

**DURHAM, NORTH CAROLINA  
MONDAY, MARCH 18, 2013  
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 William V. Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Don Moffitt and Steve Schewel. Absent: Howard Clement, III.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation followed by the pledge of allegiance led by Council Member Brown.

Mayor Bell read proclamations declaring March 22, 2013 as Arbor Day presented to General Services Director Joel Reitzer and Economic and Workforce Development Director Kevin Dick and March 26, 2013 as Diabetes Alert Day presented to Marissa Mortiboy, Information and Communications Specialist of Durham's Diabetes Coalition. Comments were made by recipients inviting everyone to participate in events planned for recognition.

Mayor Bell asked for priority items by the City Manager, City Attorney and City Clerk. There were no priority items by the City Manager and City Attorney.

City Clerk Gray stated a valid protest petition was filed against General Business Agenda Item #14 [Zoning Map Change – Guess Road 2].

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to accept the City Clerk's priority item was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

Mayor Bell explained that the Consent Agenda is approved with a single motion and items pulled from that agenda by any citizen or council member will be discussed at the end of the agenda. No items were pulled from the Consent Agenda.

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to approve the Consent Agenda was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**[CONSENT AGENDA]**

**SUBJECT: Citizens Advisory Commission – Appointment**

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**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti Brown to appoint Edward L. Kwon to the Citizens Advisory Commission with the term to expire on June 30, 2013 was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Appointment of a Second Durham City Council Representative to the Durham Workforce Development Board**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to approve the addition of a second City Council liaison appointed to the Durham Workforce Development Board was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Bid Report - January 2013**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to receive a report and to record into the minutes bids which were acted upon by the City Manager during the month of January 2013 was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Environmental Workforce Development and Job Training "Brownfields" Contract between the City of Durham and Durham Technical Community College Foundation, Inc.**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute a contract with Durham Technical Community College Inc. in an amount not to exceed \$150,000.00 to provide curriculum development and training in environmental technology for the 2013-2015 Brownfields Job Training Program was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Interlocal Agreement between the City of Durham and Durham County to Conduct a Joint Disparity Study**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute an Interlocal Agreement with Durham County for a joint Disparity Study was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

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**SUBJECT: Piggyback Purchase - Two (2) Vacuum Leaf Collector Trucks - Virginia Truck Center of Richmond, Inc.**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to enter into a contract with Virginia Truck Center of Richmond, Inc. in the amount of \$272,629.28 for providing the City with two (2) Vacuum Leaf Collector Trucks was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: FY 2012-13 CIP Budget Amendment - Project Close-Out**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to adopt an Ordinance Amending General Capital Improvement Project Ordinance, Fiscal Year 2013, as amended, the same being Ordinance #14286 for the purpose of closing \$133,894,591.00 in project costs;

To adopt an Ordinance Amending Stormwater Capital Improvement Project Ordinance, Fiscal Year 2013, as amended, the same being Ordinance #14288 for the purpose of closing \$1,265,612.00 in project costs; and

To adopt an Ordinance Amending Solid Waste Capital Improvement Project Ordinance, Fiscal Year 2013, as amended, the same being Ordinance #14289 for the purpose of closing \$831,763.00 in project costs was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**Ordinance #s 14409; 14410 & 14411**

**SUBJECT: Annual Property/Casualty Insurance Plan 2013 - 2014**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to maintain the general property/casualty insurance plan and modify it as may be needed provided the modifications are consistent with the City's overall risk management and financial objectives;

To purchase additional insurance throughout the year, as needed for special event, lease and contract requirements, new programs, and builders risk insurance; and

To expend an amount for all insurance premiums not to exceed \$789,012.00 to maintain the annual insurance plan and make additional insurance purchases as may be needed beginning April 1, 2013 was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro

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Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Lease of Non Residential Property and Contract for Service-Stepha"N T. Askew Foundation, Inc.**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute the Lease of Non-Residential Property and contract for Service with Stepha"N T. Askew Foundation, Inc. in the amount of \$0.00 was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Master Agreements for Transportation and Engineering On-Call Services**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute master agreements for Transportation and Engineering On-Call Services with the following firms: 1) AECOM Technical Services of North Carolina, Inc.; 2) Gannett Fleming, Inc.; 3) John Davenport Transportation Consulting; 4) Kimley-Horn and Associates, Inc.; 5) Martin/Alexiou/Bryson, P.C.; 6) Parsons Brinckerhoff; 7) Renaissance Planning Group, Inc.; 8) Ramey Kemp and Associates, Inc.; 9) RK and K; 10) Santec Consulting Services, Inc.; 11) URS Corporation;

To authorize the City Manager to execute master agreements for Data Collection On-Call Services with the following firms: 1) John Davenport Transportation Consulting; 2) Martin/Alexiou/Bryson, PLLC; 3) Ramey Kemp and Associates, Inc.; and 4) Quality Counts, LLC; and

To authorize the City Manager to execute supplemental agreements pursuant to the executed master agreements for (a) Transportation and Engineering On-Call Services and (b) Data Collection On-Call Services so long as the supplemental agreements do not exceed \$100,000 for any single project was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Sole Source Purchase of Kruger ANITA Mox Nitrogen Removal Process – I. Kruger, Inc.**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to authorize the City Manager to execute a purchase contract with I. Krüger Inc. for the purchase, delivery, startup and monitoring services for the ANITA Mox System in the total amount not to exceed \$647,100.00; and

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To authorize the City Manager to enter into a 10-year right-of-entry agreement allowing Krüger Inc. access to the site to harvest "seeded" media was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**[GENERAL BUSINESS AGENDA]**

**SUBJECT: Resolution to Support the Upper Neuse River Basin Association (UNRBA) Monitoring for the Re-Examination of the Falls Lake Stage II Goals at the Proposed FY2014 Funding Level**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to adopt a Resolution Supporting the Upper Neuse River Basin Association Plan for Monitoring Falls Lake and the Falls Lake Watershed to accomplish the Re-Examination of the Falls Lake Stage II Goals at the proposed FY2014 funding level of \$149,742.67 was approved at 7:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**Resolution #9848**

**[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]**

**SUBJECT: Zoning Map Change - 2125 Guess Road 2 (Z1200006)**

To conduct a public hearing to receive comments on the zoning map change for 2125 Guess Road 2 (Z1200006); and

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200006 out of Office Institutional (OI), and Residential Urban - 5 (RU-5) and placing same in and establishing same as Commercial Neighborhood with a development plan (CN(D)) and Residential Urban - 5 with a development plan (RU-5(D)); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials; or

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

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Staff Determination: Staff determines that this request is consistent with the Unified Development Ordinance, the Comprehensive Plan and other adopted policies and ordinances.

Planning Commission Recommendation and Vote: Denial, 7-7 on November 13, 2012. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. However, the Commission believes the request is not reasonable nor in the public interest and recommends denial based on inconsistency with neighboring land uses and opposition from the community.

[The site is located at 2125 and 2131 Guess Road, north of Broad Street and Sunset Avenue, PINs 0822-06-37-6672, 0822-06-37-6636] (Resource Person: Patrick Young, AICP - 919-560-4137 ext. 28273) (PR# 8957)

Noted: Valid protest petition filed.

City/County Planning Director Steve Medlin briefed Council on the zoning case for Guess Road 2 that was continued from the February 18<sup>th</sup> City Council meeting. He stated the present zoning designation is Office/Institutional and Residential Urban-5 and the applicant is requesting a zoning designation of Commercial Neighborhood and Residential Urban -5 with a development plan.

In addition to the development plan committed elements listed in your staff report, the applicant has proffered the following additional committed elements for the record:

1. The maximum building height for any building located on the lot at 2125 Guess Road from the ground to the highest point on the building shall be 20 feet.
2. The property at 2125 Guess Road may be used for the following uses as provided in the CN District only:
  - a) Single-family detached residential use,
  - b) Retail sales and service use except payday lenders, drive-through facilities, veterinary clinics, animal hospitals, and kennels,
  - c) Antique shops
  - d) Art, music, dance, photographic studio or gallery uses, or
  - e) Office uses

No other uses shall be allowed.

In the uses permitted, no food or beverages shall be prepared for sale, sold, or served, no fuels, weapons, explosives, or pesticides shall be stored, sold or distributed, and no tobacco products or smoking-related products shall be served, sold, or distributed.

3. Commercial or office uses at 2125 Guess Road shall not be open to the public before 8:00 a.m. or after 7:00 p.m.

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4. The maximum number of off-street parking spaces located on the lot at 2125 Guess Road shall be five spaces. The property at 2131 Guess Road shall not be used for any parking serving the property at 2125 Guess Road.
5. Vehicular access to the property at 2125 Guess Road shall be provided by a single driveway.
6. A 4 foot high fence, 16 feet long shall be constructed between 2125 and 2131 Guess Road.
7. Exterior lighting shall be limited to single-bulb lamps mounted at exterior doors and one pole-mounted fixture illuminating the parking area at 2125 Guess Road. The pole mounted fixture shall not exceed seven feet in height. No bulb or burning element shall be visible from any adjacent residential adjacent property or from either property at 2125 Guess Road or the property at 2131 Guess Road.
8. In the event that the property at 2125 Guess Road is used for a non-residential use, there shall be no more than one sign located on the property. The sign shall not exceed 32 square feet in display area, the maximum height shall be eight feet, shall be constructed of wood, brick, stone, or any combination of these materials and shall not be illuminated.
9. No non-residential use shall be made of the property at 2125 Guess Road until the buffers described herein are installed and the commitments listed in this development plan are implemented.
10. Applicant has agreed to install a seven foot high wooden fence along the common property line with the Ringer property located at 1802 Sunset Avenue.

He reported staff has determined that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances and the Planning Commission recommended denial at its November 13, 2012 meeting.

Mayor Bell stated this item was deferred two cycles to allow proponents and opponents to have continued discussion on this item in order to reach a compromise.

