



# THE HUNT LAW FIRM, PLLC

ANITA BEANE HUNT      RALPH A. HUNT, JR.  
Attorneys at Law

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P.O. Box 130 Durham, NC 27702 (919) 667-0721 / (919) 599-6478 / (919) 683-2355 (fax)

VIA CERTIFIED MAIL

August 20, 2014

Mayor William V. Bell  
City Of Durham  
101 City Hall Plaza  
Durham, NC 27701

AUG 2014  
RECEIVED  
CITY OF DURHAM

Dear Mayor Bell:

I am writing you regarding the two trees that are in front of our building located at 104 E. Main Street in Durham. The City of Durham planted two trees in front of our building in conjunction with a Streetscape Project. As you are aware, we have had problems with the plumbing at our office as a result of the trees and their root structure. However, you may not be aware of several other problems that we have had involving the trees.

Since the trees were put in place in 2007 during a Streetscape Project, our office has been vandalized on multiple occasions and the cover provided by the trees has assisted the vandals and thieves in their efforts. Some of our losses and/or negative experiences that can be attributed to the trees include:

- The attempted prying open of the front door.
- The theft of copper downspouts and copper collector boxes (decorative water collection boxes) from the front of our building.
- Damage to gutters and drainage piping that caused rain and storm water to flow into the building which created in excess of twenty-five thousand dollars (\$25,000.00) in damage to the interior of our building.

This does not take into consideration the added costs and disruption created by unnecessary disturbances while trying to maintain and operate our business. We have included several photographs for your review including sewage backup caused by the tree root structure.

On multiple occasions, our bathrooms have been rendered inoperable due to the penetration of our sewer pipes by the tree roots. The root intrusion has caused stoppage and backup that has required private plumbing companies and City of Durham Water Management to provide temporary remedies. Unless and until the source of the problem is removed and the pipe(s) replaced, the stoppages and backups will continue creating unnecessary costs and financial burdens.

Before contacting you, I have contacted several individuals, including but not limited to: Kevin Lilley – Urban Forestry; Martin Nona – Water & Sewer; Steve Miller – Water & Sewer; Mike Ross – Engineering; Ed Venable – Streetscape; Tasha Johnson – Streetscape; Greg Yavelak – General Services and Joel Reitzer. All departments and individuals told me that the tree/root problem was not the responsibility of their department and that the tree/root problem was not associated with the City of Durham. In fact, I was specifically told that any and all tree/root problems were “my” problem.

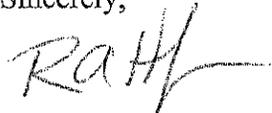
Additionally, there is a safety/liability issue to be considered. Several times each year, individuals slip on the fallen leaves coming to and leaving from our office. This is especially true when the leaves and/or walkway is wet.

As you can imagine, each time we are forced to deal with in issue caused by the trees, we lose time from concentrating on our business and also incur costs and expenses that were not anticipated in the day-to-day operation of our business.

I am writing to request that both of the trees in front of our building located at 104 E. Main Street be permanently removed and that any damaged drain and/or sewer pipes be replaced. Additionally, we would like to discuss the costs and expenses we have experienced as a result of the previously mentioned occurrences. Please let me know a time when we can meet and discuss these concerns.

Thank you for your time and consideration. With my warmest personal regards, I remain

Sincerely,

A handwritten signature in black ink, appearing to read "R.A.H.", with a long horizontal flourish extending to the right.

Ralph A. Hunt, Jr.

## Bonfield, Thomas

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**From:** Ferguson, Bo  
**Sent:** Thursday, August 28, 2014 1:51 PM  
**To:** Bonfield, Thomas  
**Subject:** FW: Letter to Mayor Bell from Hunt Law firm  
**Attachments:** RE: Street Trees obstructing Office bldg. @ 104 E. Main Street; RE: 104 E. Main St. Claim

**Importance:** High

Tom, I have spoken to several departments regarding the letter you forwarded to me that was received by Mayor Bell regarding trees in front of 104 East Main St. The summary below from Kevin Lilley and the attached emails serve as a fairly thorough response to the issues raised in the letter. I would recommend forwarding these emails to the Mayor for his consideration. Based on my review of staff's responses and the content of the letter, my opinion is that we have provided Mr. Hunt several options to pursue his concerns, but have not found evidence to support any of his allegations. As an aside, I have walked down to inspect the property myself, and at least as it pertains to the "above-ground" nuisances described in the complaint, I find it difficult to see how the trees are in any way related to the problems he describes.

