

**DURHAM, NORTH CAROLINA
MONDAY, MARCH 17, 2014
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, Eddie Davis, Don Moffitt and Steve Schewel. Absent: None.

Also present: City Manager Thomas 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.

The following ceremonial items were presented by Mayor Bell and comments were made by each recipient for their recognition.

- 1) Donate Life Month Proclamation - Presented to Sharon Hirsch, Executive Director of Donate Life N. C.;
- 2) Durham CROP Hunger Walk Day Proclamation - Presented to Kaaren Johanson, Durham CROP Walk Coordinator;
- 3) Arbor Day 2014 Proclamation - Presented to Assistant Director of General Services Chris Boyer;
- 4) Proclamation Honoring Southern High School Football Team - Presented to: Darius Robinson, Athletic Director and other coaches of Southern School of Energy and Sustainability
- 5) Proclamation Recognizing Dr. Debra Saunders-White as the 11th Chancellor of North Carolina Central University
- 6) Recognition of MEAC Men's Tournament Champions – NCCU Basketball Team - Head Coach LeVelle Moton (MEAC Coach of the Year); Jeremy Ingram, Captain (MEAC Player of the Year); Emanuel "Pobbie" Chapman, Captain; Ingrid Wicker-McCree, NCCU Athletics Director; Dr. Debra Saunders-White, NCCU Chancellor; Dr. Dwight Perry, Chairman, NCCU Board of Trustees

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

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. Agenda Item # 5 [Annual Property/Casualty Insurance Plan 2014-2015] was pulled from the Consent Agenda by a citizen.

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to

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approve the Consent Agenda as amended was approved at 7:41 p.m. by the following vote:
Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

[CONSENT AGENDA]

SUBJECT: DURHAM PERFORMING ARTS CENTER OVERSIGHT COMMITTEE - APPOINTMENTS

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to reappoint Phillip A. Powell, Sr. representing Facility Management and to appoint Susan Callaghan representing Community Relations to the Durham Performing Arts Center Oversight Committee with the terms to expire on March 1, 2017 was approved at 7:41 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

SUBJECT: FY2013-14 AMENDMENTS TO THE BUDGET ORDINANCE, GRANT PROJECT ORDINANCES AND CAPITAL IMPROVEMENTS PROGRAM ORDINANCES

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to adopt a budget Ordinance Amending the City of Durham Budget Ordinance as amended, Fiscal Year 2013-14, the same being Ordinance #14486;

To adopt the FY 2008-09 Transit Planning and Capital Grant Project Ordinance (GPO) Superseding GPO # 13835;

To adopt the FY 2012-13 Transit Planning and Capital Grant Project Ordinance (GPO) Superseding GPO # 14526;

To adopt the FY 2013-14 5303 Metropolitan Transit Planning Grant Project Ordinance Superseding GPO # 14473;

To adopt the FY 2012-13 Section 104(f) and Section 133(b) (3) (7) Transportation Planning Grant Project Ordinance Superseding GPO # 14352;

To adopt the FY 2013-14 Section 104(f) and Section 133(b) (3) (7) Transportation Planning Grant Project Ordinance Superseding GPO # 14471;

To adopt an Ordinance Establishing a Capital Improvements Project for Transit; and

To adopt an Ordinance Amending the Capital Improvements Project Ordinance as amended, the same being Ordinance # 14464 was approved at 7:41 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

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Ordinance #s - 14582, 14583, 14584, 14585, 14586, 14587, 14588 and 14589

**SUBJECT: SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES
ADMINISTRATION GRANT PROJECT ORDINANCE AND CONTRACT
WITH ALLIANCE BEHAVIORAL HEALTHCARE**

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to accept the amended Substance Abuse and Mental Health Services Administration (SAMHSA) Grant by executing the grant documents;

To adopt the City of Durham Employment and Training FY 2014-2015 Grant Project Ordinance Superseding Project Ordinance #14546 for Substance Abuse and Mental Health Services Administration (SAMHSA) Grant; and

