

**DURHAM, NORTH CAROLINA
MONDAY, AUGUST 1, 2005
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Absent: None.

Also present: City Manager Patrick Baker, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Clement.

Mayor Pro Tempore Cole-McFadden commented on her attendance at the first graduation ceremony of the Junior Fire Marshal Program.

Fire Marshal Kenneth Crews gave a power point presentation on the first Junior Fire Marshal Program for ages 11-17. The following graduates of the program were recognized: Christopher Thompson, Darion Hite, Darius Lawrence, Devon Brannon, James Nelson, JaQuan Tommer, Justin Lawson and Quentin Roberson and Rachel Brown.

Council Member Best made comments on the editorial in THE HERALD-SUN regarding the Americans with Disabilities Act. He requested an update at the next work session or thereafter on where the City stands regarding the contract, how findings are being addressed, and what the City currently offers to the special population.

City Manager Baker noted that he would provide a report at the August 4, 2005 City Council Work Session.

Council Member Clement commented on his attendance at the NCLM's Community and Economic Development Legislative Action Committee meeting. He noted Durham was acknowledged during the meeting for receiving the following recognitions: Top 100 cities— Best place to live and the Best place for singles.

Council Member Brown congratulated Mr. & Mrs. Hughes on their wedding that took place on Saturday and Mayor Bell, the father of the bride.

Mayor Pro Tempore Cole-McFadden noted she attended the Police Academy graduation.

Council Member Clement noted one of the officers who graduated was immediately deployed to Iraq. He urged his colleagues to convey their prayers to his family for his safe return.

Council Member Best asked if Council had formally recognized City employees who had been deployed and returned.

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City Manager Baker made comments on the December Care Package effort. He noted that he would bring to Council a formal recognition for ongoing recognition of troops that are serving in active duty.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk. City Manager Baker requested that Consent #21 [Workforce Investment Act – GMSI Contract] be referred back to the administration—Economic Development and provided a handout for GBA #37 Centex Rezoning and County Option on the Floodplain—letter from County Manager Michael Ruffin dated July 29, 2005. City Manager Baker informed Council that Congress passed a Transportation Bill and a significant amount of money will be coming to Durham \$1.6 million to complete the American Tobacco Trail with connection to Chatham County; \$1.6 million for Bike and Pedestrian Trails construction and \$2 million for railroad corridor acquisition for a total of \$5.2 million. Also, the City Manager announced that National Night Out will be celebrated August 2.

Kim Walker, of the Police Department, made comments on the community participation for the National Night Out event.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to approve the City Manager's priority items was approved at 7:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

City Attorney Blinder reported the City has settled the case of Tuchinsky vs City of Durham. He provided background information on this stormwater case and the appeal filed by the plaintiff. Under the settlement reached, City Attorney Blinder noted the City will remove a single fallen tree that is about a quarter of a mile from the property owner's home, there will no payment of any money by the City to the property owner and the cost of the tree removal should not exceed a couple thousand dollars.

There were no priority items from the City Clerk.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items #1 [Non-City Agency Program Specific Compliance Evaluations (June 2005) – Walltown Children's Theatre – Durham Art Guild, Inc. – Big Brothers-Big Sisters of Durham and Orange Counties], 30 [Amendment to Sub-Recipient Agreement – UDI Community Development Corporation for Additional Six Months Operations Cost Support of Small Business Incubator Center and 44 [Concerned Citizens for Accountable Government] were pulled.

Mayor Bell noted he would be abstaining from voting on Consent Agenda #30 [Amendment to Sub-Recipient Agreement – UDI Community Development Corporation].

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to approve the Consent Agenda as amended was approved at 7:30 p.m. by the following vote:

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Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

[CONSENT AGENDA]

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to approve City Council Minutes for the June 6, 2005 and June 20, 2005 regular City Council Meetings; and

To approve City Council action taken at the May 19, 2005 and June 9, 2005 City Council Work Sessions was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: RECREATION ADVISORY COMMISSION - REAPPOINTMENT

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to reappoint Dan Moushon to the Recreation Advisory Commission with a term to expire on August 8, 2008 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: HUMAN RELATIONS COMMISSION - APPOINTMENTS

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to appoint Kristen Dubay and Whitney Tuttle to fill vacancies for two (2) Non-Minority Females with terms expiring on June 30, 2008 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: HOUSING APPEALS BOARD - APPOINTMENTS

To appoint citizens to fill two (2) vacancies for Regular Members with terms expiring on June 30, 2008.

Note: This item was referred back to the City Clerk's Office.

SUBJECT: EQUAL BUSINESS OPPORTUNITY PROGRAM ADVISORY COMMITTEE – RECEIPT AND ACCEPTANCE OF APPLICATIONS

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MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive and accept applications for a citizen to fill one (1) vacancy for a SDBE Professional Services Firm Owner with term expiring on April 1, 2007 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: ENVIRONMENTAL AFFAIRS BOARD – RECEIPT AND ACCEPTANCE OF AN APPLICATION

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive and accept an application to fill one (1) vacancy on the Environmental Affairs Board representing Biological Sciences with a term expiring June 1, 2008 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: DURHAM OPEN SPACE & TRAILS COMMISSION – RECEIPT AND ACCEPTANCE OF APPLICATIONS

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive and accept applications for citizens to fill two (2) vacancies representing Ward 1 (term expires June 30, 2007) and At-Large (term expires June 30, 2008) was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: CONTRACTS

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute the list of contracts and;

To authorize the City Manager to make changes to the list of contracts before execution as long as the changes do not increase the dollar amount and remain consistent with the general intent of the contracts was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

Contractor	Contract Description	Dept	CT Amount
Allison Raspberry	Soccer Official	P&R	\$1,000.00
Steven Mukungu	Soccer Official	P&R	\$2,300.00

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Leah Fuerst	Soccer Official	P&R	\$1,000.00
Stephanie Bowman	Soccer Official	P&R	\$1,000.00
Jennifer Lloyd	Soccer Official	P&R	\$1,000.00
Dana Sroka	Soccer Official	P&R	\$1,000.00
Tyler Holmes	Soccer Official	P&R	\$1,000.00
Joseph Polcaro	Soccer Official	P&R	\$3,000.00
Peter Ifamose	Soccer Official	P&R	\$2,000.00
Austin Johnson	Soccer Official	P&R	\$2,300.00
Stuart Krall	Soccer Official	P&R	\$2,300.00
Isaiah Lincoln	Soccer Official	P&R	\$2,300.00
Craig Wolfe	Soccer Official	P&R	\$2,300.00
Grant Underhill	Soccer Official	P&R	\$2,300.00
Szymon Pucilowski	Soccer Official	P&R	\$2,300.00
Olgierd Pucilowski	Soccer Official	P&R	\$2,300.00
Joseph Peel	Soccer Official	P&R	\$2,300.00
Timothy Jackson	Soccer Official	P&R	\$2,300.00
David Everly	Soccer Official	P&R	\$2,300.00
Jose Mendoza	Soccer Official	P&R	\$2,300.00
Also Elmehrath	Soccer Official	P&R	\$2,300.00
Wilbur Blake	Soccer Official	P&R	\$2,300.00
Donald Gellenback	Soccer Official	P&R	\$2,000.00
Allen Clayton	Basketball Official	P&R	\$2,199.00
Dennis Scott	Basketball Official	P&R	\$2,199.00
Raymond Alston Jr	Basketball Official	P&R	\$2,199.00