Mayor Bell opened the public hearing.

### **Proponents**

Nickolaos Bourbous, the applicant, spoke in support of this item. He provided Council with a corrected letter dated March 12, 2013 addressed to Scott Whiteman of the Planning Department agreeing to install a 7-foot high wooden fence along the common property line with the Ringer property located at 1802 Sunset Avenue, a 15-foot buffer off of the Ringer property line or a 20-foot buffer with no fence. Also, he agreed to install a 4 foot wood fence between 2125 and 2131 Guess Road approximately 16 foot long. He urged Council to support this request.

Peter Bourbous spoke in support of this zoning map change for Guess Road 2, referenced commitments noted by his father, Nickolaos Bourbous, and expressed a concern with providing additional buffer.

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George Bourbous spoke in favor of this request. He explained why they do not have a developer any longer; referenced that commitments on the development plan are reasonable, beautify neighborhood as well as properties and urged Council to support this request.

City/County Planning Director Steve Medlin stated the committed elements read earlier are legally enforceable and in excess of the minimum Unified Development Ordinance standards. He informed Council that the development plan shows a 15-foot buffer, but the applicant would also have to install a solid masonry wall or an evergreen edge—six feet in height and enough materials equivalent to 40 plants for every 100 linear feet of frontage. For clarification, Steve Medlin stated this discussion was held with Mr. Bourbous.

### **Opponents**

Kay Ringer spoke against this zoning map change. She stated she would like to have a plan that addresses all the needs of everyone involved. She made comments on attempts and proposals to reach an agreement, stated plan does not meet the criteria that the neighborhood has been asking for and urged Council to deny this request.

Tom Miller, representing Watts-Hospital Hillandale Neighborhood Association, stated attempts and offers have been made to Mr. Bourbous, but they are still far apart. He noted the letter presented by Mr. Bourbous includes things that do not rise to the minimum requirements of the zoning code and their proposal included minimum requirements and more. He explained why the current zoning is the best for this area.

Chris Rusconi asked Council to reject this zoning map change due to key buffer components that protect the residential use of properties on Sunset Avenue, Delaware, Wagner and Guess.

For clarification, Steve Medlin outlined Mr. Bourbous' options.

Mayor Bell closed the public hearing.

**MOTION** by Council Member Catotti seconded by Council Member Schewel to receive comments on the zoning map change for 2125 Guess Road 2 (Z1200006); and

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200006 out of Office Institutional (OI), and Residential Urban - 5 (RU-5) and placing same in and establishing same as Commercial Neighborhood with a development plan (CN(D)) and Residential Urban - 5 with a development plan (RU-5(D))

**FAILED** at 7:49 p.m. by the following vote: Ayes: None: Noes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Absent: Council Member Clement.

Note: The Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

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**SUBJECT: Unified Development Ordinance Text Amendment, Farmers' Markets and Commercial Crop Production (TC1200005)**

To conduct a public hearing to receive comments on the Unified Development Ordinance Text Amendment, Farmers' Markets and Commercial Crop Production (TC1200005); and

To adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 5, Use Regulations; Article 7, Design Standards; Article 9, Landscaping and Buffering; Article 10, Off-Street Parking and Loading; and Article 16, Definitions.

Recommendations: Staff recommends approval. The Planning Commission recommended approval at its December 11, 2012, meeting with a vote of 12-1.

Michael Stock, of the City/County Planning Department, briefed Council on the text amendment that would cover two topics: farmers' markets and commercial crop production. He referenced the goal and scope for this amendment is to provide an initial, quick fix to the ordinance to allow expanded permissibility of farmers' markets on sites not typically permitted for commercial activity, and for expanded permissibility throughout the city limits, beyond what is currently allowed, for crop production.

He stated the intent of the amendment is to establish broader permissibility for farmers' markets in areas where retail activity is not typically permitted and summarized proposed regulations:

1. Establishment of a temporary use permit process to allow farmers' markets in all non-residential zoning districts and within certain non-residential uses in residential zoning districts.
2. Vendors shall be limited to those who produce food or beverage items, farm products, or value-added farm products. Definitions for these terms are also proposed.
3. Supplemental requirements are proposed specifying allowed hours and days of operation, signage, and parking.
4. Clarification of existing principal use provisions and outdoor markets.

Mr. Stock provided background information on crop production. He mentioned that agricultural crop production is not currently permitted in most zoning districts within the City limits, but permitted within the Rural Residential (RR) and Residential Suburban-20 (RS-20) zoning districts within City limits and agricultural uses within the County are exempt from zoning regulations due to State statute. He stated this amendment would allow crop production within all zoning districts within City limits, while providing basic supplementary requirements, and he summarized the proposed regulations as noted:

1. Maintain permissibility of all agricultural uses within the RR and RS-20 zoning districts within City limits.
2. Allow on-site sales.
3. Require on-site parking only when permanent structures are proposed for on-site sales.
4. Prohibitions on aquaponics and the sale of compost, except where already permitted.

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5. Clarification on the permissibility of apiculture (bee keeping).
6. Relaxed regulations on outdoor storage for agricultural uses.

He reported the Durham Planning Commission held a public hearing on this text amendment and received a request to allow crafts within farmers' markets; and requests for reduced parking requirements, aquaponics, and the sale of compost for crop production within the City limits. The Planning Commission recommended approval of the text amendment without further changes at its December 11, 2012 meeting, recognizing that although some of these topics warranted further discussion, but also recognized the scope of the project, which was meant to be very limited and quick fix at the time, and did not feel that it was worthwhile delaying this text amendment.

In regards to composting, there is no restriction on the generation of compost for on-site use. Compost production, sale and distribution is currently permitted in industrial zoning, but will not be proposed for this text amendment.

As for aquaponics, Planning also understands this is an important component and developing aspect of crop production. However, there has not been the time or resources to analyze the impacts this methodology may have on surrounding properties and thus is not including it in this amendment. That does not mean it cannot be considered in the future.

Michael Stock stated there are other municipalities that do allow aquaponics and wanted to take time to make sure that it would be done in an appropriate manner. He stated the Planning Department wanted to make sure they considered all aspects of fish production—raising of it along with waste disposal.

Council Member Schewel thanked staff for the work they did on this item. He asked staff to review non-food items being sold at Farmer's Markets and report back with recommendations to do aquaponics and composting.

Council Member Moffitt spoke in support of moving this item forward and referring the issues of composting, aquaponics and non-food items at Farmer's Market to the Joint City/County Planning Committee for consideration.

City/County Planning Director Steve Medlin reminded Council that it is not the Joint City/County Planning Committee that sets the departmental work program, but provides guidance to the two managers. It is ultimately the City Council and Board of County Commissioners that adopt their annual work plan.

Mayor Bell opened the public hearing.

Peter Schubert, representing the South Durham Farmer's Market, asked Council to adopt the proposed UDO text amendments for Farmer's Market and Commercial crop production. He applauded all efforts to remove restrictions that currently only allow Farmer's Market on commercial or other similarly zoned properties or parcels. He stated it is vital to agriculture in Durham [rural and urban] that Farmer's Markets be allowed to operate as close to residential

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neighborhoods to where the people live as possible, wherever suitable space and parking are available. These proposed text changes go a long way to unleashing the potential for Durham growers to feed all the citizens of our city and county with the healthiest food available and with the maximum benefits to everyone to include health, nutrition, jobs and by fostering a community centered around growing and eating food. He commented that citizens have made comments that the text amendments before Council are not perfect, have missing key elements and are not complete. He urged Council to approve text amendments tonight and commit to further improvements to the ordinance as a priority in the coming year and stated Council would be helping to bring Durham to the forefront of urban agriculture in the southeast and to become a model for communities across the country.

Emily Kate Hannapel thanked Council for taking on this item. She made comments regarding the urban farm that she and her partner would be starting so that neighborhoods could receive fresh and nutritionist vegetables. She urged Council to support this item.

Kevin Hamak spoke in support of the text amendments. He pointed out that there are items missing [aquaponics and compost] that would be an added revenue source. He urged Council to help move this item forward in getting the sale of aquaponics and compost into the ordinance.

Mayor Bell closed the public hearing.

Council Member Catotti noted that it's important to move forward which is an initial step and they will have to reprioritize other items on the Joint City/County Planning Committee work plan. She encouraged residents to contact County Commissioners that serve on that board also.

Council Member Schewel thanked Mr. Hamak for his work and contributions to Northeast Central Durham.

Several members of Council thanked staff and community for their work on this item.

**MOTION** by Council Member Moffitt seconded by Council Member Catotti to receive comments on the Unified Development Ordinance Text Amendment, Farmers' Markets and Commercial Crop Production (TC1200005);

To adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 5, Use Regulations; Article 7, Design Standards; Article 9, Landscaping and Buffering; Article 10, Off-Street Parking and Loading; and Article 16, Definitions; and

To refer the matters of compost and aquaponics to the Joint City/County Planning Committee for further consideration was approved at 8:13 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**Ordinance #14412**

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**SUBJECT: Unified Development Ordinance Text Amendment, Removal of Discretionary Regulations (TC1100007)**

To conduct a public hearing to receive comments on the Unified Development Ordinance Text Amendment, Removal of Discretionary Regulations (TC1100007); and

To adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 2, Review Authority; Article 3, Applications and Permits; Article 4, Zoning Districts; Article 5, Use Regulations; Article 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; Article 10, Off-Street Parking and Loading; Article 11, Sign Standards; Article 12, Infrastructure and Public Improvements; Article 13, Additional Requirements for Subdivisions; Article 14, Nonconformities; Article 15, Enforcement; and Article 16, Definitions.

Recommendations: The Staff recommends approval. The Planning Commission recommended approval, 13-0, at the December 11, 2012, meeting.