To authorize the City Manager to execute a contract with Alliance Behavioral Healthcare in an amount not to exceed \$60,000.00 to further implement the pilot employment and training program for youth enrolled in the SAMHSA funded program was approved at 7:41 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #14590

**SUBJECT: AWARD OF CONSTRUCTION CONTRACT FOR THE NORTH AND
SOUTH DURHAM WATER RECLAMATION FACILITIES CHEMICAL
SYSTEMS AND NUTRIENT RELATED IMPROVEMENTS AND
SELECTION OF A SUPERVISORY CONTROL AND DATA
ACQUISITION (SCADA) SYSTEM INTEGRATOR**

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute a general construction contract with Crowder Construction Company for the North and South Durham WRF Chemical Systems and Nutrient Related Improvements project in the total amount of \$13,527,008.96;

To authorize establishment of a contingency fund for the contract of \$1,353,000.00;

To authorize the City Manager to negotiate change orders for the contract provided that the cost of all change orders does not exceed \$1,353,000.00 and the total project cost does not exceed \$14,880,008.96; and

To designate CITI, LLC as the selected subcontractor for SCADA-related services on the Chemical Systems and Nutrient Related Improvements project was approved at 7:41 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

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SUBJECT: SUPPLEMENTAL ARTICLE #5 FOR JORDAN LAKE PARTNERSHIP AND CONTRACT WITH HAZEN AND SAWYER FOR REGIONAL INTERCONNECTIONS STUDY, PHASE 2 FOR THE JORDAN LAKE PARTNERS

MOTION by Council Member Moffitt seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to execute Jordan Lake Partnership Supplemental Article #5;

To authorize the City Manager to execute the contract with Hazen and Sawyer for the Regional Interconnections Study, Phase 2 in the amount of \$481,320.00; and

To adopt an Ordinance Amending the Water and Wastewater Capital Improvement Project Ordinance, Fiscal Year 2013-2014, as amended, the same being Ordinance # 14465 for the purpose of adding funding in the amount of \$500,000.00 to the Jordan Lake Capital project account was approved at 7:41 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #14591

The City Council disposed of the following agenda items at the March 6, 2014 Work Session:

- 3. Contract Amendment for Southside West Neighborhood Site Preparation and Infrastructure Improvements with D.H. Griffin Infrastructure, LLC**
(This item was approved at the 03-06-14 Work Session with a vote of 7/0)

To authorize the expenditure of \$477,000.00 in Community Development Block Grant funds for additional site preparation and infrastructure activities in the Southside neighborhood; and

To authorize the City Manager to execute an Agreement Amendment to Provide Neighborhood Site Preparation and Public Infrastructure Improvements in the Southside Neighborhood with D.H. Griffin Infrastructure, LLC in an additional amount up to \$477,000.00 for a total contract amount of \$2,136,881.00.

- 8. Southside Multi-Family Rental and Homeownership Update**
(A presentation was received at the 03-06-14 Work Session)

To receive an Update on the Southside Multi-Family Rental and Homeownership.

- 9. Neighborhood Compass Project Overview**
(A presentation was received at the 03-06-14 Work Session)

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To receive a presentation on the Neighborhood Compass Project Overview.

[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]

SUBJECT: IMPACT FEE APPEAL - PHILLIPS RESEARCH PARK APARTMENTS

To conduct a public hearing to receive comments on the assessment of impact fees for Phillips Research Park Apartments; and

To confirm the impact fees assessed by City staff against the Phillips Research Park Apartments because City Council concludes and finds as fact that the City of Durham Code sections 30-81 et. seq. have been correctly applied to the Phillips Research Park Apartments project.

The staff reported indicated that the development of the Phillips Research Park Apartments began in 2007. The original site plan application was filed in late November 2007 with subsequent approval on June 19, 2009. When the site plan application was filed, a neighboring property owner, CRLP Durham LP, denied a required cross access to the property. One requirement of CRLP Durham LP's development was that they provide cross access to the Phillips Research Park Apartments (Ellis Road, LLC) site. CRLP Durham LP attempted to block a shared access road adjoining the Phillips Research Park Apartments.