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Anthony Pough	Basketball Official	P&R	\$2,199.00
Christopher Smith	Basketball Official	P&R	\$1,500.00
Allison Daniels	Ballet Instructor	P&R	\$2,000.00
Melissa McDonald	Soccer Official	P&R	\$1,000.00
Leah Ulman	Soccer Official	P&R	\$1,000.00
Kevin Holmes	Soccer Official	P&R	\$1,000.00
Allison Murray	Soccer Official	P&R	\$1,000.00
David Hinkle	Soccer Official	P&R	\$1,000.00
William Mull	Soccer Official	P&R	\$1,000.00
Deryl Boyd	Basketball Official	P&R	\$2,199.00
Melvin Woodruff	Basketball Official	P&R	\$2,199.00
William Britt	Basketball Official	P&R	\$2,199.00
Katherine Barkley	Soccer Official	P&R	\$1,000.00
Joseph Palmer	Basketball Official	P&R	\$2,199.00
Roy Williams	Fast Pitch Softball	P&R	\$1,024.00
Ricky Daye	Fast Pitch Softball	P&R	\$1,024.00
Joseph Daye Jr.	Fast Pitch Softball	P&R	\$1,024.00
Leslie Haskins	Fast Pitch Softball	P&R	\$1,024.00
Gerald Haskins	Fast Pitch Softball	P&R	\$1,024.00
Joseph Daye Jr.	Basketball Official	P&R	\$2,199.00
Michael Neve	Soccer Official	P&R	\$1,000.00
Madeline Ross	Soccer Official	P&R	\$1,000.00
Roy Williams	Basketball Official	P&R	\$2,199.00
Mark Webb	Basketball Official	P&R	\$2,199.00

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Michael Hargrave	Flag Football	P&R	\$1,000.00
Brianna Ross	Soccer Official	P&R	\$1,000.00
Erin Timmons	Soccer Official	P&R	\$1,000.00
Rebekah Fuerst	Soccer Official	P&R	\$1,000.00
Andrea Hale	Soccer Official	P&R	\$1,000.00
Marissa Ulman	Soccer Official	P&R	\$1,000.00
Eli McDuffie	Soccer Official	P&R	\$1,000.00
Daniel Copple	Soccer Official	P&R	\$1,000.00
Jeff Norris	Basketball Official	P&R	\$2,199.00
Lisa Wrenn	Volleyball Referee	P&R	\$1,000.00
Dawn Wheeler	Volleyball Referee	P&R	\$1,000.00
Michael Hargrave	Basketball Official	P&R	\$2,199.00
Linda Wolfe	TaiChi Instructor	P&R	\$500.00
Quality Janitor Service	Janitorial Service	Wtr Mgmt	\$24,942.32
Printrak	Maintenance on AFIS Machine	Police	\$23,596.00
General Engineering & Environmental	Air Quality Study Old Planning Bldg	Gen Ser	\$5,854.00
Cary Psychology	Pre-employment Evaluations	Emergency Comm	\$4,000.00
Jan Pro Cleaning	Janitorial Service Northgate Substation	Police	\$24,713.88
The News & Observer	Display Advertising	Public Aff	\$2,000.00
AC Corp	HVAC Maintenance for Data Center	TS	\$4,636.00
A+ Delivery	Preparation, Placement & Removal Public Hearing Sinage CT Extension	Planning	\$15,000.00
Manfred Bowden	Basketball Official	P&R	\$2,199.00

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Jeffery Holmes	Soccer Official	P&R	\$1,000.00
Leslie Sparks	Soccer Official	P&R	\$2,300.00

SUBJECT: PRELIMINARY PLAT – NORTHERN WAY SUBDIVISION (D04-407)

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to approve a preliminary plat for “Northern Way Subdivision”, submitted by The Prescott Company, LLC on behalf of RCP Investments VI, LLC, for 14 single-family residential lots on a 12.2 acre site zoned R-20, RD and E-B, the property is located at the southeast quadrant of North Roxboro Road and Goodwin Road, PIN 0825-04-62-9645, 7543 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: MAJOR SITE PLAN – FIRST CALVARY BAPTIST CHURCH (D04-605)

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to approve a major site plan for “First Calvary Baptist Church”, submitted by Bulla Smith Design Engineering, on behalf of First Calvary Baptist Church, to construct a 43,600 square foot place of worship on a 2.94 acre site, zoned R-3 and NC with a buffer reduction from 20 feet to 10 feet, with a fence, along four property lines, the property is located south of Morehead Avenue and east of Kent Street - PIN 0821-10-35-8853] was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: SETTING PUBLIC HEARING TO CONSIDER ORDERING IMPROVEMENT UNDER ENABLING ACT AUTHORITY

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to adopt a resolution setting a public hearing for September 6, 2005 for the following improvement was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

Sewer Main on Holloway Street - from West Property Line of PIN 0841-14-44-3521 to Rummel Street.

SUBJECT: LICENSE AGREEMENT WITH NORTH CAROLINA CENTRAL UNIVERSITY (NCCU – NEW SCIENCE BUILDING) - UNDERGROUND TELECOMMUNICATION DUCKBANK - CONCORD STREET

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MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a License Agreement with North Carolina Central University (NCCU) to construct and maintain underground telecommunication duckbank crossing Concord Street, PIN 0821-20-80-4123, Tax Map 182-02-012 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: SEWER EXTENSION AGREEMENT WITH MR. MITCHELL NEWTON, INDIVIDUAL - GARRETT ROAD

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Sewer Extension Agreement with Mr. Mitchell Newton, Individual to serve Garrett Road, PIN 0719-01-07-5134, 0719-01-07-4380 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: WATER EXTENSION AGREEMENT WITH SANTA FE TRIANGLE, LLC - HOLDER ROAD

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water Extension Agreement with Santa Fe Triangle, LLC to serve Holder Road, PIN 0850-01-49-6316, Tax Map 663-02-013 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: WATER & SEWER EXTENSION AGREEMENT WITH SUN RIVER BUILDERS, INC. - KEMPTON SUBDIVISION

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water & Sewer Extension Agreement with Sun River Builders, Inc. to serve Kempton Subdivision, PIN 0801-04-70-0493, 0801-04-70-2186, 0801-04-70-2582 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: WATER & SEWER EXTENSION AGREEMENT WITH DR. PERRY L. JEFFRIES, DDS - JEFFRIES DENTAL FACILITY

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Water & Sewer Extension Agreement with Dr. Perry L. Jeffries, DDS to serve Jeffries Dental Facility, PIN 0820-20-80-8409, Tax Map 407-02-007

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was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: SEWER EXTENSION AGREEMENT WITH FRANK GARRARD,
INDIVIDUAL - 4016 LEAH LANE**

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a Sewer Extension Agreement with Frank Garrard, Individual to serve 4016 Leah Lane, PIN 0814-03-41-2793, Tax Map 773-02-006A was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: NORTH CAROLINA DEPARTMENT OF TRANSPORTATION [NCDOT]
UTILITY AGREEMENTS – NORTHEAST CREEK PARKWAY – N.C. 55
– BRIDGE NO. 111 OVER NEW HOPE CREEK**