Michael Stock, of the City/County Planning Department, briefed Council on this text amendment that modifies the discretionary provisions of the UDO to allow flexibility through either: 1) specific supplementary, or performance, standards; 2) approval through an existing quasi-judicial mechanism; or 3) in some cases, both methods. Additional changes that were deemed necessary to come into conformance with other federal regulations were also made.

He reported State legislation went into effect at the beginning of 2010 that explicitly defined quasi-judicial decisions to specifically include discretionary decisions authorized by local development ordinances for the purpose of site plan approval. Durham's Unified Development Ordinance (UDO) contains provisions intended to provide flexibility in response to unique site conditions and development circumstances. Some of these provisions require the exercise of discretion without employing quasi-judicial decision-making procedures, and thus are not compliant with the state statute. He stated the purpose of this text amendment is to bring the UDO into compliance by revising discretionary provisions, while continuing to provide flexibility in the UDO, either through performance standards, quasi-judicial procedures.

He stated Planning staff began reviewing the entire UDO in July 2011 to identify all discretionary provisions. The draft revisions were issued for public review in early July 2012. The Joint City-County Planning Committee (JCCPC) reviewed the draft revisions on August 1, 2012, received comments from the public, and suggested minor revisions to the draft. The comments received primarily consisted of sections of the UDO regarding parking, floodplain development, sidewalks, and vehicular access, in addition to minor technical or typographical errors. Subsequently, staff reviewed the comments and held discussions with representatives of the development community and the Tuscaloosa-Lakewood Neighborhood in regards to its MPO to determine the revised regulations and what additional revisions were necessary.

He said at the November 13, 2012, Planning Commission meeting, staff provided the draft text amendment in order for the Planning Commission to have an adequate amount of time to review the document prior to the public hearing held on December 11, 2012, and recommended approval of this request.

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He stated the proposed text amendment modifies the UDO in regards to the discretionary provisions and most of the articles in the UDO have been modified in some way. He briefed Council on revisions to the UDO for the following articles:

1. Article 2, Review Authority: Dissolve the Development Review Board (DRB) and the Design District Review Team (DDRT).
2. Article 3, Applications and Permits: New site plan categories and the removal of Section 3.14, Administrative Adjustment.
3. Article 4, Zoning Districts: Revisions to the Tuscaloosa-Lakewood Neighborhood Protection Overlay (TLNPO), and revisions to the Major Transportation Corridor (MTC) Overlay.
4. Article 5, Use Regulations: Revisions to limited use standards and custodial care.
5. Article 6, District Intensity Standards: Revised parking and sidewalk requirements for the University-College Districts (UC and UC-2).
6. Article 7, Design Standards: Revisions to utility and trash handling.
7. Article 8, Environmental Protection: Revisions to approval authority for development in special flood hazard areas.
8. Article 9, Landscaping and Buffering: Revised landscaping requirements through a Landscape Manual, and revised screening.
9. Article 10, Off-Street Parking and Loading: Revisions to methods for parking reductions and alternative forms of compliance.
10. Article 12, Infrastructure and Public Improvements: Revisions to vehicular access and sidewalk requirements.
11. Article 14, Nonconformities: Revisions to Section 14.4, Nonconforming Improvements and Structures, reducing the instances that would require a minor special use permit.

He gave an overview of the following changes made to the articles by the Planning Commission which received a recommendation of approval:

1. Additional text to Section 9.9, Fences and Walls,
2. Revision to existing text in Section 10.3, Required Parking
3. Revision to proposed text for Alternative Pedestrian plans in Section 12.4, Pedestrian and Bicycle Mobility. Since only RTP and Treyburn had existing, valid alternative pedestrian plans, it was decided to maintain the validity of those plans.

Also, he gave an overview of the following changes made subsequent to the Planning Commission hearing:

1. Grammatical and word choice corrections that made no substantial change to the intent of the standards; these changes only clarified or provided further correction to the text of the standard.
2. A proposed change from "major" to "minor" special use permit for certain development within the floodplain indicated in paragraph 8.4.4C, Development Requiring a Minor Special Use Permit. The proposed change would make the Board of Adjustment the approval authority instead of the governing bodies. Approvals will still require a quasi-judicial hearing, the overall process would remain the same, and no changes in the findings are made.

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3. Adjustments to changes within paragraph 5.3.3N, Wireless Communication Facilities for Transmitting and Receiving Electronic Signals (WCFs). Staff has reviewed comments received from citizens and agreed that:
  - a. Proposed changes to “third-party review” standards should be removed and considered in a future text amendment specific to wireless communication facilities; and
  - b. A revision should be made to paragraph 5.3.3N.13.4, Aesthetics, to remove the phrase “to the extent feasible.” Staff agrees that this is a discretionary standard.

Mayor Bell opened the public hearing.

Council Member Catotti stated the Joint City/County Planning Committee is scheduled to discuss the cell tower matter on April 3, 2013.

Regarding the third party review, Mike Stock of the City/County Planning Department, stated the current language leaves it to the discretion of the Planning Director, when third party review is warranted that staff shall seek additional technical analysis through third party.

For clarification regarding changes to wireless communication, Mike Stock stated there were citizen comments regarding third party review and aesthetics that were incorporated into the text amendment, but referenced that there will be future discussions and foresees a future text amendment specifically concerning wireless communication facilities.

John Martin, President of Inter-Neighborhood Council, stated at their February meeting a committee was appointed regarding this matter. He noted a group of comments were assembled about the revisions and commended the Planning Department for their work; however, it is not complete. He stated the executive committee of the Inter-Neighborhood Council adopted a resolution and they felt that there were several weaknesses in the UDO in particular that need to be dealt with: 1) impermissible discretionary decision making continues to be vested in persons or agencies not authorized to make such decisions; 2) the standards governing the decision making are either absent or overboard; 3) the legislative authority of the City and County is impermissibly delegated to government departments by referenced publications, manuals and guidelines which are not themselves adopted by ordinance; 4) important substantive regulations safeguarding neighborhoods and persons living in proximity to proposed development currently proposed in the code; however, imperfectly are eliminated or reduced; 5) the rights of citizens to be heard on matters relating the regulation development and land use have been curtailed.

Susan Sewell stated she was opposed to the passage of these changes at this time which require more study. She stated she understands the need to eliminate discretionary decision making, but felt that we have moved in the wrong direction putting more emphasis on the Planning Department being the deciding body and less on some kind of public hearing, citizen participation and notice. She made comments about interpretations from various staff members regarding the Tuscaloosa-Lakewood Neighborhood Association overlay from one year to the next which resulted in an erosion of that overlay. She thanked Council for entertaining the possibility of postponing this item and having more neighborhood input.

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John Schelp stated the strength of Durham is in its neighborhoods and asked Council to review the comments from the Inter-Neighborhood Council and come back with a better document. He stated the voices of the neighborhoods are important and so, if we can strengthen this very important document, the UDO, it would make Durham better.

Carol Baldwin stated that passing this amendment without making additional changes in the UDO Article, 5.3.3N, which deals with WCFs, will be a major setback to the rights of Durham residents. If this amendment which does away with the DRB passes, then every time the planning director, who will now have approval authority, puts pen to paper and approves another concealed cell phone tower in a residential zone, he will do so without first notifying nearby residents or holding any public hearing. The residents most likely will have no knowledge of the proposed tower before the planning director signs the approval, nor will they have opportunity for input unless and until they hire an attorney to appeal the approval. She stated Durham residents have a right to notification and a public hearing as part of the approval process. She referenced that there are other types of changes in the land use proposed in residential zones that require notification and public hearing, such as the designation of an historic landmark. She urged City Council and Planning Commission to not hide behind "concealed metal towers and take a positive step to protect their rights as citizens and residents. She noted if you do away with the DRB, please make sure that you also amend those sections in Article 5.3.3N that pertain to approval authority for concealed towers in residentially zoned areas to include language that requires in the process both notification to surrounding residents and a public hearing.

Dolly Fehrenbacher stated over the past 18 months in dealing with the proposed Southpoint Cell Phone Tower and the Durham's Unified Development Ordinance, the GoodNeighbors of 751/Durham have learned that Section 5.3.3N specifically addressing the freestanding concealed tower ordinance does not allow for much citizens' input. Presently, with the Durham Review Board, the UDO offers a small opportunity of notification and communication for concerned residents. With the removal of the DRB, residents will no longer have a say in what should be a community issue. We strongly object to the timing of this vote to remove DRB because we recognize that to place these commercial towers into our neighborhoods should take the approval of a legislative body and not an administrative staff. Any construction, especially business, that can impact surrounding properties should be addressed in an open forum. She noted next month they will be presenting their concerns to the Joint City/County Planning Committee in hopes of correcting this ordinance and mentioned that the GoodNeighbors of 751/Durham still have a pending case before the Durham Review Board. They asked the question that if the DRB is removed before their Southpoint Tower case is resolved will the tower company be allowed to drop their present application and reapply under the new amended UDO with no DRB at the same location.

Dorothy Croom thanked Council and Planning staff for meeting with them regarding this matter and stated that they want to be a part of the process.

Donna Rudolf commented on her visit to residents within Eagles Pointe subdivision and shared some of their remarks regarding wireless communication facilities as follows: 1) That review board, it doesn't sound like the American way, throwing out a committee and giving all authority to one guy; 2) Maybe they should get rid of that DRB because it isn't fair. It's what approves

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those big trees in our zone, but doesn't put them in other city residential zones. Why pick on just us? 3) Why does Durham divide the tall towers by concealed and not concealed? Neither of them should be allowed among houses. What happened to zoning rules? ; 4) For that 751 tower why didn't they invite everyone nearby to see a Balloon test? In the county, where I used to live, people got a letter to come see how visible the tower would or wouldn't be; 5) I've seen those towers in school yards here...in France we don't like electromagnetic radiation to be near kids. We discourage young kids having cell phones on their ears and in their pockets. Oh, I didn't know your government won't let you talk about it; 6) Changing that third party review rule to apply to only special permit cases is not good for Eagle's View since we're a zone where no special permit is required before setting up a tower. It's not in our best interest that a tower company knows it won't face any check up of its permit; and 7) I saw a chart that shows in most residential zones here, wireless attention can't be more than 25 feet above zoning allowed structures.