On September 29, 2008, Steven L. Medlin, Planning director, provided written notification to CRLP Durham LP's legal representative that stated Colonial Grand Apartments was in clear violation of the condition set forth in Condition 5 of its site plan approval which requires that cross access be provided and maintained between the tracts. CRLP Durham LP decided to appeal the director's administrative decision to the Board of Adjustment. Pursuant to the Unified Development Ordinance Section 3.15.7 the filing of the appeal application stays all proceedings in furtherance of the action being appealed and prevented the final approval of the site plan until such time as the appeal was heard and decided by the Durham Board of Adjustment.

On March 5, 2009 the Board of Adjustment heard the case and voted to uphold the Planning director's administrative decision with their final order being issued in April 2009. CRLP Durham LP appealed the Board of Adjustment's decision to the NC Superior Court, which upheld the Board of Adjustment's action. CRLP Durham LP appealed the Superior Court ruling to the N.C. Court of Appeals, which subsequently dismissed the appeal on March 1, 2011.

Budget and Management Services Director Bertha Johnson stated that this item is an impact fee appeal by Phillips Research Park Apartments. Phillips Research Park is appealing the Impact Appeal Committee's determination to City Council pursuant to City Code Section 30-87. The City Manager's Office has provided the appellant notice of this hearing as required by code Section 30-87. The City Council shall hear from the appellant, interested parties, the City Manager's Office and applicable City departments and shall then make findings of fact and conclusions that explain the basis for its determination to either confirm or amend impact fees currently assessed by the City.

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Mayor Bell opened the public hearing.

Attorney Robin Currin, representing the appellant, provided Council with a packet of information. She addressed the Council raising the following concerns: She stated that this is an appeal from the City Manager's determination regarding the Phillips Research Park Apartments located on Ellis Road. This project started in 2007 and Phillips Development and Realty did everything possibly within their power to do everything right for a period of almost seven years. The apartments are built and up and running, but due to some litigation an appeal was brought by the neighboring property owner which ultimately they prevailed. During the time this appeal was going on the impact fees changed. They were not able to move forward with the development of the property and could not finish the site plan, could not ask for a building permit for years because the City would not allow them to go forward because of the appeal by the neighboring property owner. She stated that they are asking that they be treated in a way to allow the impact fees to be calculated when they should have been able to and would have been able to file for a building permit had this not happened. She referenced exhibit provided to Council and gave an overview of the chronology of the Phillips Impact Fee Appeal from August 20, 2007 through October 6, 2011.

Donald Phillips, the developer, provided background information about his real estate experience and involvement with the City staff for over 22 years. He made comments regarding the cross easements, two letters of reliance, issue of access from Colonial, the delay from Board of Adjustment and appeal process. He stated after six years and \$50 million through a period of time when banks were failing they prevailed and asked Council to not create injury to them as a result of following the direction and guidance of the people that they have grown to trust for 20 years.

City/County Planning Director Steve Medlin discussed his involvement with the project from its inception. He stated that staff did verify for the applicants that the zoning was appropriate and it was a site that was rezoned with a development plan that did have a committed element requiring the interconnection between the two portions of the project and it was a requirement imposed at the time of zoning. Mr. Medlin referenced the chronological history prepared by the Assistant Planning Director and noted there were exceedingly long periods of time when the application was back in the hand of the applicant with no response coming forward. He commented on Ms. Currin's characterization that the staff arbitrarily told the applicant not to come forward referencing that the ordinance is very clear that once an appeal has been filed --staff would have to stay any further action until such time that action has been rendered by the Board of Adjustment. He acknowledged that the adjacent property owner did use the process in some ways to elongate the process resulting in the case being carried to the March Board of Adjustment hearing and subsequent order being approved in April. He informed Council that staff stands behind all actions they have taken with all parties regarding this matter. He agreed with Mr. Phillips and his attorney that the adjacent property owner utilizing the appeal process did have an adverse effect on them.