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to adopt resolutions to reimburse the North Carolina Department of Transportation (NCDOT);

To authorize the City Manager to execute utility agreements for the relocation of utilities for the following:

1. Northeast Creek Parkway from SR 1308 (Cornwallis Road) to SR 1954 (Ellis Road) - Project U-2831A (\$114,603.23)
2. N.C. 55 from north of North Wake Expressway to SR 1121 (Cornwallis Road) – Project R-2906C (\$257,876.70)
3. Bridge No. 111 over New Hope Creek and approaches on SR 1107 - Project B-2963 (\$180,000); and

To authorize the expenditure of \$271,473.10 from the Water Extensions and Improvements Account and \$281,006.81 from the Sewer Extensions and Improvements Account was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: WORKFORCE INVESTMENT ACT (WIA) GRANT – DSS
[DEPARTMENT OF SOCIAL SERVICES] CONTRACT**

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MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a WIA contract with the Department of Social Services in the amount of \$172,500; and

To make changes to the contract before executing it as may be needed so long as they do not increase the contract amount nor alter the completion date of the contract was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: WORKFORCE INVESTMENT ACT (WIA) GRANT – GMSI CONTRACT

To authorize the City Manager to execute a WIA contract with the General Management Solutions, Inc. in the amount of \$319,004; and

To make changes to the contract before it is executed as may be needed so long as they do not increase the contract amount nor alter the completion date of the contract.

Note: By a vote of 7/0, the City Council referred this item back to the administration at the request of the City Manager.

**SUBJECT: WORKFORCE INVESTMENT ACT (WIA) GRANT – ESC
[EMPLOYMENT SECURITY COMMISSION] CONTRACT**

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a WIA contract with the Employment Security Commission of North Carolina in the amount of \$178,300; and

To make changes to the contract before executing it as may be needed so long as they do not increase the contract amount nor alter the completion date of the contract was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: WORKFORCE INVESTMENT ACT (WIA) GRANT – MEASUREMENT,
INC. INCUMBENT WORKER TRAINING CONTRACT**

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a WIA contract with the Measurement Inc. in the amount of \$37,500; and

To make changes to the contract before executing it as may be needed so long as they do not increase the contract amount nor alter the completion date of the contract was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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**SUBJECT: AMENDMENT TO WORKFORCE INVESTMENT ACT PROJECT
ORDINANCE #13145**

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to adopt the Amended Grant Project Ordinance to include \$41,250 in the 2002-2006 Employment and Training Budget for a total of \$2,144,113 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

Ordinance #13151

**SUBJECT: PROPOSED FIVE YEAR LEASE AGREEMENT BETWEEN THE CITY
OF DURHAM AND M. M. FOWLER, INC. FOR DISTRICT #1 POLICE
SUBSTATION**

To authorize the City Manager to execute the five-year Lease Agreement with M. M. Fowler, Inc. for the property located at 2406 Holloway Street beginning at a monthly rental fee of \$4,057.42 with a 3% annual increase each year of the lease;

To approve reimbursement to the landlord for renovations totaling \$156,482.10 to be paid in equal monthly installments of \$2,608.03 over the term of the lease; and

To authorize the City Manager to make changes to the lease prior to execution, provided such changes are consistent with the intent of the lease attached to this agenda item or and do not increase the monthly rental or renovation expenses.

Note: This item was referred back to the Administration – General Services Department.

**SUBJECT: DURHAM STATION TRANSPORTATION CENTER – CONTRACT
AUTHORIZATION FOR PROFESSIONAL ENVIRONMENTAL
SERVICES - S&ME, INC.**

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a contract with S&ME, Inc., in an amount not to exceed, \$100,700;

To authorize the City Manager to establish a project contingency in the amount of \$15,105, and to negotiate and execute change orders, provided the total amount paid under this contract does not exceed \$115,805; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the compensation paid by the City, do not reduce the scope of

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services to be provided to the City, and the modifications are consistent with the general intent of the version of the contract attached to the agenda item was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: AMENDMENT TO THE INTER-LOCAL AGREEMENT WITH DURHAM COUNTY DEPARTMENT OF SOCIAL SERVICES FOR DEVELOPMENT OF 10-YEAR PLAN TO END HOMELESSNESS IN DURHAM TO MODIFY MILESTONE DATES AND EXTEND THE TERM

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute an amendment to the Inter-local Agreement with the County of Durham Department of Social Services to modify milestone dates and extend the term through April 17, 2006; and

To authorize the City Manager to modify the amendment before execution provided the modifications do not increase the dollar amount of the contract approved by City Council, or lessen the obligations of the contractor was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: PROPERTY TRANSFER AND LOAN ASSUMPTION BY BARN DOOR PROPERTIES, INC. AND MATISON PROPERTY COMPANY, INC. AND LOAN SUBORDINATION BY THE CITY OF DURHAM

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to approve the reduction of the borrower's service fee from \$50 to \$10 per month in order for the loan repayment terms to be more equitable and consistent with similar developers/borrowers and projects;

To agree to the title transfer of the three properties that is collateral for the City's 2nd mortgage from Barn Door Properties, Inc. to Matison Property Company, Inc.;

To approve the assumption of Barn Door Properties' 2nd mortgage indebtedness to the City by Matison Property Company, Inc.;

To approve the subordination of the City's existing loan to a new 1st mortgage loan in the amount \$360,000 from Sun Trust Bank to Matison Property Company, Inc.; and

To authorize the City Manager to execute the appropriate documents required to allow the assumption and subordination of the City's loan, protects the City's loan investment, that do not increase the first mortgage indebtedness of \$360,000, lessen the responsibilities of the borrowing entities including, but not limited to, complying with the original intent of the project, or do not

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extend the City's loan position beyond that of 2nd lien holder was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: HOUSING LOAN PORTFOLIO MONTHLY STATUS REPORTS (FOR PERIODS ENDING APRIL 30, 2005, MAY 31, 2005, AND JUNE 30, 2005)

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive the monthly Housing Loan Portfolio Status Reports for April, May and June 2005 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: USE OF CONTROLLED SUBSTANCE DISTRIBUTION FUNDS AND FEDERAL ASSET FORFEITURE FUNDS IN AN AMOUNT OF \$116,035 FOR THE PURPOSE OF PURCHASING NECESSARY EQUIPMENT TO BE USED FOR POLICE OPERATIONS

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the use of Controlled Substance Tax Distribution Funds and Federal Asset Forfeiture Funds in an amount not to exceed \$116,035 to purchase the items described in this request that are necessary to enhance Police operations and investigations was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: ACS PRODUCT SUPPORT AND ENHANCEMENT AGREEMENT - ACS GOVERNMENT SYSTEMS, INC.

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute the Product Support and Enhancement Agreement with ACS Government Systems, Inc. for the Workflow Automation System in the amount of \$40,324 for a period of 17 months; and

To authorize the City Manager to make changes to the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: COMPUTER LEASE AGREEMENT – EPLUS GROUP, INC.