Linda Huff, representing the Bicycle and Pedestrian Advisory Commission's Development Review Committee, stated they have some adjustments to make to the pending UDO changes. She stated after the Work Session they met with the staff from Planning, Transportation, and Public Works to discuss the sidewalk construction issue. After that meeting there were some problems with implementing this program that needed performance standards that they have not had time to develop. She noted the Planning Department has agreed to work with them to fix the part of the ordinance that they wanted to change so tonight they are withdrawing their request to add sidewalk in lieu to the UDO. For reasons stated in the memo it is good program that would be good for developers and City, but has not been flushed out well enough to make it usable. She asked Council to incorporate other suggestions made by the Bicycle and Pedestrian Advisory Commission into the UDO as written in the BPAC memo with the exception of sidewalk in lieu be removed from 12.4.2.d3.

Mike Stock, of the City/County Planning Department, stated staff received comments from the Inter-Neighborhood Council this morning, but did not have time to review them.

Several members of Council thanked staff, citizens and everyone involved for their review, input and work on the UDO.

Council Member Catotti stated it's important to move forward today with the recommendation. She asked that the Manager and staff to review the additional input from the Inter-Neighborhood Council and individual citizens.

Mike Stock reported DRB is not a board that heard public hearings. It is technical review body made up of City and County staff with representatives from Durham Open Space and Trails and Durham Pedestrian Advisory Commission. Whenever the DRB is no longer in existence, he noted the processes and procedures for site plan review are not changing. The same requirements have to be met and still reviewed by a host of different review bodies and agencies within the city and county. Site plans have to demonstrate that all applicable ordinance requirements have been met before it is approved and once it is approved, there is an opportunity to appeal it. In reference to timing, he reported the ordinance is out of compliance. This has gone through multiple reviewing agencies in terms of changes, offices of the City and County

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Attorney. On a yearly basis, Council and the Board of Commissioners will receive technical changes that will need to happen, and the comments submitted will be definitely reviewed to see what is applicable to be included within the next round of technical changes that would come before the Council through the same public hearing process—Planning review, Planning Commission public hearing and governing bodies public hearings. Also, he reported they send out monthly all new applications that come in, to all contacts that have been registered with the Planning Department to receive public hearing notices, and there's an on-line developer tracker--tracking all development cases ranging from site plans, use permits, historic preservation, etc. that are listed on the web.

Mike Stock explained how concerns [sidewalk matter] raised by the Durham Bicycle and Pedestrian Committee were addressed.

Council Member Schewel made comments on the concerns raised from the 751 group. He shared his concern and spoke in support of adequate notification.

City/County Planning Director Steve Medlin indicated that the cell tower facilities discussion will begin at the April meeting of the Joint City/County Planning Committee. At that meeting, staff should receive some guidance from the body to pull together additional modifications to the UDO and present that at their June meeting. If what staff presents in June is acceptable then it would be moved through the public hearing process—in July/August to the City/County Planning Commission and then it would go to the City Council and Board of County Commission shortly thereafter.

To address question raised by Ms. Fehrenbacher, President of the GoodNeighbors of 751/ Durham, regarding any affects on their appeal, – Mike Stock stated that it would have no effect. The language within the order maintains the DRB for any cases that have been remanded back to them from the Board of Adjustment.

City/County Planning Director Steve Medlin explained the process of how a cell tower application can be submitted before the ordinance is changed.

Mayor Bell expressed a concern that administratively a cell tower application can be approved. Mayor Bell asked staff if they were aware of any proposed cell tower applications coming in between now and June.

Mike Stock replied that he is not aware of any. He indicated that the effective date of the ordinance would be June 1, 2013.

If the County does not approve the ordinance, Steve Medlin stated there would be a divided ordinance—whatever is adopted by Council would be applicable in the city limits and whatever is adopted by County Commissioners would be applicable in the county.

Mayor Bell stated he has some strong feelings concerning notification to citizens.

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Based on the process, Steve Medlin stated that it would be in the fall before Council would consider the text amendment related to wireless communication facilities.

Council Member Schewel asked staff is there any way between now and June 1<sup>st</sup> that staff could bring to Council, not UDO related, a resolution by Council or whatever the appropriate way of doing this, that will provide some notification for people within a certain area of the cell tower.

City/County Planning Director Steve Medlin replied if it is the Council's desire for staff to provide that notification within a prescribed distance [1,000 feet], they could do that for any application and bring that forward as a component of the code when it does come forward to Council. He informed Council that this would be a cost that the department would have to incur because they cannot pass that on to the applicant.

Council Member Schewel stated that this is a good idea that would take care of that interim period where there is some concern with notification.

Mayor Bell stated it is worth the cost and said if, in fact, you have that unique case where it does happen, notification is very important.

Council Member Moffitt asked staff does the current ordinance provide for notification for wireless communication facilities/will that be eliminated in the proposed changes.

Steve Medlin replied no. He stated the only required notification currently would be if there's a major special use permit required, then we are required by law to notify property owners in proximity to the tower. He stated we are not changing the notification standards that are currently in place for this text amendment.

Council Member Moffitt asked staff is the discussion about 1,000 feet notification zone and notification by June 1<sup>st</sup> in addition to any current required notification.

Steve Medlin replied that would be true.

Mayor Bell stated he would hope that staff would be able to put the recommendation in place that Council Member Schewel had indicated relative to cell tower notification, specifically, as we move forward.

Mayor Bell closed the public hearing.

**MOTION** by Council Member Brown seconded by Council Member Catotti to receive comments on the Unified Development Ordinance Text Amendment, Removal of Discretionary Regulations (TC1100007); and

To adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 2, Review Authority; Article 3, Applications and Permits; Article 4, Zoning Districts; Article 5, Use Regulations; Article 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; Article 10, Off-Street

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Parking and Loading; Article 11, Sign Standards; Article 12, Infrastructure and Public Improvements; Article 13, Additional Requirements for Subdivisions; Article 14, Nonconformities; Article 15, Enforcement; and Article 16, Definitions was approved at 9:18 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

City/County Planning Director Steve Medlin stated they understood the Council's intent as to provide that notice and will begin doing so immediately.

**Ordinance #14413**

**SUBJECT: Proposed Fee Ordinance Amendments for the City-County Planning and City-County Inspections Departments**

To conduct a public hearing to receive comments on the Proposed Fee Ordinance Amendments for the City-County Planning Department and City-County Inspections Department; and

To adopt the Proposed Fee Ordinance Amendments for the City-County Planning Department and City-County Inspections Department.

City/County Planning Director Steve Medlin stated this the companion to the item just adopted. He stated this item modifies the current fee structure to re-label some of the site plan categories to match the new categories that were listed in the text amendment. He reported there would be no increase or modification to fees, just changing the site plan categories.

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

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Brown to adopt the Proposed Fee Ordinance Amendments for the City-County Planning Department and City-County Inspections Department was approved at 9:19 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**Ordinance #14414**

There being no further business to come before the City Council, the meeting was adjourned at 9:19 p.m.

Linda E. Bratcher, CMC  
Deputy City Clerk

D. Ann Gray, MMC, NCCMC  
City Clerk

**DURHAM CITY COUNCIL WORK SESSION**  
**Thursday, March 21, 2013 – 1:00 p.m.**  
**Committee Room – 2<sup>nd</sup> Floor – 101 City Hall Plaza**

**Present: Mayor William V. “Bill” Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Don Moffitt and Steve Schewel. Absent: Council Member Howard Clement III.**

**Also present: City Manager Thomas Bonfield, City Attorney Patrick Baker and City Clerk D. Ann Gray.**

The meeting was called to order by Mayor Pro Tempore Cole-McFadden.

Mayor Pro Tempore Cole-McFadden asked if there were any announcements from the Council.

At the request of Council Member Brown, Deputy City Manager Keith Chadwell provided a status report on the Rolling Hills Development. He said the site preparation phase of the project has experienced some delays in trying to remediate some environmental discoveries which were not prevalent to the preliminary assessment. However, he said the project is moving steadily forward and referenced the tax credit units being completed by the end of the year.

City Manager Bonfield said a full project update will be given to the council at the April 4, 2013 City Council Work Session.

Mayor Pro Tempore Cole-McFadden asked for priority items from the City Manager, City Attorney and City Clerk Gray.

City Manager Bonfield asked that council suspend the rules on Item #6 [Resolution Authorizing A Revision to the City’s Right of Re-Entry Associated with the Property Necessary for Goley Pointe].

The City Manager’s item was accepted by the Council.

There were no priority items from the City Attorney and City Clerk.

After Mayor Pro Tempore Cole-McFadden announced each item on the agenda, the following items were pulled for discussion/comments and/or council action.

**Subject: Approval of City Council Minutes**

To approve the City Council Minutes for the January 4, 2013 Special City Council Meeting, January 7, 2013 and January 23, 2013 Special City Council Meetings and the February 18, 2013 City Council Meeting.

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Council Member Moffitt asked that the City Clerk make a correction to the February 18, 2013 minutes, page 16, third paragraph. He stated it should read \$500 per student, and there are 10 additional students.

Mayor Pro Tempore Cole-McFadden asked the City Clerk to review and make the necessary correction.

**Subject: Resolution Authorizing A Revision to the City's Right of Re-Entry Associated with the Property Necessary for Goley Pointe**

To adopt a Resolution Authorizing a Revision to the City's Right of Re-Entry for 1406 Morning Glory Avenue, 1408 Morning Glory Avenue, 1504 Morning Glory Avenue, 115 N. Goley Street and 118 N. Goley Street as Conveyed to Development Ventures Incorporated.