I am returning the original letter to you. Please let me know if you would like anything further on this.

Bo



**W. Bowman Ferguson**  
Deputy City Manager  
101 City Hall Plaza, Suite 2100  
Durham, NC 27701  
(919) 560-4222  
[www.durhamnc.gov](http://www.durhamnc.gov)

Pursuant to North Carolina General Statutes, this email and any attachments, as well as any electronic mail messages that may be sent in response to it may be considered public record and as such are subject to request and review by third parties.

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**From:** Lilley, Kevin  
**Sent:** Thursday, August 28, 2014 12:06 PM  
**To:** Ferguson, Bo; Reitzer, Joel; Greeley, Don  
**Cc:** Williams, Marvin; Boyer, Chris; Medlin, Steve  
**Subject:** RE: Letter to Mayor Bell from Hunt Law firm  
**Importance:** High

Bo,

Long story, but simple responses. Mr. Hunt brought this concern for the removal of the two trees in front of his building to various individuals within the City of Durham and has not been satisfied with the answers provided. To keep it simple, he had originally claimed that his decorative copper downspouts were stolen from his property some time ago as a result of the trees providing cover for the individual who committed the crime. There was an issue with his water line backing up, and that was confirmed by both an outside contractor and members of Martin Nona's staff who I

worked with. I was in the excavated hole and did see tree roots, but whether or not the new trees penetrated to that depth is purely speculative. In most cases tree roots seldom penetrate deeper than 18 to 24" and the water lines were all significantly deeper than that. Our new trees were planted using a "root path" system that channels roots laterally beneath the sidewalk, and not downward.

Many of our conversations were by phone, very little in writing, except between City divisions and the two most pertinent are included in this email.. The email from Alex Johnson to Risk Management was the result of several accusations made by Mr. Hunt against the City for actions he perceived to be the result of the trees. He was provided information on filing a claim and we never discouraged him from doing so. The second email, from Sara Young in Planning, details the necessary steps that Mr. Hunt can take to request that the trees be removed or relocated. Again, we never discouraged him from doing so, we simply provided him the necessary steps to follow, should he wish to pursue that action.

Mr. Hunt seems to have a belief that a simple call to the Mayor will solve his perceived problem, yet that simply isn't the case. As a matter of fact, even if Alex and I agreed with Mr. Hunt that the trees should go away, we do not have that authority. As elements of the StreetScape plan there is a very definitive process for changes.

I have not seen any evidence to support Mr. Hunt's claims, yet at no time did I ever dispute his claims, I simply provided the path necessary to address his immediate concerns and involved those in the City with expertise beyond my own.

Kevin

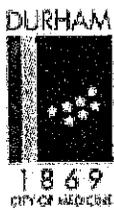
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**From:** Ferguson, Bo  
**Sent:** Monday, August 25, 2014 4:51 PM  
**To:** Reitzer, Joel; Greeley, Don; Williams, Marvin  
**Subject:** Letter to Mayor Bell from Hunt Law firm

Joel, Don, and Marvin, Mayor Bell is in receipt of a letter from Ralph Hunt Jr. complaining about the streetscape trees that were installed in 2007 in front of his law office on E. Main St. According to the letter, he has talked to various members of your staff including Kevin Lilley, Martin Nona, Steve Miller, Mike Ross, Ed Venable, Tasha Johnson, Greg Yavelak and Joel. Can you poll these staff members and provide a brief synopsis of our response regarding his concerns about the sewer penetration issues and nuisance issues he cites are a result of the trees?

Thanks,

Bo



*W. Bowman Ferguson*  
Deputy City Manager  
101 City Hall Plaza, Suite 2100  
Durham, NC 27701  
(919) 560-4222  
[www.durhamnc.gov](http://www.durhamnc.gov)

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## **Bonfield, Thomas**

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**From:** Young, Sara  
**Sent:** Wednesday, January 15, 2014 8:25 AM  
**To:** Lilley, Kevin; Johnson, Alexander  
**Cc:** Reitzer, Joel; Boyer, Chris; Yavelak, Greg; Medlin, Steve; Bailey-Taylor, Alysia; Young, Patrick  
**Subject:** RE: Street Trees obstructing Office bldg. @ 104 E. Main Street

Thanks for giving me a heads up that I may be hearing more on this... I wanted to let you all know that any changes to the streetscape in downtown now require a site plan (including all required site plan drawings, application, and fee—all at the cost of the applicant), and that street trees (like many other elements: benches, receptacles, etc.) are required by the Unified Development Ordinance (UDO) in certain amounts (usually related to the linear amount of street frontage). So, it is possible (not sure since I haven't taken a look at this site) that removal of the street tree(s) in question would violate the ordinance therefore it would not be allowed. There are street tree alternatives (not waivers) in the UDO but they are only to be used in specific instances of utility conflicts.