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MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a four (4) year lease agreement amendment with ePlus Group, Inc. for 370 desktop computers, 4 workstations and 20 laptops in the amount of \$96,948 annually for four (4) years for a total of \$387,792; and

To authorize the City Manager to modify the amendment before execution provided that modifications do not increase the dollar amount and the modifications are consistent with the general intent of the existing version of the amendment was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: CENTRAL PARK SCHOOL FOR CHILDREN

To receive comments from Vicky Patton requesting the Department of Parks and Recreation to make Old North Durham Park a neighborhood discovery park.

Note: Citizen was not present at the 7/21/05 Work Session.

SUBJECT: MAAT ATHLETIC ASSOCIATION AND TRAINING

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive comments from Ronnie Jennings regarding space for kids and keeping the game field a game field was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: DURHAM JUSTICE AND FAIRNESS INTER-NEIGHBORHOOD ASSOCIATION

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive comments from Anita Keith-Foust regarding the rich using the demographics of the poor and public property to further their own special agendas was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: RALPH MCKINNEY

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive comments from Ralph McKinney requesting an investigation of City employees and elected Democratic, Mayor and City Council for intimidation and harassment threats and to void equal protection of Durham citizens by City employees was approved at 7:30 p.m. by the

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following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: NEW EAST DURHAM COMMUNITY ORGANIZATION

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to receive comments from Vivian McCoy regarding several issues in the community was approved at 7:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: CONSTRUCTION CONSULTANT SERVICES FOR C. M. HERNDON PARK - LAPPAS + HAVENER, PA

To authorize the City Manager to amend the contract between the City and Lappas + Havener, PA in the amount of \$23,900 for a total amount not to exceed \$230,000 and to extend the contract date to October 31, 2005;

To authorize the City Manager to approve a contract between the City and MACTEC Federal Programs, Inc. in the amount of \$5,000;

To authorize the City Manager to amend the contract between the City and Tim Fitzgerald and Associates, LLC in the amount of \$70,000 for a total amount not to exceed \$205,000; and

To authorize the City Manager to make changes to the contracts so long as the changes do not increase the cost to the City or reduce the scope of services to be provided.

Note: This item was approved at the 7/21/05 Work Session with a vote of 6/0.

[GENERAL BUSINESS AGENDA – PUBLIC HEARING]

SUBJECT: ZONING MAP CHANGE – 4130 GARRETT ROAD/CENTEX - P04-36

To receive public comments on zoning map change Case P04-36 (Garrett Road/Centex); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case P04-36 out of R-20 and placing same in and establishing same as RM-12(D).

Planning Department Recommendation: Approval

Planning Commission Recommendation and Vote: Denial: 9-0

City/County Planning Director Frank Duke briefed Council on the staff report. He noted the staff report has been revised to reflect that the applicant has reduced the density to 235

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residential units. He gave an overview of the committed elements highlighted on page 2 of the staff report—maximum # of 235 townhomes units, a provision of a landscape buffer along Garrett Road frontage along with landscape materials to be installed within that buffer area, construction of a 10' and 5' sidewalk, dedication of additional right-of-way, a provision for the Durham Historic Preservation Society to relocate agriculture buildings off-site and a number of TIA requirement improvements to Garrett Road and to the driveway intersections of this site with Garrett Road. He made comments on the environmental constraints, infrastructure and school capacity. Mr. Duke noted the request is consistent with the Comprehensive Plan, staff is recommending approval and the Planning Commission recommended denial of the rezoning based on density and traffic impacts associated with project.

Mayor Bell opened the public hearing.

Mayor Bell made comments noting several citizens signed up to speak in opposition to this request. Several individuals agreed to speak on behalf of the group.

Proponent

Patrick Byker, representing the applicant, spoke in support of this rezoning request. He addressed the context of this proposal and its contributions to policy stated in the comprehensive plan that benefit the City of Durham. He noted the applicant is proposing a townhomes community with 235 owner-occupied townhomes that will increase the percentage of homeowners instead of renters. He made comments on the density [7.24], community meetings, floor plans/price of townhomes and traffic situation. He noted the applicant had a TIA completed which was not required and the City's Transportation Division reviewed the TIA and requested improvements. Relative to the stormwater management plan for this project, he noted the Public Works Department reviewed this project and found that it creates no adverse impacts. Also, he urged Council to approve this request as recommended by staff.

Opponents

Leah Ogden, of 15 Porchlight Court, spoke in opposition to this rezoning request. She noted the site is a prime location and asked Council to vote to develop with care because the residents want something that Durham can be proud of and that the citizens of Durham want something better than what they have seen. She commented on the Planning Commission's denial of this request. Ms. Ogden, on behalf of group, expressed concern with the traffic and safety, environmental impact, design and lack of collaboration by Centex particularly recently. She noted the stakes are too high as to when NCDOT would widen lanes and improve intersection, the property is in a critical juncture of the New Hope Creek and Mud Creek and they have asked Centex to do something above and beyond the minimal requirements to protect this area and they have said no. She noted they don't understand why the applicant cannot do a bio-retention facility and more high-tech water saving measures like they have done in Raleigh and Cary. She noted we can do so much better than what Centex has proposed and urged Council to not settle for okay because the residents want more and made comments on the signatures of support received from those who could not be present at the meeting tonight. She stated this critical piece of Durham

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can be developed to provide developer's profits, community safety and a beautiful Durham while respecting our environment. She urged Council to vote yes for a thoughtful development.

Bob Healy, of 839 Sedgefield Street, spoke in opposition to this rezoning. He noted this proposal is a very bad land development project, made comments on the remarks made by the Planning Commission and noted we can demand more and better from our developers. He made comments on other townhomes/condos that have been built by Centex in Virginia.

Hildegard Ryals, Chair of the New Hope Creek Advisory Committee, spoke in opposition to this rezoning. She noted this is not a new idea, please try to protect it.

Wendy Jacobs, of 142 Solterra Way, spoke against this rezoning request expressing traffic concerns at Garrett Road. She stated people are saying we know there is going to be a development here, but it needs to be done right.

LaVonia Allison, representing the DCABP, spoke against this rezoning request. Mrs. Allison noted neighborhoods are being messed up and ordinances are not protecting neighborhoods. She urged Council to start listening to the Durham Planning Commission and expressed school capacity issues.

Rebuttal

County Commissioner Lewis Cheek, representing the applicant, noted the Planning Commission rejected the project when it was 284 and not 235 units. He addressed the traffic counts noting no plat would be approved on the subdivision plat until late 2006, construction will start 2007 and the first town home would not be completed until May 2007 so the real impact on traffic is not until the earliest 2007, if DOT does what it says it would do. He noted improvements are going to be made as a result of the TIA which was not required; accidents have been reduced over the last two years. He addressed issues relative to the density, issues raised by the neighborhood [historic area--the trails, pedestrian access to Alexan Farm]. Mr. Cheek noted a number of things have been done regarding sidewalks, landscaping, New Hope Corridor area and stormwater. He noted townhouses are appropriate for this area.

Mayor Pro Tempore Cole-McFadden asked the applicant why more meaningful dialogue wasn't done earlier on in the process.

A representative of Centex Homes noted many conversations/meetings have taken place and Centex tried to address a lot of the issues, but the concerns keep changing.

Mayor Pro Tempore Cole-McFadden asked staff when are the road improvements going to take place in this area and what kind of assurances are there that they will be done.