Development Ventures Incorporated and the Housing Authority of the City of Durham wish to construct 20 units of affordable multifamily rental housing that will be known as the Goley Pointe development. Twelve of the 20 units will serve homeless families. The project will be owned by Goley Pointe, LLC, which is a North Carolina limited liability company, with Development Ventures Incorporated as its sole member and manager. The lots were re-platted and recombined, and now require single ownership by Goley Pointe, LLC.

**MOTION** by Council Member Catotti seconded by Council Member Schewel to suspend the rules of the City Council and take action on this item was approved at 1:12 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

The following discussion was held on this item.

Council Member Moffitt asked once the building permits have been issued and there is no right of re-entry, what assurances do we have that it will actually end up for low income/homeless housing.

Executive Director Dallas Parks commented on the financing structure of the program. He said it is a program that will have 14 public housing eligible, 12 of whom will be for the homeless, 3 will be market rate and 3 will be project based.

Shannon McClean, of the Durham Housing Authority, stated due to the fact that the lots are owned by two different entities prevents them from transferring to a single ownership entity which is Goley Pointe, LLC and said this does affect the closing of the construction loan and it also prevents the closing with HUD. She said 14 of the units will serve public housing families which is up to 80% of AMI and they will pay 30% of their adjusted household income, and the Section 8 program they will pay a certain percentage of their adjusted household income.

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Council Member Moffitt asked if there are other agreements to that affect which are already in place.

Shannon McClean replied yes. She said for the HUD Program there will be deed restrictions on the site as well indicating they have to serve low and moderate income families.

**MOTION** by Council Member Catotti seconded by Council Member Schewel to adopt a Resolution Authorizing a Revision to the City's Right of Re-Entry for 1406 Morning Glory Avenue, 1408 Morning Glory Avenue, 1504 Morning Glory Avenue, 115 N. Goley Street and 118 N. Goley Street as Conveyed to Development Ventures Incorporated was approved at 1:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**Note: Resolution was not provided in supporting documents.**

**Subject: Scott Barndt**

To receive comments from Scott Barndt regarding solicitation and housing.

Scott Barndt was not present at the meeting to speak.

**Subject: John and Tammy Kobani**

To receive comments from John and Tammy Kobani regarding solicitation.

John and Tammy Kobani were not present at the meeting to speak.

At this time, Mayor Pro Tempore Cole-McFadden expressed concerns pertaining to citizens residing in residential areas being exposed to roadside solicitation. She referenced some cities having a rule that if you are going to solicit you have to be so many feet away from the entry way and commented on litter being unacceptable. She asked the City Attorney's Office to research her concern to see what can be done.

**Subject: Updates and Corrections to Durham City Code & Resolution**

The City Attorney's Office noted out-of-date provisions or errors have found their way into the Durham City Code and resolutions. This agenda item is intended to bring to the City Council the opportunity to update and correct many of them. Each of the paragraphs in the issues and analysis portion of the staff's memo explains what is recommended and the reasons for the recommendation. Additional detail can be found in the proposed ordinances and resolutions which are included in the staff report.

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Council Member Moffitt questioned if the firefighters vacation pay in excess of 360 being transformed into sick leave was the practice.

Senior Assistant City Attorney Richard Weintraub replied yes that has been the practice and 330 hours has never been used. He said this would not be a change, only recognizing what is being currently done.

Council Members thanked the attorney's office for their work on making corrections to the City Code.

**Subject: Loan Restructuring for Mutual Manor**

To authorize the City Manager to execute an amendment to the loan agreement and related documents for Mutual Manor and Rockwood Cottages.

In 1994, City Council approved \$691,000.00 in HOME funds and \$260,000.00 in bond funds for Woodland Associates, Inc. to develop 20 units of affordable senior housing on Rockwood Court, known as Rockwood Cottages, and \$877,000.00 in bond funds to develop 18 units of affordable senior housing on Fayetteville Street known as Mutual Manor Apartments. Woodland has successfully operated both complexes without interruption for the past 17 years. The original low income housing tax credit compliance period has now expired and Woodland is requesting loan restructuring to be able to continue to maintain and operate both properties as affordable senior housing for an additional 13 years. All units at Mutual Manor will be affordable to residents whose household income is at or below 50% of area median income, as determined by HUD and 14 units at Rockwood Cottages will be affordable to residents whose household income is at or below 60% with the remaining 6 units available to residents whose income is at or below 50% of area median income.

Larry Jarvis, of the Community Development Department, stated both of these projects are very complicated and they have had discussions on how important it is to structure affordable housing projects such as they are sustainable for the long term, and said these two projects were not set up or structured the way they should have been.

James Pugh, representing Woodlands Associates, provided background information on the two projects and said the projects were done at a time when structuring was more concerned with the short term performance of the project instead of the long term performance, and said in this particular case they were originally to be structured as grants not as loans. Also, after initial approval and moving forward with construction, issues/concerns were raised that made it more important that these two projects be structured as loans rather than grants.

Council Member Schewel asked if there would be a loan repayment on these two projects.

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Larry Jarvis, of the Community Development Department, said as stated by Mr. Pugh these were originally were setup as grants but had to be converted to loans, and he said there will not be any loan repayments on these projects.

Council Member Schewel said these are valuable and very nice properties and it good to have housing affordable at this level which is of high quality and he appreciated the staff bringing this item forward as difficult as this is.

James Pugh spoke on the current tenants pertaining to income limits and affordability. He said he felt the residents that are currently there now can afford the rents and the \$15.00 per year is a reasonable way to accommodate. He also said from a management point of view they do not want to lose any of their existing residents, and they will be working with residents as needs arise.

Council Member Moffitt asked if it would be possible for the owners of Rockwood Cottages to keep the 35% AMI level going forward in light of the fact that reducing the loan interest repayment from 1 ½ % to 0% would result in a net cash flow to the project of approximately \$10,000 per year.

The administration will provide a response to Council Member Moffitt's question before the April 1, 2013 City Council Meeting.

**Subject: Small Local Business Enterprise Program Ordinance**

To adopt the Small Local Business Enterprise Program Ordinance.

On June 16, 2011, the City of Durham was successful in gaining the passage of Session Law 2011-168 Senate Bill 297, a local act amending the Charter of the City of Durham to authorize the City to establish a Small Business Enterprise Program to promote the development of small businesses in the City and to enhance the opportunities for small businesses to participate in City contracts. Various local preference programs from around the country were reviewed and comments and input were received from internal and external stakeholders. The recommended program was modified based on input received. The City's construction and professional services contracts, specifically contracts that were \$500,000 or less were reviewed. Databases of general contracting, architectural, engineering and surveying individuals/firms licensed and residing in the Durham Metropolitan Statistical who might potentially bid/propose on contracting opportunities were reviewed. The proposal for Durham's own, unique iteration of a local preference program – The Durham Small Local Business Enterprise Program is being recommended.

EO/EA Director Deborah Giles referenced her presentation to council on January 24, 2013 on the proposed Small Business Enterprise Program for the purpose of receiving council's input. She referenced their follow-up town hall meeting and additional comments were received on the

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proposal and based on all the totality of the information received, four modifications were made to the program which she also summarized.

Council Member Catotti said they have received some concerns regarding changing the professional services contract from the \$500,000 threshold to \$100,000.

Council Member Moffitt requested that a table be provided showing the number of contracts below \$100,000; between \$200,000 and \$300,000.

The administration will provide this information requested before the April 1, 2013 City Council Meeting.

**Subject: Contract with Fire Recovery USA – Fire Based Inspections Billing/Collections Services & Asset Management Software & Contract with ACS Government Systems**

To authorize the City Manager to execute a two year contract with Fire Recovery USA, LLC for Fire Based Inspections billing and collections services, software, and associated equipment and services in the amount of \$263,584.00; and

To authorize the City Manager to execute a two year contract with ACS Government Systems for Reporting, Inspections and Asset Management Software (Fire House) in the amount of \$118,580.00.

The Fire Department's Fire Prevention Division is not currently automated. By implementing a new software program for the department and moving fire inspectors to a technology based system, the time required to complete a fire inspection will decrease, increasing productivity within the division. Automating the division will also move the Fire Prevention Division closer to its adopted goal of annual inspections for all businesses. As a component of this initiative, the billing and collections component of the division's activities will be outsourced to a third party vendor. The move will allow the department to reduce postage and duplication costs. This will also remove from the Finance Department the burden of tracking delinquent accounts.

Fire Department Representative Chris Iannuzzi explained why there is only one bidder for this proposal. He said the software that is needed is industry standard and 80% of the fire departments in the country currently use it. In order for the fire department to continue the process improvement they are looking for and getting the analytics from the system, this is the only piece of software that accomplishes that. Also, Mr. Iannuzzi said Fire Recovery USA was the only company to submit a bid.

**Subject: Contract ST-258C with BREE Associates of Durham - Angier-Driver Streetscape Construction Inspections**

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To authorize the City Manager to execute a contract for ST-258C, Angier-Driver Streetscape Project Construction Inspections with BREE Associates of Durham, North Carolina in the amount of \$350,300.00;

To establish a contingency fund in the amount of \$57,900 which is 8.75% of the construction contingency amount of \$663,344.12 in the contract with Fred Smith Company; and

To authorize the City Manager to execute change orders to the contract so long as the total project cost does not exceed \$408,200.00.

The staff report indicated that on December 19, 2012, bids were opened for Contract ST-258. The contract involves street demolition and construction, replacement of electrical, water, sewer and storm water utilities, installation of streetscape and landscaping, and traffic signals and decorative street lighting for the Angier-Driver Business District in the City of Durham. The City Council approved the award of the construction contract to The Fred Smith Company on March 4, 2013 in the amount of \$3,316,720.60 with a contingency of \$663,344.12 (20%).