City Attorney Baker commented on his review of this matter and the legal basis for retroactively applying an impact fee schedule that does not exist since 2009. He stated the way the code is

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written, the administration cannot find a way to allow the applicant to retroactively apply an old fee schedule to building permits that get pulled in 2011.

Attorney Currin referenced general statute and code regarding the appeal process. She explained why Mr. Phillips could not move forward referencing the Board of Adjustment appeal decision that took seven months, the appeal to Superior Court, Development Review Board's decision, impact fee ordinance, and appeal by neighboring property owner. She asked that the period of freeze/stay not be considered and that the building permit be treated as if it was filed when it could have been, instead of when they ultimately did it.

Mayor Pro Tempore Cole-McFadden asked developer if they had sued the adjacent property owner or received any compensation.

Attorney Currin explained that under North Carolina law, you cannot recover money damages if your delay is for a zoning appeal.

To address Council Member Davis' question regarding any recent precedents, City Attorney Baker stated that they could not find anything since this is an extremely unique situation.

For clarification, City/County Planning Director Steve Medlin stated that Attorney Currin indicated from the time the appeal was filed that there was a seven month period before the item was actually concluded before the Board of Adjustment. He explained why this item was delayed. He reported that it is not unusual to take 60 days after an appeal is filed to prepare a response and then schedule the item before the Board of Adjustment. He commented on the two-month delay of consideration of this item by the attorney for the opposing party. Also, he noted during the third month he was out of office and a special meeting was held two weeks after its normal meeting.

Council Member Schewel asked did the City delay this process in a way that was important and in an unreasonable amount of time beyond delays that were caused by the appeal process itself.

City/County Planning Director Steve Medlin stated based on the record it is clear whenever they had the application, with the exception of the seven-month appeal period for the site plan, staff has turned those comments around within the prescribed timeframes. He felt that the appeal process was elongated. For clarification, when DRB granted them their initial approval that was the approval of the site plan. At that time the process was to grant approval subject to corrections and verification. The verification was the ongoing conversation between the Attorney's Office and the attorney for the applicant to work out some details as it related to a note that had to be placed on the site plan and that was the determination of the Development Review Board which is no longer in existence empowered to make those decisions.

Council Member Schewel asked was it the duty of staff to notify the property owner and to receive the permission for that right-of-way.

For clarification, City/County Planning Director Steve Medlin referenced the letter that he sent to the adjacent property owner that created this issue of whether or not the requirement was going

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to be honored as part of the committed element. After further review of comments, from the first review, he stated there was no requirement that they do that. It was simply pointed out that they had to make provisions for connection.

Mayor Bell made comments on the fee schedule.

City/County Inspections Director Gene Bradham stated there was an increase in the impact fee July 1, 2008 and another increase to take effect July 1, 2009. He also noted there were no additional fee changes between 2009 through 2012.

Mayor Bell asked staff have there been situations where persons entered into the development process and had fee changes in the middle of the process and do we notify the developer that development fees have changed.

City/County Inspections Director Gene Bradham outlined the process. He stated the impact fee ordinance specifies that if the applicant brings a completed package [everything that would be necessary to approve that building permit] then they would be under that fee schedule at that time even if it took three weeks to process.

Mayor Bell asked the applicant if he thought that his development fees would be different from when he started this project in 2007 and did anyone notify him that the fees changed.

Donald Phillips, the developer, replied no.

City/County Inspections Director Gene Bradham explained that when the impact fee was adopted there was a public hearing.

Donald Phillips explained why he did not know the impact fees changed and mentioned when he submitted his application to HUD.

Council Member Moffitt pointed out that Council approved impact fee changes in May 2008 with a July 2009 effective date.

Council Member Brown felt that the developer should have been notified of the impact fee change and offered a suggestion that this item go back to the City Manager for further discussion.