Mark Ahrendsen, Transportation Division, noted the project is currently programmed in the recently adopted NCTIP to begin construction in October 2006--the current schedule for the project in the adopted state TIP.

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Council Member Catotti asked staff how long will it take for those road improvements at the corridor and intersection.

For clarification, Mark Ahrendsen noted there are three projects planned to begin construction at that time in this vicinity—the widening of 15/501 to six lanes, relocation of service road across from the Toyota dealership and replacing two bridges on Garrett Road near the driving range. All three are scheduled to be linked together as a group of projects in October 2006 with the longest duration being the widening of 15/501 because of the bridge replacement which is estimated to take 24 to 30 months.

Council Member Catotti noted a status report was given at a Transportation Advisory Committee meeting that NCDOT projects in Durham County were behind five years. She expressed traffic concerns with this proposal and was hoping that the developer was going to come in with a plan to phase these units.

Relative to traffic impacts, Council Member Stith asked the applicant are there timing mechanisms that could be utilized to mitigate the May 2007 first occupancy going in with road improvements not being projected until 2008/09.

Rob Ross, of Kimley Horn Associates/representing the applicant, stated what is before Council tonight are the required improvements for this project to include dual left-turn lanes at 15/501 and Garrett Road. He noted Centex is required to construct those improvements if they are not built already by DOT or another developer is required to do one of those turn lanes. If turn lanes are not constructed at the time that Centex comes in for final site plan approval, then Centex has to prove that the intersection would work acceptably without those turn lanes.

Council Member Stith asked what could the developer offer to help mitigate the traffic situation because of the state delay noted by staff.

Patrick Byker, representing the applicant, noted the applicant is looking at the proposal of 235 townhomes, the applicant anticipates at the earliest the first town home would be ready for sale in May 2007 and a three-year build out with annual phases—first phase being the smallest in order to accommodate the need for traffic improvements to be underway (60 homes) and years two and three would spilt the 175 town homes in half.

City/County Planning Director Frank Duke noted what the applicant outlined is a business proposal that would not be enforceable by the City unless it was made a committed element that would tie down the number of units to a specific date or completion and staff would need to see the phasing lines on the plan in order to fully implement it and also it would require modifications to the development plan.

Patrick Byker, representing the applicant, noted the applicant would commit to 60 homes in the first phase and the remaining townhomes divided into two equal phases for each year after that.

Council Member Stith asked the applicant why the bio-retention mechanism is not required and cannot be done due to the sensitive nature of that area.

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Patrick Byker, representing the applicant, noted the most appropriate way to deal with this issue would be to preserve 28 acres as a permanent natural buffer. He noted the bio-retention facility would be the responsibility of the homeowner to maintain and would be a burden on the homeowner's association.

Discussion was held on why the bio-retention facility would be a burden on homeowners and New Hope Creek plan.

Council Member Stith expressed environmental impact concerns and asked the applicant if the bio-retention facility would be a prohibited item for this plan.

Dan Jewell, representing the applicant, stated it would take many hundreds of thousands of dollars to install those devices and the City requires a surety maintenance bond which would be an additional expense.

Council Member Brown noted he was sorry the developer and the neighbors could not come together on this because this is a difficult issue. He asked staff what type of development could go on this site.

Under the current zoning ordinance, City/County Frank Duke noted 120 to 125 single family lots could go on this property and under the UDO the number would drop to 100.

Council Member Catotti asked staff what other items would look different under the UDO.

City/County Planning Director Frank Duke made comments on the parking lot landscaping area and design guidelines.

Council Member Catotti asked the applicant if the landscaping issue would be addressed.

County Commissioner Lewis Cheek noted the landscaping would be whatever the requirements are of the UDO.

City/County Planning Director Frank Duke noted the wording should be the developer shall meet the provisions of the UDO based on the draft in place on August 1, 2005 with regard to parking lot landscaping as well as perimeter landscaping.

Patrick Byker, representing the applicant, noted he would make the renderings a part of the committed elements showing the façade treatment.

City/County Planning Director Frank Duke noted those elevations are committed elements because of design standards. The UDO might require some additional variations beyond what is already stated. He stated as he understands it, it is a committed element.

A motion was made by Council Member Best seconded by Council Member Clement to approve the item as printed on the agenda along with committed elements discussed this evening.

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Mayor Bell asked the opponents if anyone was opposed to the property being developed.

The opponents replied no.

Mayor Bell asked the opponents what is acceptable and if they were in opposition to the density being above six units per acre.

City/County Planning Director Frank Duke briefed Council on lowering the density. He noted anything lower than 7.04 units per acre would send this case back to the Planning Commission for a recommendation on the revised plan. A request lower than 6 units per acre would start a new process which would require a plan amendment as well as the rezoning.

Mayor Bell asked the opponents if there is any compromise between the residents and the developers on some lower density.

Leah Ogden, representing the opponents, stated we would consider a discussion about density but issues still remain regarding water quality and traffic.

Mayor Bell asked the developer if they would consider a lower density between 6 and 7 units.

Patrick Byker, representing the applicant, noted the applicant's contract does not allow for extending the process out any further. Any reduction that would force this case back to the Planning Commission would not work.

County Commissioner Lewis Cheek, representing the applicant, noted having gone from 284 to 235 that is not a whole lot to work with. There could be an additional cut of up to five units, but nothing below that works.

Council Member Brown made comments noting he would be opposing this development due to density and traffic concerns.

City/County Planning Director Frank Duke noted the applicant agreed to make two additional committed elements: 1) Phasing - The developer will obtain certificates of occupancy for no more than 60 townhomes by May 2007 with a maximum of an additional 88 townhomes by May 2008 and 2) Landscaping - The developer shall meet the UDO requirements as shown in the August 1, 2005 draft with regard to parking lot landscaping and perimeter landscaping.

Patrick Byker, representing the applicant, agreed to the additional committed elements noted by Mr. Duke.

MOTION by Council Member Best seconded by Council Member Clement to receive public comments on zoning map change Case P04-36 (Garrett Road/Centex); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case P04-36 out of

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R-20 and placing same in and establishing same as RM-12(D) **FAILED** at 8:46 p.m. by the following vote: Ayes: Council Member Clement. Noes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti and Stith. Absent: None.

[GENERAL BUSINESS AGENDA]

SUBJECT: ARCHITECTURAL DESIGN SERVICES FOR THE WALLTOWN PARK RECREATION CENTER

To approve the Resolution Exempting the Architectural Design Services for the Walltown Park Recreation Center Project from G.S. 143-64.31;

To authorize the City Manager to enter into a contract with Woolpert, Inc. for the Architectural Design Services for the Walltown Park Recreation Center in the amount of \$199,620 and a \$19,962 contingency; and

To authorize the City Manager to negotiate and execute change orders, and to make changes to the contract before executing it, if the changes do not increase the compensation to be paid by the City and do not decrease the goods and services to be provided to the City.

City Manager Baker informed Council that they have been provided with additional information in response to comments/questions raised at the June 20, 2005 City Council Meeting.

Beth Timson, of the Parks & Recreation Department, gave an overview of memo provided to Council dated July 12, 2005 [Comments on Walltown Park Recreation Center Design Consultant Contract Selection Process]. She noted the additional information outlines the scores from the five team members and scores for each one of the consultant firms evaluated—the top three firms. She noted Mr. Williams' firm had two scores because he did two presentations—one for the committee/a different one for neighborhood organization and staff evaluated both of those to have a consistency of scores. Also, she noted included in the information is a list of sub-consultants that make up the entire team for each of the projects.