Ed Venable, of the Public Works Department, explained the base fee for BREE's contract administration and inspections service (\$290,300.00) which is 8.75% of the construction contract amount of \$3,316,720.60, and said this percentage is consistent with other recent complicated streetscape construction such as City Hall Plaza.

At this time, Council Member Moffitt suggested that a combined public hearing be held on Items 18 (Comprehensive Plan Amendment, Triangle Curling Club) and Item #19 (Zoning Map Change – Triangle Curling Club) since they are related and the same testimony is being heard twice.

City/County Planning Director Steve Medlin said staff would still be required to provide two staff reports; council could then have a single public hearing but would have to take single action on each of the items. Also, he commented on why two separate hearings were held on plan amendments and zoning map changes.

Before the public hearing is opened, several members of council said it would be helpful to remind citizens what the subject matter is and informing them it has to be done in a two-stage process.

**Subject: Update on Whitted School Redevelopment Process**

To receive a presentation on the Whitted School Redevelopment Process.

Deputy County Manager Lee Worsley gave a power point presentation on the Whitted School Redevelopment Process referencing the following:

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**Background**

- James A. Whitted School originally constructed in the early 1920's with an addition in the 1950's
- The 98,380 square feet facility is located on a 4.062 acre site at 200 East Umstead Street
- The building has previously housed Hillside High School and Operation Breakthrough
- Facility has been unoccupied for 7 years
- The Durham County Board of County Commissioners have clearly indicated a desire to repurpose James A. Whitted School so that it continues to be an important anchor in the Southside Community
- Through the County's Strategic Planning process, the repurposing of Whitted School emerged as one of the County's first year initiatives

**RFP Process**

- A Request for Proposals to solicit concepts from developers for the repurposing of the James A. Whitted School Site was issued on May 1, 2012
- Two proposals were received on the June 28, 2012 deadline:
  1. Integral/Forty AM/Durham Public Schools/Belk Architecture
  2. Traditional Neighborhood Development Partners, LLC/TBL Group/MHAworks/Sustainable Community Resources/CAHEC/Civitech, LLC

**RFP Review** (RFPs were reviewed and scored in two phases):

- Phase 1 – Review of the RFP submittal
- Phase 2- Formal interview with the developer
- Two review teams were formed for the RFP review process: Staff Review Team and Community Review Team

**Recommendation to Board of County Commissioners**

- The Review Teams unanimously agreed that the proposal from Integral should be recommended to the Board of County Commissioners

The recommendation is based on the following:

- After each phase of the RFP review process, Integral's proposal was preferred by both review groups.
- Integral's proposal is a mix of affordable housing for low to moderate income seniors and public, pre-kindergarten programs
- Community Review Team members who currently live in the Southside neighborhood preferred this proposed use of the building. They expressed that they were excited about the inter-generational program
- In addition, pre-kindergarten programs has been identified in Durham County's Strategic Plan as a priority
- The Integral proposal includes a plan to renovate the James A. Whitted School, but also includes new construction along Roxboro Road

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- The renovation is critical, but new construction makes an important statement that the James A. Whitted School site will serve as an important focal point of the community, long term
- The Integral Team includes Integral Development, which has substantial experience in senior housing projects, inter-generational projects and housing tax credit projects
- Eddie Belk is included as the architect. Mr. Belk has significant experience in historical renovations and historical tax credit projects
- Dr. Eric Becoats has also expressed strong support for the pre-kindergarten component

### **Progress to date**

- The recommendation to begin negotiations was brought before the Board of County Commissioners on November 5, 2012. The Board authorized staff to begin negotiations at that time
- The Board of Commissioners authorized a purchase option on January 7, 2013
- Integral held a community meeting at Mount Vernon Baptist Church on February 7, 2013
- Rezoning has been requested for the property and came before the Planning Board on March 12, 2013
- Deal points are being negotiated and this time and are anticipated to be brought before the Board of Commissioners at the April or May Work Session

Carl Webb provided additional details/information on the Whitted School Project and commented on meetings held with various groups. Also a 3-minute video documentary referencing the history of Whitted School was shown by Mr. Webb.

Representatives from Belk Architect commented on the proposed project site and provided a rendering of the proposed renovations.

Integral Vice President Daryl Jones spoke on the redevelopment of the proposed Whitted School noting the proposed project is slated for a pre-school and 89 apartments for low-income seniors. Fifty of the units would be earmarked for recipients of Section 8 rental vouchers. Also, Mr. Jones provided the council with a breakdown of the budget for the proposed redevelopment of Whitted School.

It was noted that the City Council is being asked to contribute \$500,000 to the planned renovation of the former Whitted Junior High School.

Integral Vice President Daryl Jones said the project's budget relies on about \$7.2 million in federal and state low-income housing tax credits that regulators award to developers on a competitive basis.

Council Member Catotti expressed concern with the city being asked to commit funds to the Whitted School project and questioned why city funds were needed.

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The plan assumes a county contribution of \$1.5 million, with another \$5 million from the Durham Public Schools for work on the pre-school.

Council Member Schewel noted the project appears cost-effective and said that Council Member Catotti's concern was separate and very important.

Mayor Bell spoke in support of the proposal and credited County Commissioner Ellen Reckhow for suggesting this and he said this project would build on the city's work at Rolling Hills.

Mayor Pro Tempore Cole-McFadden said the project would give people from all walks of life a chance to live in a building that in its day was a totally segregated institution.

**Subject: Durham Industrial Lane Study Presentation**

To receive a presentation on the Durham Industrial Land Study.

The staff has completed a land suitability analysis of industrial land in Durham, utilizing well-accepted industry and land use planning standards. This report was developed with input from the City's Office of Economic & Workforce Development and the Greater Durham Chamber of Commerce. Based on staff's analysis, Durham has sufficient industrial land to accommodate projected demand through 2035. However, an absence of vacant, very large parcels of land (over 100 acres) may limit Durham's ability to attract some industrial employers. This report was presented to the Joint City/County Planning Committee on February 6, 2013 and the Durham Planning Commission on February 12, 2013.

Laura Woods, of the City/County Planning Department, gave a power point presentation on the Durham Industrial Land Study commenting on the following topics:

- Industrial Uses in Study
  - Industrial Uses Not in Study
  - Methodology
  - Employment Projection
  - Land Demand Projection
  - Location Criteria
  - Land Zoned for Industrial Uses
  - Existing Industrial Uses
  - Vacant Lands that Meet Criteria
  - Implications
  - Further Study
- Durham lacks very large vacant industrial properties
- 100 or more acres in size
  - May limit recruitment of some industrial uses

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The report noted that Durham could consider addressing this issue during the next update of the Comprehensive Plan.

The council thanked Ms. Woods for the report.

**Subject: Report on Regionally Coordinated Analysis of Transit Fare Increase Options**

To receive a report on Regionally Coordinated Analysis of Transit Fare Increase Options; and

To authorize staff to proceed with a coordinated regional public comment period on a proposed fare increase and with a Title VI analysis of the impacts of the proposal on low-income and minority groups.

The staff's report noted that it has been nearly ten years since the City of Durham raised transit fares establishing a \$1.00 base fare for local service. Since that time, the percentage of operating costs that are funded with customer fares has declined from 24.9% to approximately 16% in FY13. This year, Transportation Department staff, together with staff at Triangle Transit, Raleigh, and Cary agreed to evaluate the regional fare structure and pricing prior to the FY2014 budget process. They agreed to look at recent trends in service levels, costs, and fare revenues; current usage levels of fare payment options; and fare structures and pricing of peer agencies. They also agreed to estimate the impacts on revenue and ridership levels of several fare change scenarios.

The staffs of the four transit agencies have agreed to request permission to proceed with a coordinated regional public comment period on a proposed fare increase and with a Title VI analysis of the impacts of the proposal on low-income and minority groups.

A tentative timeline of activities is to conduct public input sessions and the Title VI equity analysis during April and May, to bring a final recommendation to governing bodies in June for public hearing and a final decision in June or July. Initial implementation of any changes would be in January 2014.

At this time, John Tallmadge of Triangle Transit Authority, gave a power point presentation on the Region-Wide Fare Increase Analysis commenting on the following:

**Key Questions to Consider**

- What share of operating costs should customers pay
- What is an equitable way to raise that revenue
- How should this be balanced with ridership goals
- How should be balanced with quality of service goals

John Tallmadge continued his presentation commenting on the following topics:

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- History of DATA Fare Levels
- Coordinated Regional Evaluation
- Current Usage of Fare Types
- Trends From FY 2004 to FY2012
- Peer Cities
- Peer Comparison
- New Fare Scenarios
- Impacts of Two Step Fare Increase
- FY14 Fare Increase Factors
- Proposed Process

Following the presentation, the following questions were raised by Council Members:

- Do we have any information on the ridership impact of the various fare increases/changes that have been implemented by DATA since the July 2003 base fare was increased from \$0.75 to \$1.00?
- Do we know anything about the demographics of the 6% of the current customers that pay a one-way cash fare?
- Considerable discussion about fare elasticity and the sensitivity of the fare analysis if the elasticity experienced by DATA is different from the elasticity assumed in the fare analysis. Could we track our own fare changes and ridership changes to determine a fare elasticity for DATA?
- Are there other variables besides fares that could have contributed to ridership changes?

The city staff will provide a response to questions before the April 1, 2013 City Council Meeting.

Several members of council noted they were not on board at this point in raising fares; however, it was the consensus of the council for the operators of DATA to have further discussion and begin gathering public comments.

Mayor Bell said the council needed more data before making a decision later in the spring.

Triangle Transit Authority Attorney Wib Gulley addressed the council stating TTA was not urging or advocating anyone for a bus fare increase, and he commented on the purpose of the presentation today.

At this time, City Clerk Gray announced that Caren Maene and Marcilla Elizabeth Smith received 3 votes for appointment to the Human Relations Commission.