I wanted to make sure you all are aware of this because this is different than how streetscape changes were dealt with in the past, when they were evaluated based on subjective opinions about what makes a good streetscape. We no longer have that flexibility, and I want to make sure that when issues like these arise the parties interested in removing streetscape elements are fully aware that there are standards to be met and we can't just waive or ignore them. I would caution that we not tell people that they can petition (i.e. ask) us to change something as it can imply that we will, based on their persuasive arguments, at no cost to the person asking (semantics, I know). There would be real costs to an applicant in submitting for a change to the streetscape, including potentially having to make other improvements if a street tree alternative was approved.

Please let me know if you have questions or concerns, or if I misread any of the information below.

**Sara M. Young, AICP**  
*Urban Design Center Supervisor*  
*Durham City-County Planning Department*  
101 City Hall Plaza, Durham NC 27701  
919.560.4137, ext. 28256 (v)  
<http://durhamnc.gov/ich/cb/ccpd/Pages/Home.aspx>

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**From:** Lilley, Kevin  
**Sent:** Tuesday, January 14, 2014 3:50 PM  
**To:** Johnson, Alexander  
**Cc:** Reitzer, Joel; Boyer, Chris; Yavelak, Greg; Young, Sara  
**Subject:** RE: Street Trees obstructing Office bldg. @ 104 E. Main Street

Thanks Alex.

Sara and I have spoken before about requests to change or alter elements within the StreetScape, and without sounding coy, our trees are elements within the StreetScape, the same as a bench or a bike rack to some, offering much more benefit to others. Mr. Hunt did move in accepting the conditions that come with living downtown, but he is afforded the opportunity to request a review of the StreetScape elements.

Thanks,

Kevin

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**From:** Johnson, Alexander  
**Sent:** Tuesday, January 14, 2014 3:45 PM  
**To:** Lilley, Kevin  
**Cc:** Reitzer, Joel; Boyer, Chris; Yavelak, Greg; Young, Sara  
**Subject:** RE: Street Trees obstructing Office bldg. @ 104 E. Main Street

Kevin: Greg has spoken with Mr. Hunt about his concerns regarding the 2 trees located on the right-of-way adjacent to his property at 104 E. Main St. His concerns were stated as follows:

- The trees drop leaves
  - Fallen leaves clog storm drains
  - Leaves create a slippery walking surface
  - Leaves can blow into the building when the door opens
- At least one of the trees interfere with his sewer line

What was not revealed in his conversation with the Mayor's office or Greg was an earlier concern which was raised several years ago when he approached me to remove the trees following the theft of his gutter downspouts (made of copper), which he attributed to the presence of the trees screening the activity of the thieves.

In other words, he's been trying for years to have these trees removed, and the reasons given have changed over time.

Greg left it with Mr. Hunt that he would respond once he'd visually inspected them, which he did this afternoon, after which he gave me a verbal report.

In light of our conversation, I will give Mr. Hunt a call tomorrow and explain to him the following points:

- His concerns regarding the trees do not constitute an actionable removal request. Policy requires trees to be in a hazardous or unhealthy condition to be candidates for removal. Being deciduous does not equate with being hazardous.
- I do not intend to discuss the sewer concern. We have no policy in place to address that issue. In the absence of clear policy, discussion would be a moot point in that removal would be contingent upon the acceptance (by multiple agencies) of a formal change to the streetscape design.

In the event he is not satisfied with this response I will give him the contact information for Sara Young in City/County Planning and allow him to formally petition for a change to the downtown streetscape that would allow for the removal of these trees. In copying her to this email I've alerted her to the possibility that he will be contacting her.

Alex

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**From:** Lilley, Kevin  
**Sent:** Tuesday, January 14, 2014 7:44 AM  
**To:** Johnson, Alexander  
**Subject:** FW: Street Trees obstructing Office bldg. @ 104 E. Main Street

I saw your response this morning. Joel's note to Chris and me is below.

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**From:** Reitzer, Joel  
**Sent:** Monday, January 13, 2014 5:45 PM  
**To:** Boyer, Chris  
**Cc:** Lilley, Kevin  
**Subject:** FW: Street Trees obstructing Office bldg. @ 104 E. Main Street

Please follow-up with Alex and ask him to please respond back to Tom that he will do so and also ask Alex let us know the outcome.