Mayor Pro Tempore Cole-McFadden asked who will be assisting on a local level for this project since individuals are from other places.

Roger Dahnert, of Woolpert, Inc., noted Woolpert will be project managing this project from the office in Charlotte, has worked before in Durham and understands the design board review process and the processes involved. He noted Woolpert, Inc. would be using locally Sud Associates based in Durham and M.A. Engineering which are both here to help us facilitate communication.

Mayor Pro Tempore Cole-McFadden asked if there are any African American firms working on this project.

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Mr. Dahnert replied yes noting the Moody-Nolan firm from Columbus, Ohio. Also, he made comments on the local minority firms [Sud Associates and M A Engineering Consultants] that would be participating, but neither one is an African American firm.

Mayor Pro Tempore Cole-McFadden asked who locally would have that presence since Moody-Nolan does not know anything about Durham.

Todd Neely, of Woolpert, noted Woolpert is working currently with the firm of Moody-Nolan at North Carolina Central University on the expansion and renovation of the Pearson cafeteria and this would be the same team that they would be bringing to the City of Durham for this project. He noted the collective team does have experience with the City of Durham. Individually Woolpert is working with several other projects in this area and is familiar with the Durham process. He noted that Woolpert and Moody-Nolan recently completed a feasibility study for a major student activity center for Winston-Salem State University. He noted this is not an adhoc team that was put together for this project; this is a team that we believe it brings the best quality design services possible and strong minority participation and role models in this project.

Mayor Pro Tempore Cole-McFadden asked Mr. Neely, what experience Moody-Nolan has in Durham working with the community because this is a community-based project. She noted it is very important that this person has some knowledge outside of the project at North Carolina Central University.

Todd Neely, of Woolpert, stated collectively Woolpert has a tremendous amount of experience in the Tri-ad, but with the City of Durham and working with the communities no. This would be the first assignment with the City of Durham.

Relative to the evaluation, Mayor Bell noted the question he had was how Mr. Williams received zero points for experience from the EO/EA Department.

Beth Timson, of the Parks & Recreation Department, noted it was a judgment call by that particular staff member on the way the team had answered the question during the evaluation interview and that staff member felt that they did not answer the question obviously satisfactorily about presenting their team experience.

Roger Dahnert, of Woolpert, discussed Woolpert's equal opportunity hiring practices and the steps they take to fill positions under the EEO guidelines [advertising on web sites, state employment offices, participating in job fairs at universities, and referrals].

Mayor Pro Tempore Cole-McFadden asked Woolpert what positions the two black females hold in the office and if they have student interns from A&T State University.

Roger Dahnert, representing Woolpert, noted they are the controller and administrator. He made comments on the recruiting effort, but to-date none of the students have applied from A&T.

Mayor Pro Tempore Cole-McFadden asked the representative from Woolpert to send their job announcements to the City of Durham.

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LaVonia Allison, representing DCABP, raised a concern with this item. She asked Council to recognize qualified businesses existing in Durham and made comments on the Walltown Community. She commented on the contractor for the architectural design that the city is trying to take away and give to individuals who do not know the community and in support of Mr. Williams' firm. She noted he started out with Walltown when nobody was paid anything, helping them to come together and fight 30 years to get something. She indicated we need to have persons who are going to feel very comfortable with persons who have worked with them already and Woolpert hasn't work with an African American community. Also, she asked if the Walltown community was aware that this item was being discussed tonight.

Parks & Recreation Director Darrell Crittendon replied yes.

City Manager Baker noted they knew on June 20, 2005 that this item was coming back.

Council Member Clement made comments on the issue of fairness and noted he made a disclaimer about his relationship with Mr. Williams---his late wife's brother---at the last meeting. He spoke in support of the contract be awarded to G. H. Williams Collaborative.

For clarification, City Attorney Blinder noted as long as the Council Member has no financial interest in the matter, the fact that one of the firms has an owner who is a relative of the Council Member does not excuse or disqualify him from voting.

A motion was made by Mayor Pro Tempore Cole-McFadden seconded by Council Member Best to reconsider the recommendation from staff and use George Williams as the firm.

City Attorney Blinder asked staff if Council awards this contract to someone other than the firm recommended by staff would it be for the same price or would there be some negotiation.

Parks & Recreation Darrell Crittendon replied negotiation.

Council Member Best noted since this is a request for qualifications, would it be appropriate to make a substitute motion to vote down the agenda item and send it back to staff to negotiate with a preferred choice.

City Attorney Blinder noted it would be within Council's prerogative to do that in terms of negotiation leverage. Mr. Blinder stated if it is Council's desire to award it to another firm, Council could do a substitute motion to award it to the other firm on the same terms and for the same cost as presented tonight and if that firm that is awarded the contract is unwilling to do the work for the same cost and same level of services it would come back to Council.

Mayor Bell asked if the motion could include a price not to exceed the amount as printed on the agenda.

The friendly amendment was accepted.

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Mayor Bell restated the motion as follows: To recommend to staff that the contract be awarded to G. H. Williams Collaborative for a price not to exceed the amount listed in the agenda and the services not to be less than those proposed.

Based on staff's recommendation, Council Member Stith asked staff if anything was wrong with the process in the selection process.

Parks & Recreation Director Darrell Crittendon noted there were not any flaws in the actual process.

Mayor Bell made comments on the problem he had with G. H. Collaborative receiving zero points for personnel experience since he knows the firm and the history they have in working with the Walltown community.

Beth Timson, of Planning Department, noted she was not a part of the interview. She noted the question was asked about experience with recreation planning and recreation buildings and that G. H. Collaborative has not built any recreation centers.

Mayor Bell expressed concern that the staff person was not present tonight to address his question.

Relative to the firm of G. H. Collaborative, Council Member Catotti made comments on the scores made by the reviewer being similar. She spoke in support of the motion as recommended by staff, noted Woolpert and Moody-Nolan are a very experienced team as reflected in the scores. She noted she is very concern about the precedence, staff went through a process and after going back the City Manager has not changed his position.

A substitution motion was made by Council Member Catotti seconded by Council Member Brown to approve the item as printed on the agenda.

Council Member Brown expressed concern with moving forward with this item until bonds are approved, asked staff what will happen if the bonds are not passed for this project and noted the precedent we are setting is a very dangerous one. He noted the process has been fair and for us to go down from number one to number three sends a wrong message to the people who we are trying to get to support these bonds.

Parks & Recreation Director Darrell Crittendon noted staff would have to seek a variety of sources--grants, capital money and phase out the project.

Relative to the personnel experience, Mayor Bell asked staff if the different people rated presentation one [15 points] and presentation two [0 points] under G. H. Williams Collaborative.

Darrell Crittendon replied no, the same people.

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Mayor Bell made comments expressing concern with points going from 15 to zero by the same person under personnel experience and with the process.

Council Member Stith asked if the questions were the same.

Parks & Recreation Director Darrell Crittendon noted the only difference was the second presentation by G. H. Williams.