Due to tie votes, the Human Relations Commission appointment will be placed on the General Business Agenda for the April 1, 2013 City Council Meeting.

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**Settling the Agenda – April 1, 2013 City Council Meeting**

City Manager Bonfield announced the following items for the April 1, 2013 City Council Meeting agenda: Consent Agenda Item 1; 3 thru 5; Items 7 thru 12; General Business Agenda Item 2; and Public Hearings 16 thru 19.

**Motion** by Council Member Brown seconded by Council Member Schewel to settle the agenda for the April 1, 2013 City Council Meeting as stated by the City Manager.

The motion was approved by a vote of 6/0 at 4:11 p.m.

**Closed Session**

**Motion** by Council Member Catotti seconded by Council Member Schewel to hold a closed session to discuss matters relating to the location or expansion of industries or other businesses in the City of Durham, pursuant to G.S. 143-318.11(a)(4).

The motion was approved by a vote of 6/0 at 4:11 p.m.

**Motion** by Council Member Catotti seconded by Council Member Brown to return to open session.

The motion was approved by a vote of 6/0 at 4:49 p.m.

No action was taken during open session.

Mayor Pro Tempore Cole-McFadden asked if council members received a copy of the proposed bill to eliminate levying of privilege licenses by municipalities.

Council Member Catotti suggested in the future that the council have a conversation on economic incentives.

There being no further business to come before the council, the meeting was adjourned at 4:53 p.m.

D. Ann Gray, MMC, NCCMC  
City Clerk

**DURHAM, NORTH CAROLINA  
MONDAY, APRIL 1, 2013  
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 William V. "Bill" Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Don Moffitt and Steve Schewel. Absent: Council Member Howard Clement, III.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation followed by the pledge of allegiance led by Council Member Brown.

Mayor Bell read the following proclamations and presented them to individuals representing the organizations: TRY Prevention Alcohol Awareness Month; Sexual Assault Awareness Month; and Fair Housing Month. The recipients, Wanda Boone, Kandace Watkins and Delilah Donaldson thanked the Mayor and Council for the recognition. Also, Joy Morgan, Chair of the Human Relations Commissions, also thanked the Council for the proclamation and asked individuals to support the upcoming Fair Housing Month initiatives being held.

Mayor Bell asked if there were any announcements from council members.

At this time, the following statement was made by Council Member Schewel:

Thanks for the care and concern of the people present concerning the Roadside Solicitation Ordinance.

I want to say first of all that the ordinance is well motivated and that the reasons for the ordinance, including safety, are real.

That being said, I do think we have a problem with the ordinance. I don't believe that putting homeless people through our court system and into jail makes sense. We are criminalizing poverty by doing this, and I don't think it is a good use of our court resources or our police resources.

In that light, I was glad to receive an email today that we all received from Bo Glenn, chair of the Homeless Services Advisory Committee, saying that they have delegated a group chaired by John Bowman to make recommendations on the ordinance to both the HSAC and the council. John has been dedicated for many years of service on behalf of Durham's homeless and is a deeply trusted community member, and I look forward to their report.

One approach I hope the committee will consider is the model of the Orange County Outreach Court which I read about just today. The court is in session one day per month. It allows homeless people charged with misdemeanors to follow a plan for receiving services instead of

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going to jail. This is somewhat similar to Drug Treatment Court. The idea behind the court is to help homeless people take changes seriously and follow through on mental health and substance abuse treatment. This helps the person change his or her life, and it helps the community by actually trying to get the misdemeanants into potentially life-changing services instead of simply jailing them briefly and then letting them go with no additional resources.

In addition, I do want to again advocate for the council to fund during our current budget work the two police officers dedicated to mental health policing that we lost when a recent federal grant ran out. These are critical positions in my view.

To those in the audience, and to those who have written us emails and spoken to us on this issue, I really appreciate your care. But here is my challenge to you. Is this really the best we can do for the 25 or 35 people in Durham who are relying on roadside solicitation? I hope you will dedicate as much energy as you are dedicating to this to joining the monumental effort I see all around us in Durham to ending homelessness. Not to making it feel a little better with a donation one day, but to actually ending it.

Donating cash to a homeless person helps that person a little for a short time, and it may help the giver feel better as well. But it does nothing to end homelessness.

What CAN end homelessness is the work of community outreach workers who are trying to get people into services. What CAN end homelessness is the funding of ongoing mental health and substance abuse services and helping homeless folks get and keep access to them.

What CAN end homelessness is the construction of housing for homeless people and the preservation of our stock of affordable rental housing which this council is putting tremendous resources into.

The things I just mentioned are much harder work. It takes a lot longer. It takes a lot of money-- both public tax money and private donations. But this is the only thing that works.

So please join us by supporting our community effort to end homelessness. We need your energy and your brain power and your money.

Again, Mr. Mayor, I believe we need to reexamine the jail time that the current ordinance is meting out. I think it is a real problem and we should fix it. At the same time, I ask those who care about the folks on the roadside to please join the ongoing work of Durham government and Durham churches and Durham non-profits to get homeless folks INSIDE houses and connected to services.

I work on it every single day. My colleagues work on it as well, and many more people in Durham. I hope you'll work on it, too. We can end homelessness in Durham. There is an enormous effort moving forward in this community to end homelessness. And that should be our goal.

Mayor Pro Tempore Cole-McFadden challenged the churches to adopt a homeless individual and follow them until they are no longer homeless.

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Mayor Bell asked for priority items by the City Manager, City Attorney and City Clerk.

There was no priority item by the City Manager.

At the end of the meeting agenda, City Attorney Patrick Baker requested a closed session, attorney-client consultation, pursuant to G.S. 143-318.11(a)(3).

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to accept the City Attorney's priority item (to hold a closed session, attorney-client consultation, pursuant to G. S. 143.318.11(a)(3) was approved at 7:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

City Clerk Gray stated that Agenda Item #22 [Durham Workforce Development Board – City Council Appointment] was added to the agenda as a Supplemental Item.

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to accept the City Clerk's priority items was approved at 7:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Durham Workforce Development Board – City Council Appointment**

**MOTION** by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to appoint Steve Schewel as a City Council liaison to the Durham Workforce Development Board was approved at 7:25 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

Mayor Bell explained that the Consent Agenda is approved with a single motion and items pulled from that agenda by any citizen(s) or council member(s) will be discussed at the end of the agenda. Citizens requested that Item #10 be pulled from the Consent Agenda (Expedited Hearing Request for Vermilion).

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to approve the Consent Agenda as amended was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**[CONSENT AGENDA]**

**SUBJECT: Approval of City Council Minutes**

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**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to approve City Council Minutes for the January 4, 2013 Special City Council Meeting, January 7, 2013 Special City Council Meeting, January 23, 2013 Special City Council Meeting and February 18, 2013 City Council Meeting was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Updates and Corrections to Durham City Code and Resolutions**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to adopt the following Ordinances and Resolutions was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

An Ordinance to Repeal the Exemption from Codification of Ordinances that Redefine or Rearrange Election Ward Lines and Boundaries - **Ordinance #14415**

An Ordinance to Correct Reference in City Code Section 1-3 to the Unified Development Ordinance - **Ordinance #14416**

An Ordinance Respecting the Assignment of Territory to Election Wards - **Ordinance #14417**

A Resolution to Make Amendments to the Durham County Animal Control Ordinances Apply in the City of Durham - **Resolution #9849**

A Resolution to Make Amendments to the Wake County Animal Control Ordinances Apply in the City of Durham- **Resolution #9850**

An Ordinance to Delete References to Bids and Proposals from the Post-Bid Phase Portion of the Equal Business Opportunity Program Ordinance - **Ordinance #14418**

An Ordinance to Correct Cross-References in City Code Section 34-49 - **Ordinance #14419**

An Ordinance to Allow Hitting Golf Balls on City Parks and Playgrounds except Where Designated Otherwise - **Ordinance #14420**

An Ordinance Revising City Code Provision Regarding Use of Motorized Boats on Lakes Owned by the City and Repealing a Provision Regarding Fees in Twin Lakes Park - **Ordinance #14421**

An Ordinance to Correct the Definition of CCB Plaza as a Location Where Alcoholic Beverages May Be Consumed - **Ordinance #14422**

An Ordinance to Revise City Code Section 42-7(B) Regarding Conversion of Sworn Firefighters' Accrued Vacation Time to Sick Leave - **Ordinance #14423**

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An Ordinance to Repeal Requirement that Railway Company Display a Sign on Randolph Street on the Approach of a Train - **Ordinance #14424**

An Ordinance to Clarify the Ordinance to Amend the City Code Regarding Regulation of Street Vending and Special-Event Permits - **Ordinance #14425**

An Ordinance to Repeal City Code Section 66-173, Which Pertains to Parking in Front of Religious Facilities - **Ordinance #14426**

An Ordinance to Correct Erroneous Spelling of Counsel in Section 66-375(E) - **Ordinance #14427**

An Ordinance to Correct the Definitions of Double Check Detector Assembly and Reduced Pressure Detector Assembly in City Code Section 70-758 in the Cross-Connection Control Ordinance - **Ordinance #14428**

An Ordinance to Clarify Sections 70-740 and 70-441 of the Ordinance Pertaining to Stormwater Performance Standards for Development – **Ordinance #14429**

An Ordinance to Provide a Rule of Construction that Underlined Material in Ordinances is Being Added and that Struck Material is Being Deleted - **Ordinance #14430**

**SUBJECT: Community Development Block Grant Application Process Follow Up Performance Audit February 2013**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to receive and accept the Community Development Block Grant Application Process Follow Up Performance Audit dated February 2013 as presented and approved at the February 25, 2013 Audit Services Oversight Committee meeting was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Loan Restructuring for Mutual Manor Apartments and Rockwood Cottages**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute an amendment to the loan agreements and related documents for Mutual Manor and Rockwood Cottages was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Small Local Business Enterprise Program Ordinance**