Victoria Peterson asked Council to help the developer with their request.

Mayor Bell closed the public hearing.

City Attorney Baker explained the code provision as being mandatory, that the impact fee shall be determined at the time of building permit application and the building permit application came in sometime after July 1, 2009. He stated that he did not see anything in the code to make a retroactive statement to apply impact fees that don't exist at the time of building permit application submitted in 2011.

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City Manager Bonfield stated while it would be fair and equitable to have the prior impact fee applicable, staff could not find the basis in the code to do that.

Budget and Management Services Director Bertha Johnson stated the charge from the Impact Fee Appeal Committee has always been to study the methodology used to calculate the fee. The Committee had no authority to apply the fee in any other way unless it was proven that the fee was applied incorrectly.

Questions were raised and answered by staff and the developer regarding withdrawal and resubmittal of building permits.

Council Member Davis asked if an amendment could be made to the motion to allow an adjustment to half of the change in the impact fee from the earlier fee to this current impact fee.

City Attorney Baker stated that it is his understanding that you would have to have a basis for the decision and did not know what the basis would be to identify a number unless the calculation is not correct and that is not the issue.

Council Member Davis expressed a concern with staff's recommendation. He said if the original motion fails he would offer a substitute motion to go back to the original impact fee.

City Attorney Baker reported that Council took action in 2008 to change the impact fees and there is not a legal basis to retroactively change the fee just for this project. He said if Council allows the project to be retroactive, many people would receive a refund.

MOTION by Council Member Schewel seconded by Council Member Catotti to receive comments on the assessment of impact fees for Phillips Research Park Apartments; and

To confirm the impact fees assessed by City staff against the Phillips Research Park Apartments because City Council concludes and finds as fact that the City of Durham Code sections 0-81 et. seq. have been correctly applied to the Phillips Research Park Apartments project was approved at 8:54 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Catotti, Davis, Moffitt and Schewel. Noes: Council Member Brown. Absent: None.

SUBJECT: FY2014-15 FISCAL YEAR BUDGET AND FY2015-2020 CAPITAL IMPROVEMENT PLAN (CIP)

To conduct a public hearing to receive comments on the FY2014-15 Fiscal Year Budget and FY2015-2020 Capital Improvement Plan (CIP).

Budget and Management Services Director Bertha Johnson made comments on this item.

Mayor Bell opened the public hearing.

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Victoria Peterson asked that the old Holton School be utilized as a full vocational technical center. She asked Council to set aside \$5 million [\$1million over the next five years] for training young people in this community.

LaDawnna Summers, representing Durham Open Space and Trails Commission, provided Council with a handout and Resolution Urging Action to Obligate the \$2 million Rail Trail Earmark before funding is lost. She stated obligating the earmark involves putting matching funds into the budget and directing staff to take the necessary steps to put a project agreement in place with NCDOT and this process takes about a year. She stated NCDOT confirmed that they could put a project agreement in place to work on an alternative and if the beltline becomes possible the agreement can be amended back to the beltline and funds could be preserved. She asked Council to support option 3 which would serve an underserved and growing part of the community and additionally this option has in its zone impact fees available now to put in the budget for the match that is needed for the earmark. She said DOST requested Council to urgently protect \$2 million by budgeting the match from the available zone 2 impact fees and directing staff to begin the process to obligate the funds culminating in a project agreement.

Vince Hamner, representing the Inter-Neighborhood Council, provided Council with a handout stating that they have identified some limited concerns regarding safety and aesthetics within the current cell tower ordinance as it impacts residential areas within Durham County. He noted the ordinance has been classified as a relatively low-priority and asked that the Planning Department receive additional resources within their budget to expand staff through additional permanent hiring and to hire a contingent worker or a temporary consultant for this project.