Thanks

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**From:** Bonfield, Thomas  
**Sent:** Monday, January 13, 2014 4:24 PM  
**To:** Johnson, Alexander  
**Cc:** Reitzer, Joel  
**Subject:** Fwd: Street Trees obstructing Office bldg. @ 104 E. Main Street

Alex:

Will you please follow up with him and see what the problem is and advise? Thanks.

Tom Bonfield

Begin forwarded message:

**From:** "Bill Bell" <[billbell@udicdc.org](mailto:billbell@udicdc.org)>  
**Date:** January 13, 2014 at 9:56:04 AM EST  
**To:** "Tom Bonfield" <[tjbonfield@gmail.com](mailto:tjbonfield@gmail.com)>  
**Subject:** Street Trees obstructing Office bldg. @ 104 E. Main Street

Tom could you have someone stop by:

Attorney Ralph A. Hunt Jr.  
104 E. Main Street  
Durham, NC 27701  
919-667-0721 office  
[Thehuntlawfirm.com](http://Thehuntlawfirm.com)

He spoke with me last week to say that the trees in front of his office were causing obstructions to their 2<sup>nd</sup> floor office building.

I told him that I would ask you to have someone stop by to speak with him.

I'd be interested in what they determine.

Thanks

Bill

Monday 1/13/2014 @ 9:54am

## **Bonfield, Thomas**

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**From:** Johnson, Alexander  
**Sent:** Wednesday, February 12, 2014 8:31 AM  
**To:** Wrenn, Edith; LeGrande, Glenn  
**Cc:** Lilley, Kevin  
**Subject:** RE: 104 E. Main St. Claim

Thank you Edith, I'm relieved that I wasn't the source of the problem.

The issue came to light as an email from the City Manager's office, forwarded from the Mayor's office, on 1/13/14. The claimant was concerned with 2 trees "obstructing" his office building.

**Attorney Ralph A. Hunt Jr.**  
104 E. Main Street  
Durham, NC 27701  
919-667-0721 office  
[Thehuntlawfirm.com](http://Thehuntlawfirm.com)

The call was given to the Urban Forestry Technician, Greg Yavelak, and he reported back to me that the trees were well formed and did not require pruning maintenance inputs. He also stated that in his conversation with Mr. Hunt his concerns included leaves blowing into the building and "littering" the sidewalk. He also mentioned that there were plumbing issues at his building that he blamed on the trees. The solution he sought was immediate removal of both trees.

I inspected the location with Kevin Lilley (copied) and met with the private plumber he had hired to clean out his pipes and install a "clean-out", which heretofore had been absent. The tree (which was installed in April of 2007) had a portion of its roots exposed by the plumber's trench. The location and density of the roots were not out of the ordinary for a tree of this species and age in the landscape. The roots appeared to be limited to the top 2' of soil, whereas the sewer lateral appeared to be at least 3' deep in the profile. The downtown streetscape trees also benefit from the installation of "root pathways" which direct root growth into and along trenches placed parallel to the roadway, linking the tree "pits" as they exist in sequence in an east-west orientation. I mention this to support the argument that the trees are part of a design, and the design takes into account (and takes appropriate steps to avoid) potential conflicts with other existing infrastructure.

I do not dispute that Mr. Hunt's property was experiencing plumbing problems, but my observations did not support the conclusion that the tree was directly responsible, or that immediate removal of these public assets would alleviate his private concern.

Furthermore, removing any elements of Durham's downtown streetscape would constitute a design change, which would require making a new design and submitting it to the Planning Department for review. Therefore, there was no part of his request that was actionable by the Urban Forestry Division.

The Public Works Department has been active at the location in the past. In 2009 they repaired unit pavers (City Works Service Request 236691, completed 3/24/09). There is a second unit-paver repair SR (#616368) in the system to address the damage to the sidewalk done in the course of the work done by the plumber.

Water and Sewer was also dispatched to the site on the same day that the issue was brought to Urban Forestry's attention (1/13/14). That SR was converted to a Work Order (#545690), but since there was no "clean-out" at this location, there was nothing for that department to do, so the WO was closed out.

I updated Mr. Hunt on his request to the Mayor and Manager on 2/6, at which time he was informed that the trees would not be removed. He informed me that he would like to seek damages.

Since Mr. Hunt is an Attorney, and has demonstrated a willingness to take his concerns "to the top", I thought it prudent to bring to Mr. LeGrande's attention.

This concludes my report.