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**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to adopt the Small Local Business Enterprise Program Ordinance was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**Ordinance #14431**

**SUBJECT: Contract for Fire Based Inspections Billing/Collections Services and Inspections, Reporting and Asset Management Software – Fire Recovery USA, LLC & ACS Government Systems**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a two year contract with Fire Recovery USA, LLC for Fire Based Inspections billing and collections services, software, and associated equipment and services in the amount of \$263,584.00; and

To authorize the City Manager to execute a two year contract with ACS Government Systems for Reporting, Inspections and Asset Management Software (Fire House) in the amount of \$118,580.00 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Proposed Three-Year Lease with Liberty Arts, Inc. for Arts Pavilion at 505 Rigsbee Avenue**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a three-year lease with a two-year option to renew with Liberty Arts, Inc. for the Liberty Arts pavilion at 505 Rigsbee Avenue in the amount of \$1.00 per year was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Contract ST-258C - Angier-Driver Streetscape Construction Inspections – BREE Associates of Durham, North Carolina**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract for ST-258C, Angier-Driver Streetscape Project Construction Inspections with BREE Associates of Durham, North Carolina in the amount of \$350,300.00;

To establish a contingency fund in the amount of \$57,900 which is 8.75% of the construction contingency amount of \$663,344.12 in the contract with Fred Smith Company; and

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To authorize the City Manager to execute change orders to the contract so long as the total project cost does not exceed \$408,200.00 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: 2013 Pavement Condition Survey of the City of Durham Street System – Transmap Corporation of Upper Arlington, Ohio**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a contract for the Pavement Condition Survey of the City of Durham Street System with Transmap Corporation of Upper Arlington, Ohio in the amount of \$257,498.04;

To establish a contingency fund in the amount of \$25,749.80 (10%); and

To authorize the City Manager to execute change orders to the contract so long as the total project cost does not exceed \$283,247.84 was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**SUBJECT: Report on Regionally Coordinated Analysis of Transit Fare Increase Options**

**MOTION** by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize staff to proceed with a coordinated regional public comment period on a proposed fare increase and with a Title VI analysis of the impacts of the proposal on low-income and minority groups was approved at 7:27 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**[GENERAL BUSINESS AGENDA]**

**SUBJECT: Human Relations Commission - Appointment**

To appoint a citizen to fill one (1) vacancy on the Human Relations Commission representing a Non-Minority Female with the term to expire on June 30, 2013.

**Note: By ballot, the City Council appointed Caren Maene [with four votes] to the Human Relations Commission representing a Non-Minority Female with the term to expire on June 30, 2013.**

**[PUBLIC HEARINGS]**

**April 1, 2013**

**SUBJECT: Zoning Map Change Forest at Duke (Z1200017)**

To conduct a public hearing to receive comments on the zoning map change for Forest at Duke (Z1200017);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200017 out of Planned Development Residential 8.700 and 0.00 (PDR 8.700 and 0.000) and placing same in and establishing same as Planned Development Residential 8.7000 (PDR 8.700); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Determination: Staff determines that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances.

Planning Commission Recommendation and Vote: Approval, 11 – 0 on February 12, 2013. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.

[The site is located at 2801 Pickett Road, on the south side of Pickett Road opposite Lindenshire Drive, PINs 0810-06-39-9264, -49-3392 (partial)]

City/County Planning Director Steve Medlin certified that both public hearings before the council this evening have been properly noticed in accordance with the general statutes and the unified development ordinance provisions and affidavits have been executed and are a part of the case files.

The City/County Planning Director said this case is the Forest At Duke which is a request to change the zoning designation of a 5.26 acre tract located at 2801 Pickett Road (on the Southside of Pickett Road opposite Lindenshire Drive) from Planned Development Residential 8.7 to Planned Development 8.7, a change in the existing development plan to add two points of access, and one point of access on Pickett Road and one point of access along the eastern property boundary to connect to the existing Forest At Duke facility with an additional maximum of 20 units. This request is consistent with the future land use designation of the comprehensive plan

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which designates the site as medium density residential 6 to 12 units to the acre. Staff has determined that the request is consistent with the comprehensive plan and other adopted policies and ordinances and the Planning Commission recommended approval on February 12, 2013 by a vote of 11/0.

Mayor Bell opened the public hearing.

**Proponents**

Bob Zumwatt, representing the applicant, stated he was present to answer any questions the council may have.

There were no questions from the council.

There were no persons present to speak in opposition to this zoning map change request.

Mayor Bell closed the public hearing.

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Moffitt to receive comments on the zoning map change for Forest at Duke (Z1200017);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200017 out of Planned Development Residential 8.700 and 0.00 (PDR 8.700 and 0.000) and placing same in and establishing same as Planned Development Residential 8.7000 (PDR 8.700); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Schewel.

**Ordinance #14432**

**SUBJECT: Zoning Map Change Whitted School (Z1200028)**

To conduct a public hearing to receive comments on the zoning map change for Whitted School (Z1200028); and

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200028 out of Residential Urban-5(2) (RU-5(2)) and placing same in and establishing same as Planned Development Residential 20.000 (PDR 20.000); and

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To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

**Staff Determination:** Staff determines that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances.

**Planning Commission Recommendation and Vote:** Planning Commission will make a recommendation on March 12, 2013.

[The site is located at 200 East Umstead Street between South Roxboro Street and Sawyer Street, PIN 0821-20-82-8319]

City/County Planning Director Steve Medlin said Zoning Case Z120028 for Whitted School is a request to change the zoning designation of a 4.062 acre tract located at 200 East Umstead Street between South Roxboro Street and Sawyer Street from Residential Urban 5(2) to Planned Development Residential 20.0. The City Council granted this application an expedited hearing on February 18, 2013 and the development plan associated with this request includes a number of text commitments and a summary includes: 1) a maximum of 80 residential units and 32,500 square feet of daycare/pre-school; and 2) transit facilities along South Roxboro Road that may include additional sidewalk and concrete pad shelter and bench. The staff has determined that this request is consistent with the comprehensive plan and other adopted policies and ordinances. The Planning Commission recommended approval on March 12, 2013 by a vote of 11/0.

Mayor Bell opened the public hearing.

### **Proponents**

Eddie Belk, representing Belk Architect, said his firm was serving as the architect on the Whitted School Project and he was present to answer any questions that the council may have.

There were no questions from the council.

John Tarantino provided a song selection pertaining to the Whitted School Project and Mayor Pro Tempore Cole-McFadden, a graduate of the school.

No persons were present to speak in opposition to this zoning map change.

Mayor Bell closed the public hearing.

**April 1, 2013**

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to receive citizens comments on the zoning map change for Whitted School (Z1200028); and

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200028 out of Residential Urban-5(2) (RU-5(2)) and placing same in and establishing same as Planned Development Residential 20.000 (PDR 20.000); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 7:36 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

**Ordinance #14433**

**[ITEM PULLED FROM THE CONSENT AGENDA]**

**Subject: Expedited Hearing Request for Vermilion (Zoning Case Z1300004)**

To adopt a Resolution Granting an Expedited Hearing per Section 3.5.11.B of the Unified Development Ordinance for Zoning Map Change Request Z1300004 (Vermilion).

Jim Yamin, President of Workforce Homestead Inc., stated he and his partner are proposing to develop Vermilion a 76 unit apartment community located at 1311 Cook Road in Durham and asked the council to support the expedited hearing request. He referenced the reasons he was requesting the expedited hearing.

City Attorney Baker stated this item is for a request to expedite a public hearing on a zoning map change to be heard at a later date.

Sara Sampson, representing the Hope Valley Farms North Homeowners Associations, asked that the process not be granted this quickly to allow the homeowners an opportunity to participate thoroughly as they would like to. She said their concerns are possible traffic congestion, impact on the area environmentally and neighboring land uses. Ms. Sampson said issues and concerns need to be examined properly by the Planning Commission as well as by the residents and the homeowners' associations. She asked that the request be denied to grant an expedited hearing.

City/County Planning Director Steve Medlin said this is a discretionary decision that the council has and the ordinance does make it clear of standards that one should apply when accessing whether or not an expedited hearing should be considered. He said staff has evaluated the criteria and what has been presented meets the criteria and they are recommending the expedited request be granted. He said if approved, it will go before the Planning Commission next

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Tuesday and it will come before the City Council the first meeting in May. Also, he referenced what components of this request are consistent with the intent of the expedited hearing ordinance.

Mayor Pro Tempore Cole-McFadden asked if Mr. Medlin if he thought the neighborhood had adequate time to have input on this project.

City/County Planning Director Steve Medlin stated he believes the neighborhood is well aware of this request, there is no development plan and it is a straight rezoning request. He said if the zoning is approved then the design details would be worked out at the time of site plan approval.

**MOTION** by Council Member Schewel seconded by Council Member Catotti to adopt a Resolution Granting an Expedited Hearing per Section 3.5.11.B of the Unified Development Ordinance for Zoning Map Change Request Z1300004 Vermilion was approved at 7:47 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

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Council Member Catotti said she appreciated the neighborhood concerns but the council is trying to be respectful of the developer's timetable because the council is interested in affordable housing, and she hoped the Planning Department will be as supportive as it always is in helping to inform and address neighborhood concerns.

**SUBJECT: Closed Session – 7:47 p.m.**

Per the City Attorney's request earlier in the meeting, the closed session was held in the Council Conference Room located on the 2<sup>nd</sup> Floor in City Hall.

**Open Session – 8:40 p.m.**

**MOTION** by Council Member Catotti seconded by Council Member Brown to return to open session was approved at 8:40 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Moffitt and Schewel. Noes: None. Absent: Council Member Clement.

No action was taken by the City Council in open session.

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There being no further business to come before the Council, the meeting was adjourned at 8:40 p.m.

D. Ann Gray, MMC, NCCMC  
City Clerk