City/County Planning Director Steve Medlin gave an update on the cell tower ordinance. He stated they are scheduled to report to the Joint City/County Planning Committee Meeting on April 2nd the results of a staff analysis provided by INC and it is their hope that they will receive clear policy direction to draft potential amendments and noted they do not have a timeline because they don't know how big the scope of the project would be at this point, but do hope to have some sense of timeline within the next month. For clarification, he reported the issue involving the text amendment is not a staffing issue, but a policy direction issue.

Council Member Catotti thanked INC and citizens for their background work done on this effort. She said that it is her understanding the proposed change would remove cell towers from, or have very clear separation from residential areas which would require a major rewrite of the entire ordinance. She reported that the Joint City/County Planning Committee has discussed this matter, but don't know what their recommendation would be.

Mayor Bell asked staff to assign a dollar/staff value on what would be required.

City/County Planning Director Steve Medlin responded they are prepared to do so without any additional staff being requested.

Donna Rudolph provided Council with a handout and made comments on completing the revision of the Durham City-County Wireless Facilities Ordinance as a 2014-15 budget priority. She asked council to finish the ordinance that citizens have brought forward.

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John Martin, Past President of INC, commented on the work completed by Planning staff and INC. He stated the Planning Department needs more funding for staff to deal more expeditiously with citizens' concerns.

Peter Katz, representing INC, asked Council to better fund the City/County Planning Department with a mandate to provide services to the residents of this community.

Heather Slane, representing Durham Historic Preservation Commission, requested \$2,000 to help with the distribution of an annual newsletter to raise awareness for historic districts and how to inform people that they are in historic districts, etc. She explained how the content would be developed for the newsletter.

Mayor Bell closed the public hearing.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to receive comments on the FY2014-15 Fiscal Year Budget and FY2015-2020 Capital Improvement Plan (CIP) was approved at 9:18 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: CONSOLIDATED ANNEXATION ITEM – FIFTY-FOUR PLAZA -
DURHAM IMPERIAL INVESTORS, LLC**

To conduct a public hearing to receive comments on the Consolidated Annexation – Fifty-Four Plaza;

To authorize the City Manager to enter into a water and sewer extension agreement with Durham Imperial Investors, LLC;

To adopt an Ordinance Annexing the Fifty-Four Plaza development into the City of Durham effective March 31, 2014;

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1300021 out of Commercial Neighborhood (CN) (County Jurisdiction) and placing same in and establishing same as Commercial General with a development plan (CG(D)) (City Jurisdiction); 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

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interest in light of information presented in the public hearing and in the accompanying agenda materials.

Recommendations: The staff recommends that the City Council approve the Utility Extension Agreement, Voluntary Annexation Petition, and Zoning Map Change.

City/County Planning Director Steve Medlin certified that all Planning Department public hearing items on the agenda tonight have been properly advertised in accordance with law and affidavits are on file with the department. He briefed Council on this item which requires three separate actions by Council related to the annexation of the Fifty-Four Plaza development. He reported that the utility extension agreement will allow the applicant to serve the development with City water and sewer service. He stated the Public Works and Water Management Departments performed a utility impact analysis and determined that water and sewer facilities are adequate to serve this site. He stated this is a voluntary petition for contiguous annexation submitted by the property owners for the site and the Budget and Management Services Department has performed a Fiscal Impact Analysis that estimated revenues will exceed estimated expenditures immediately upon annexation. He stated the City Council is required to apply an initial zoning to newly annexed property. Case Z13-21 is the requested initial zoning of Commercial General with a development plan and this zoning is consistent with the adopted Comprehensive Plan and Unified Development Ordinance standards. He stated staff is recommending that the Council approve the extension agreement, voluntary annexation and initial zoning for Fifty-Four Plaza. He stated the Planning Commission recommended approval of the initial zoning at its January meeting.

Mayor Bell opened the public hearing.

Brandon White, representing the developer, spoke in support of this item. He thanked staff for their work on this request and stated he was present to answer questions.

No one spoke against this item.