- Alex

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**From:** Wrenn, Edith  
**Sent:** Tuesday, February 11, 2014 1:19 PM  
**To:** LeGrande, Glenn; Johnson, Alexander  
**Subject:** RE: 104 E. Main St. Claim

There is a problem with the CODI system, the claim for damages form cannot be accessed, please forward me all the information you have and I will get a claim set up manually  
Thank

Edith S. Wrenn  
Claims Administrator  
Finance Department, City of Durham  
101 City Hall Plaza - Annex  
Durham, NC 27701  
P: 919-354-2740 ext. 18333  
F: 919-560-1151

[Edith.Wrenn@DurhamNC.gov](mailto:Edith.Wrenn@DurhamNC.gov)  
[www.DurhamNC.gov](http://www.DurhamNC.gov)

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**From:** LeGrande, Glenn  
**Sent:** Tuesday, February 11, 2014 11:50 AM  
**To:** Johnson, Alexander  
**Cc:** Wrenn, Edith  
**Subject:** RE: 104 E. Main St. Claim

Alexander, can you forward to Edith and I your internal report if you have one?

As of today I haven't heard from Mr. Hunt

*Glenn M. LeGrande, CCLS*  
*Risk Manager*  
*Finance Department, City of Durham*  
*101 City Hall Annex*

*Durham, NC 27701*

*P. 919-354-2740 ext. 18348*

*F. 919-560-1151*

*Glenn.Legrande@durhamnc.gov*

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**From:** Johnson, Alexander  
**Sent:** Monday, February 10, 2014 11:16 AM  
**To:** LeGrande, Glenn  
**Cc:** Wrenn, Edith  
**Subject:** RE: 104 E. Main St. Claim

Sorry Glenn, I cannot use the online form for regular damage claims or sewer backups. I keep getting an unfamiliar error message from CODI.

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**From:** LeGrande, Glenn  
**Sent:** Monday, February 10, 2014 9:02 AM  
**To:** Johnson, Alexander  
**Subject:** RE: 104 E. Main St. Claim

Thanks.

*Glenn M. LeGrande, CCLS*  
*Risk Manager*  
*Finance Department, City of Durham*  
*101 City Hall Annex*  
*Durham, NC 27701*

*P. 919-354-2740 ext. 18348*

*F. 919-560-1151*

*Glenn.Legrande@durhamnc.gov*

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**From:** Johnson, Alexander  
**Sent:** Monday, February 10, 2014 8:36 AM  
**To:** LeGrande, Glenn  
**Subject:** RE: 104 E. Main St. Claim

Glenn: I will fill in what I can. This is the first time I've been at my desktop for more than 10 minutes since our last exchange.

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**From:** LeGrande, Glenn  
**Sent:** Thursday, February 06, 2014 3:02 PM  
**To:** Johnson, Alexander  
**Cc:** Wrenn, Edith  
**Subject:** RE: 104 E. Main St. Claim

Alexander thanks for the heads up. Sorry I wasn't able to take your call as I'm in a meeting at the moment.

I will be looking out for Mr. Hunt's call. In the meantime please proceed with filling out the "property damage" form on CODI.

I have copied Edith Wrenn on this communication as she is the claims administrator here in risk management.

Thanks.

*Glenn M. LeGrande, CCLS  
Risk Manager  
Finance Department, City of Durham  
101 City Hall Annex  
Durham, NC 27701*

*P. 919-354-2740 ext. 18348  
F. 919-560-1151  
[Glenn.LeGrande@durhamnc.gov](mailto:Glenn.LeGrande@durhamnc.gov)*

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**From:** Johnson, Alexander  
**Sent:** Thursday, February 06, 2014 2:57 PM  
**To:** LeGrande, Glenn  
**Cc:** Lilley, Kevin  
**Subject:** 104 E. Main St. Claim

Glenn,

I just left you a voicemail, but thought an email follow-up would be prudent.

This is in reference to Mr. Ralph Hunt Jr., an Attorney working out of an office at 104 E. Main St. who will be contacting you shortly to file a claim for damages to his plumbing which he contends is due to the presence of trees in the right-of-way next to his building.

In this case I concluded that my role would be best limited to providing supporting documentation rather than leading the process.

Please let me know if I can be of assistance in resolving this matter. I would also be happy to go through the process of filling out the necessary form on my end. In any event, please let me know how you would like me to proceed.

Alex Johnson, RF, CA, BS  
Urban Forestry Manager  
City of Durham, General Services Dept.  
2011 Fay St. 27704  
(919) 560-4197 ext. 21275