Relative to presentation two of G. H. Williams, City Manager Baker noted they are the only firm that made two presentations. We made a presentation to the Walltown community of the Woolpert Group and they asked to see the other presentations --basically the top four presentations. I asked for the top four presentations to be brought in and to be made. At that time the G. H. Williams group, unlike the other groups, made a second presentation on their own account not at the Manager's request. He requested four reviewers reconvene to review the G. H. Williams' second proposal and that is why you have the second numbers and they all agreed that the second proposal was better because their first score was 78 and their second score ended up being 85 and that was the change. I'm concerned that the second score is part of this process because it wasn't. It was simply me asking a question—does this presentation make any difference, does this move them up to second or first. It did move them up significantly, but in terms of the raw numbers--they are still third even if you consider their second presentation. He noted the only presentation that counted in terms of the staff's recommendation was the first presentation. I simply asked the question to see if it made any difference whatsoever to give the community an opportunity to look at that and that was on my account and outside of the process and not a part of the process.

Mayor Pro Tempore Cole-McFadden asked staff to share the makeup of the review team.

Parks & Recreation Director Darrell Crittendon outlined the following departments that were involved in this process: EO/EA, General Services, Public Works, Planning and Parks & Recreation.

Council Member Stith made comments on the process of second presentation. He asked staff what is the impact on delaying this item.

Parks & Recreation Director Darrell Crittendon noted there would not be a schematic design for the building and the funding is a part of the 1996 bond funding which is being used for the schematic design.

SUBSTITUTE MOTION by Council Member Catotti seconded by Council Member Brown to approve the Resolution Exempting the Architectural Design Services for the Walltown Park Recreation Center Project from G.S. 143-64.31;

To authorize the City Manager to enter into a contract with Woolpert, Inc. for the Architectural Design Services for the Walltown Park Recreation Center in the amount of \$199,620 and a \$19,962 contingency; and

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To authorize the City Manager to negotiate and execute change orders, and to make changes to the contract before executing it, if the changes do not increase the compensation to be paid by the City and do not decrease the goods and services to be provided to the City **FAILED** at 9:42 p.m. by the following vote: Ayes: Council Members Brown and Catotti. Noes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Clement and Stith. Absent: None.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Best to approve the Resolution Exempting the Architectural Design Services for the Walltown Park Recreation Center Project from G.S. 143-64.31;

To authorize the City Manager to enter into a contract with G. H. Williams Collaborative for the Architectural Design Services for the Walltown Park Recreation Center in the amount not to exceed \$199,620 and a \$19,962 contingency and services to be no less than what is outlined in the contract; and

To authorize the City Manager to negotiate and execute change orders, and to make changes to the contract before executing it, if the changes do not increase the compensation to be paid by the City and do not decrease the goods and services to be provided to the City was approved at 9:43 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best and Clement. Noes: Council Members Brown, Catotti and Stith. Absent: None.

Resolution #9274

Council Member Stith noted the process itself was all over the board and it's not fair to anyone and the citizens of Durham. He noted Council will need to address this issue from a process point of view.

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

SUBJECT: ORDERING IMPROVEMENT UNDER ENABLING ACT AUTHORITY - SEWER MAIN ON PAVILLION PLACE

Lee Murphy, of the Public Works Department, made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

MOTION by Council Member Clement seconded by Council Member Catotti to receive public comments; and

To adopt a resolution ordering a Sewer Main on Pavillion Place - from North Property Line of Pin 0709-02-85-4702 to South Property Line of Pin 0709-02-85-3564 was approved at 9:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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SUBJECT: ZONING MAP CHANGE – RENAISSANCE CENTER IV - P04-68 – THE JOHN R. MCADAMS COMPANY, INC. – EAST SIDE OF FAYETTEVILLE ROAD AND MASSEY CHAPEL ROAD

To receive public comments on zoning map change Case P04-68 (Renaissance Center IV); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case P04-68 out of MU(D), RM-8(D), RM-20(D); F/J-B and MTC (partial) and placing same in and establishing same as MU(D), O&I-2, GC; F/J-B and MTC (partial).

Planning Department Recommendation: Approval

Planning Commission Recommendation and Vote: Denial: 5-5

City/County Planning Director Frank Duke briefed Council on the staff report. He made comments on the different zoning districts associated with this request, highlighted committed elements with development plan outlined on page 3 of staff report—four categories of uses, square footage, uses prohibited, color material/design features, buffer requirements, a provision for dedication of tree save area located in the floodplain, a greenway easement, mass transit facility and a number road improvements required as a result of a TIA]. He noted as proposed this proposal is consistent with the Comprehensive Plan, staff is recommending approval and the Planning Commission denied this request [tie vote is a recommendation of denial].

Relative to committed element #7, Council Member Catotti asked staff to illustrate what part of the greenway is the committed element.

City/County Planning Director Frank Duke replied it is all the tree save area located in the floodplain on lots 7 and 1.

Mayor Bell opened the public hearing.

Proponents

Attorney Kenneth Spaulding, representing the applicant, spoke in support of this rezoning request. He made comments on the zoning request, noted the uses remain the same yet reducing the height of the two office towers from 6 and 5 stories to a one-story structure and a three-story structure. Mr. Spaulding commented on the realignment of Herndon Road and the impact on the adjacent parcel and the meetings held with residents. He urged Council to approve this rezoning request.

John Silverman, representing the applicant, noted changes were made to the plan based on items discussed with the neighbors/Planning Commission which include adding additional pedestrian connection, broken up parking lot with additional landscape and beefed up pedestrian space,

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extended water and sewer to 22 lots [10 vacant parcels], maintenance of buffer and outlined why he is excited about the project and re-landscape wetland pond.

Opponent

LaVonja Allison noted if the residents of Kentington Heights are supporting this rezoning, she would not be opposing it. She asked if the commercial development had been increased and residential development had been decreased.

Rebuttal

Attorney Kenneth Spaulding noted he cannot speak for Kentington Heights.

It was indicated that no one from Kentington Heights was present opposing this rezoning.

Walter McMiller, of 7521 Massey Chapel Road, noted the community of Ellison Heights has been in dialogue with the developer and are very satisfied with the responses they have gotten from the developer and are pleased to announce that they are in support of this project. He noted issues raised by the residents had to do with environmental impact, traffic and buffer zone between the adjoining community and the project and all questions were satisfactorily addressed.

Mayor Bell asked the developer to be more specific regarding the water and sewer connection for 22 lots that the developer would be providing.

Attorney Kenneth Spaulding noted from his client [Mr. McMiller] they would be provided with water and sewer, infrastructure including meter and for those who want it to go up to their house and they can begin to pay the City for their water and sewer.

Mayor Bell declared the public hearing closed.

Relative to water and sewer extensions, City/County Planning Director Frank Duke noted he would have some reservations about attaching this as a committed element to this development plan since this has no relationship to the impacts of this development. It is appropriate for the developer to deal with those issues privately with the residents of Ellison Heights. He acknowledged that he has been asked about the issues associated with annexation if water and sewer was done and he noted that would be a discretionary action by City Council and it would not be related to that extension automatically.

Council Member Brown asked if the water and sewer extensions should be deleted as a committed element.

City/County Planning Director Frank Duke noted it is not shown as a committed element but he heard Mr. Silverman say that he has made that agreement with the neighborhood.