Mayor Bell closed the public hearing.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Brown to receive comments on the Consolidated Annexation - Fifty-Four Plaza;

To authorize the City Manager to enter into a water and sewer extension agreement with Durham Imperial Investors, LLC;

To adopt an Ordinance Annexing the Fifty-Four Plaza development into the City of Durham effective March 31, 2014;

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1300021 out of Commercial Neighborhood (CN) (County Jurisdiction) and placing same in and establishing same as Commercial General with a development plan (CG(D)) (City Jurisdiction); 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 was approved at 9:22 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #s 14592 and 14593

SUBJECT: ZONING MAP CHANGE-BETHPAGE VILLAGE REVISIONS (Z1300030)

To conduct a public hearing to receive comments on the zoning map change for Bethpage Village Revisions (Z1300030);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1300030 to modify the previous proffered commitments associated with the development plan for the existing zoning designation of Planned Development Residential – 4.733 (PDR 4.733), Commercial General with a development plan (CG (D)), and Industrial Light with a development plan (IL (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.

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 January 14, 2014. 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 in the northwest quadrant of the intersection of Page Road and chin Page Road. PINs: 0748-03-94-7127, 0758-03-12-7976, -01-20-0345, -03-11-2112]

City/County Planning Director Steve Medlin briefed Council on the staff report. He stated there are changes to the committed elements from the existing development plan. He stated the zoning designation of the site will remain as Planned Development Residential 4.733, Industrial

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Light with a development plan, and Commercial General with a development plan. He reported that this development plan was initially approved by the Durham Board of County Commissioners in 2007 and subsequently into the City in 2009. At the request of the applicant, Council voted to amend the proffered committed minimum lot size of 6,500 square feet in 2012. He gave an overview of the requested changes to include adding language that specifies housing governed by the Housing for Older Persons Act of 1995 shall be exempt from the voluntary donation to Durham Public Schools and modifying the required recreation amenities originally proffered in 2007 and the applicant also wishes to remove protection for an existing cemetery located on the site. He stated staff has determined that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances and the Planning Commission recommended approval at its January 14, 2014 meeting.

Mayor Bell opened the public hearing.

Scott Lay, representing the applicant, spoke in support of this item and said that he was present to answer questions.

Council Member Moffitt expressed concerns regarding recreational facilities for anybody who might be in a non-age restricted lot and the care of single grave site if not removed.

Scott Lay, representing the applicant, addressed concerns by proffering the following committed elements:

1. In the event access to the Main Recreation Area is limited to “age restricted units in accordance with the Federal Housing for Older Persons Act of 1995”, at least one of the four active recreation areas will be located in the non-age restricted portion of the community and will contain a minimum of one of the following items:

- Tot Lot
- Pool and cabana
- Informal play field of at least 5,000 s.f.

2. In the event the existing cemetery is not relocated in accordance with State and Local regulations, it will be preserved and protected within an open space area with the gravesite surrounded by a 4 foot tall decorative fence with a gate.

Mayor Bell asked staff who would maintain this grave site.

City/County Planning Director Steve Medlin replied if it is within the common area, it becomes the property of the HOA and the applicant is required to submit documents showing how they would maintain their common properties as part of their development approvals.

No one spoke against this item.

Mayor Bell closed the public hearing.

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MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Moffitt to receive comments on the zoning map change for Bethpage Village Revisions (Z1300030);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1300030 to modify the previous proffered commitments associated with the development plan for the existing zoning designation of Planned Development Residential - 4.733 (PDR 4.733), Commercial General with a development plan (CG (D)), and Industrial Light with a development plan (IL (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 was approved at 9:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #14594

[SUPPLEMENTAL ITEMS]

**SUBJECT: RESOLUTION MEMORIALIZING FERDINAND VINCENT (F.V.)
"PETE" ALLISON, JR.**

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to adopt a Resolution Memorializing Ferdinand Vincent (F.V.) "Pete" Allison, Jr. was approved at 9:31 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Resolution #9887

**SUBJECT: PROPOSED ECONOMIC DEVELOPMENT DEAL POINTS WITH
AUSTIN LAWRENCE PARTNERS EAST, LLC (ALP EAST, L.L.C.) FOR
CAPITAL INVESTMENTS AND ARCHITECTURAL ELEMENTS AT 119
WEST PARRISH STREET, 113 WEST PARRISH STREET, 118 WEST
MAIN STREET, 120 WEST MAIN STREET AND 122 WEST MAIN
STREET AND 202 NORTH CORCORAN STREET**

To authorize the City Manager to negotiate an economic and community development agreement based on deal points negotiated between the City of Durham and Austin Lawrence Partners, L.L.C. for capital investment in 119 West Parrish Street and the restoration of identified architectural elements of 113 West Parrish Street, 118 West Main Street, 120 West Main Street and 122 West Main Street and 202 North Corcoran Street, for a total incentive payment amount not to exceed \$3,973,095.00.

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Economic and Workforce Development Director Kevin Dick gave an overview of proposed economic and community development deal points with Austin Lawrence Partners. He stated these deal points would begin the negotiations for the economic and community development incentive agreement involving the development and construction of the proposed City Center Tower as well as the renovation of the Jack Tar Motel. He stated that this development includes parking, retail, office, apartments as well as a 74-room hotel. He stated if these deal points are approved, staff would proceed to negotiate an economic incentive agreement with the developer which should come back to Council no later than April 21, 2014.

Mayor Bell raised a question regarding the SDBE Summary outlined in the staff report. Mayor Bell noted he needed to know how this statement would be different if the Equal Opportunity/Equity Assurance was managing this project towards meeting those goals. Mayor Bell stated that he was troubled by the wording that no specific SDBE provisions are specifically required by ordinance because he felt for a project like this and the participation and investment that the City and County would be making there should be goals and assurances that we are going to have that participation. The Mayor asked for clarification on the SDBE summary wording when this item comes back to Council.

Council Member Schewel asked questions that were answered by staff on whether the 500 office workers are considered new jobs, difference between assessed value and the capital value, the financial impact for year one and the private to City investment ratio for the project.

Economic and Workforce Development Director Kevin Dick responded that there have been discussions with the developers for Duke to lease some of the office space and explained the difference between the assessed value and capital value.

Council Member Schewel asked staff to provide an estimate of the new jobs that would be created as well an estimate of the net revenue gain to the City for year one including other taxes.

Mayor Pro Tempore Cole-McFadden commented on the reference in the staff report asking the developer to make every attempt to ensure that potential tenants are knowledgeable of the Durham livable wage. She asked staff to include some assurance that they are knowledgeable about the Mayor's Summer Youth Program and would encourage their tenants to participate in some way—either through hiring or giving money to hire them someplace else.

Kevin Dick replied that language is a stipulation in the Durham Workforce Development Plan.

MOTION by Council Member Brown seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to negotiate an economic and community development agreement based on deal points negotiated between the City of Durham and Austin Lawrence Partners, L.L.C. for capital investment in 119 West Parrish Street and the restoration of identified architectural elements of 113 West Parrish Street, 118 West Main Street, 120 West Main Street and 122 West Main Street and 202 North Corcoran Street, for a total incentive payment amount not to exceed \$3,973,095.00 was approved at 9:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

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[ITEM PULLED FROM CONSENT AGENDA]

SUBJECT: ANNUAL PROPERTY/CASUALTY INSURANCE PLAN 2014-2015

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

To authorize the City Manager to purchase additional insurance throughout the year, as needed for special events, lease and contract requirements, new programs and builders risk insurance; and

To authorize the City Manager to expend an amount for all insurance premiums not to exceed \$958,058.00 to maintain the annual insurance plan and make additional insurance purchases as needed beginning April 1, 2014 was approved at 9:46 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

There being no further business to come before the City Council, the meeting was adjourned at 9:46 p.m.

Linda E. Bratcher, CMC
Deputy City Clerk

D. Ann Gray, MMC, NCCMC
City Clerk