WHEREAS, the form 1235 sets the regulated rate for the Monthly Network Upgrade Add-on charge;

WHEREAS, the Report states that continued reliance on the initial form 1235 rate calculation to properly recover upgrade costs is no longer valid;

WHEREAS, the Report states that the form 1205 properly sets the regulated rate for Installation and Equipment rates;

WHEREAS, after appropriate public notice, a public hearing was held for the purpose of allowing the public and interested parties to comment on the rates;

WHEREAS, Time Warner Cable was given the opportunity to provide written and oral comments to the County with respect to the rates and the draft form of this Rate Order; and

WHEREAS, the County has carefully considered the materials, forms and statements submitted by Time Warner Cable.

NOW, THEREFORE, Durham County, North Carolina Makes the Following Findings of Fact and Conclusions of Law with Respect to the Proposed Rate to be Charged Time Warner Cable Customers:

The County incorporates by reference the entire preamble set forth above; The County has reviewed the Report and incorporates by reference the Report, which is attached hereto;

The County finds that Time Warner Cable's Maximum Permitted Rate for Basic Tier Service (\$13.55 for NC-0343 and \$10.40 for NC-0650) as set forth in the form 1240 do comply with the FCC's rate regulations;

The County finds that the initial "Add-on" Rate for Basic Tier Service contained in the Form 1235 does not comply with the FCC's Abbreviated Cost-of-Service Rules for system upgrades. Said rules require the upgrade cost allocation recovery fee based on channel/service/bandwidth allocation which set an original "Add-on" rate of \$2.11 for NC-0343, and \$1.81 for NC-0650. Going forward, the FCC's Cost of Service rules require the operator to ensure that regulated service subscribers do not pay for unregulated service costs, and that the Company does not over recover the cost of its upgrade, by periodically recalculating its "Add-on" rate to accommodate such changes as the proportion of regulated bandwidth, the current customer count and capital cost recovery reductions attributed to accumulated depreciation;

The continued reliance on the form 1235 rate approved 5-years earlier does not comply with the FCC's Abbreviated Cost of Service Rules for system upgrades capital investment recovery; and

The County finds that the Installation and Equipment rates set forth in the form 1205 comply with the FCC's rate regulations.

NOW, THEREFORE, Be it Ordered by the County of Durham, North Carolina, That:

Time Warner Cable's Maximum Permitted Rate for Basic Tier Service rate contained in the Form FCC1240 does comply with the FCC's rate regulations and is hereby accepted;

Time Warner Cable is permitted to implement its form 1240 \$13.55 for NC-0343, and \$10.40 for NC-0650 rate;

Time Warner Cable's form 1235 \$2.11 for NC-0343, and \$1.81 for NC-0650 "Add-on" rate no longer complies with the FCC's Cost of Service rules and is rejected;

Time Warner Cable is not permitted nor authorized to recover its Form1235 \$2.11 for NC-0343, and \$1.81 for NC-0650 "Add-on" rate;

Time Warner Cable must submit to the County within 30-days from the date of this Rate Order for approval a revised form 1235 that properly calculates the current Add-on rate using the FCC's Cost of Service Rules;

Time Warner Cable is required to submit to the County within 30-days from the date of this Rate Order a financial statement showing the original upgrade investment (cost), accumulated depreciation by year, current residual value by year, the amount recovered to date by year, an estimate of the remaining cost recovery period and the customer count for each year since the Add-on rate has been in effect;

Time Warner Cable's Installation and Equipment rates contained in the Form 1205 comply with the FCC's rate regulations and are accepted;

The County adopts the Report as its own;

The County reserves its rights to review and consider any new information and issue a revised Rate Order based on that evidence;

This Rate Order will be effective immediately and provided to Time Warner Cable via US Certified Mail; and

A copy of this Rate Order shall be released to the public.

Read, Adopted and Approved by the County of Durham.

This the 28th day of February, 2005.

Durham Open Space Commission Matching Grants Recommendation

Chairman Reckhow introduced DOST Chairman Tom Stark, Matching Grants Committee member Guillo Rodriguez, and Matching Grants Administrator Bill Renfrow.

Mr. Stark communicated that the Durham Open Space and Trails Commission (DOST) received two applications for Matching Grants Program funds to assist nonprofit community organizations with recreational and open space projects. The following financial summary shows the Commission's recommendation to the Board to fund the second application at \$49,000 (highlighted) using part of the \$85,000 of contractual funds requested and recommended under the General Fund, "Open Space Matching Grants" Organization of the County's FY 04-05 Budget. The first application for \$28,543 was approved by the Board in December 2004.

2004 CYCLE MATCHING GRANTS APPLICATIONS			
Applicant / Project	Request	Cost	Grant
Forest Hills Neighborhood Association/Walking Trail	\$ 28,543.00	\$ 57,543.00	\$ 28,543.00*
SEEDS/Farmer's Market Pavilion	49,000.00	525,692.00	49,000.00
Total	\$ 77,543.00	\$ 583,235.00	\$ 77,543.00

Mr. Rodriquez presented a slide show presentation regarding the Matching Grants program and its accomplishments. He gave a broad overview of the types of projects that the Matching Grants program has funded, summarized financial investments made to participating organizations, highlighted the value of partnering with nonprofits, and concluded with thoughts and recommendations from the Matching Grants Committee on enhancing the program. Mr. Rodriquez offered to supply a copy of the PowerPoint slide show to Mr. Renfrow; it could easily be adapted for the County's website or for presentation to civic groups and organizations.

Chairman Reckhow thanked Mr. Rodriquez for the time he spent preparing the slide show.

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, complimented the Board of County Commissioners for allowing the public to comment and inquire about agenda items. She praised the work of the Matching Grants Committee. Dr. Allison inquired about:

- criteria by which applications are evaluated;
- opportunities for training sessions; and
- application process cycle for 2005.

Chairman Reckhow expressed her opinion that offering a training session or workshop on the guidelines was a good suggestion. She asked Mr. Renfrow to respond to Dr. Allison.

Mr. Renfrow stated that the schedule for the grants cycle is established by the Matching Grants Committee when it meets in July. In past years, the application period opened August 1 followed by advertisements in newspapers, sports magazines, and on radio stations. Mailings are sent to organizations and community groups on the Planning Department's mailing list. Call-ins are also placed on the mailing list. The deadline for receipt of applications has been around October 15. Suggestions regarding workshops and/or training sessions could be placed on the next Matching Grant Committee agenda.

Chairman Reckhow directed that the slide show be placed on the County's website and that greater outreach opportunities be considered.

Vice-Chairman Heron moved, seconded by Commissioner Cousin, to approve funding the SEEDS Farmer's Market Pavilion project and the allocation of the \$49,000 of the budgeted Matching Grants Funds.

The motion carried unanimously.

Adjournment

There being no further business, Chairman Reckhow adjourned the meeting at 9:16 p.m.

Respectfully submitted,

Vonda C. Sessoms
Deputy Clerk to the Board