Council Member Catotti asked if there was a private agreement between the developer and the neighborhood.

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Kenneth Spaulding, representing the applicant, replied yes.

Council Member Catotti made comments on the mixed used ordinance.

Frank Duke briefed Council on what would be different under the UDO.

Council Member Catotti asked if the residential development is in the site plan phase.

Frank Duke replied yes.

City/County Planning Director Frank Duke outlined the additional committed element offered by the developer: The developer would re-landscape and irrigate the existing stormwater facility located adjacent to Herndon Road.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Clement to receive public comments on zoning map change Case P04-68 (Renaissance Center IV); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case P04-68 out of MU(D), RM-8(D), RM-20(D); F/J-B and MTC (partial) and placing same in and establishing same as MU(D), O&I-2, GC; F/J-B and MTC (partial) was approved at 10:10 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

Council Member Stith commented on the opportunities coming to Durham for the underserved areas and asked the developer to be in touch with the Economic Development Office to hear more about what the City is doing.

MOTION by Council Member Best seconded by Council Member Clement to extend the meeting beyond 10:00 p.m. was approved at 10:12 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: LAND USE PLAN AMENDMENT — MCPHERSON HOSPITAL (A05-07)
– PARK CITY DEVELOPMENTS – WEST MAIN STREET BETWEEN
BUCHANAN BOULEVARD AND WATTS STREET**

To receive public comments on the McPherson Hospital Plan Amendment (A05-07); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Medium Density Residential (6-12 DU/Acre), Urban Tier to Commercial, Downtown Tier.

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City/County Planning Director Frank Duke briefed Council on the plan amendment. He noted the Planning Commission denied this request based on the lack of a buffer. Mr. Duke noted a buffer cannot be used as a factor in a plan amendment. Design issues with the site have to be dealt with through the rezoning and site plan process and cannot be done through a plan amendment. Another concern of the Planning Commission was the lack of a development plan which cannot be done with a plan amendment. He noted staff is recommending approval.

Mayor Bell opened the public hearing.

Proponent

Dan Jewell, representing the applicant, spoke in support of this plan amendment. He noted the hospital has been for sale for over a year and the applicant wants to do a very high quality, mixed used type of development on this site and commented on the meetings with staff and recognized the individuals present in support of this item. He noted the applicant will be coming back in September for the zoning portion of this request.

Mayor Bell asked the proponents if they still wanted to speak because no one signed up in opposition to this item.

John Dagenhart, of 1409 Dollar Avenue and President of the Trinity Park Neighborhood Association, spoke in support of this amendment. He noted the Association has voted to support this plan amendment.

Mayor Bell declared the public hearing closed.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Best to receive public comments on the McPherson Hospital Plan Amendment (A05-07); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Medium Density Residential (6-12 DU/Acre), Urban Tier to Commercial, Downtown Tier was approved at 10:20 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

Resolution #9275

Louis Goetz, representing Park City Development, requested that the rezoning case associated with this plan amendment be moved to September 19, 2005 since he will be out of the country on September 6.

MOTION by Council Member Clement seconded by Council Member Brown to defer the upcoming rezoning associated with this item to the September 19, 2005 City Council Meeting was approved at 10:22 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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[ITEMS PULLED FROM CONSENT AGENDA]

SUBJECT: NON-CITY AGENCY PROGRAM SPECIFIC COMPLIANCE EVALUATIONS (JUNE 2005) – WALLTOWN CHILDREN’S THEATRE – DURHAM ART GUILD, INC. – BIG BROTHERS-BIG SISTERS OF DURHAM AND ORANGE COUNTIES

MOTION by Council Member Clement seconded by Council Member Stith to receive and accept the Non-City Agency Program Specific Compliance Evaluations (June 2005) (Walltown Children's Theatre, Durham Art Guild, Inc., and Big Brothers-Big Sisters of Durham and Orange Counties) was approved at 10:23 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

SUBJECT: AMENDMENT TO SUB-RECIPIENT AGREEMENT – UDI COMMUNITY DEVELOPMENT CORPORATION FOR ADDITIONAL SIX MONTHS OPERATIONS COST SUPPORT OF SMALL BUSINESS INCUBATOR CENTER

Council Member Stith asked staff if the same performance indicators were a part of the original grant and are they on target.

Larry Jarvis, of Housing & Community Development, noted the indicators in this amendment are slightly more specific than what were in the original agreement. He noted in terms of where it needs to be, in terms of businesses assisted and jobs created they are on track.

By a vote of 6/0, the City Council authorized the City Manager to authorize the expenditure of CDBG funds in an amount not to exceed \$55,000;

To authorize the City Manager to amend the existing sub-recipient agreement with UDI Community Development Corporation to assist in the operating of a small business incubator center (the “Center”); and

To authorize the City Manager to make changes to the documents that do not increase the contract amount, lessen the contractor’s duties, or extend the term of the contract beyond February 28, 2006 was approved at 10:24 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Abstention: Mayor Bell. Absent: None.

SUBJECT: CONCERNED CITIZENS FOR ACCOUNTABLE GOVERNMENT

To receive comments from Charlotte Woods concerning the Mayor’s comments on the petition.

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Charlotte Woods, of 116 Augusta Drive, made comments on the petition to change the way school board members are elected, expressed concern with the comments made by the Mayor on June 6 surrounding the petition. For clarification, she noted this is not a proposal for an at-large election and the proposal would be electing the school board members in exactly the same way Council Members are elected. Relative to the school board, she noted the vast majority of the players in power with the exception of a few school board members have taken their eyes off the real prize and that is our kids. She expressed concern about threatening and intimidating the voters to not to sign the petition because Durham would receive law suits, discussed Section 5 of Voter's Right Act, and stated the petition effort is still ongoing. Relative to an audit, she noted Council received 9,000 signatures last year and it has totally been ignored and commented on letter from a citizen supporting an outside audit. Finally, she noted there are a lot of issues that a lot of people have concerns over and should be addressed.

Danny Goodwin, of 4001 Crown Hill Drive, noted he is tired of Wake and Orange county using what goes on in our school board meetings and Eagle Village to sell Wake and Orange county. He expressed concern with the Eagle Village project and made comments in support of Council spending a little money in finding out where this money has gone.

Janet Rawls made comments expressing concern with statements being made that they are not concerned about the children and are troublemakers. She noted she is for what's right and for our children, raised concern about changing the way the citizens of Durham vote for school board members.

Sheryl Smith noted we want our children to be educated and treated fairly. She asked that the leaders come together and work with the parents to make sure our schools succeed. She urged the Mayor, City and County leaders to come together to help the children.

Herman Davenport noted realtors are concerned about selling houses and not concerned about every child receiving a fair and equal education. He noted our kids are suffering today because of racism on the school board.

School Board Member Jackie Wagstaff expressed concern about comments made by Ms. Woods. She noted you can only vote in the district that you live in. She noted the only thing that Concerned Citizens do is advocate to get rid of black leadership and scrutinize black non-profits.

LaVonia Allison made remarks on the non-partisan elections and provided data on school system--suspension rate, turnover rate of teachers at Hillside High School, dropout and prison population.

Note: No action was taken by Council on this item.

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There being no further business to come before the City Council, the meeting was adjourned at 10:57 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk