

DURHAM CITY COUNCIL WORK SESSION
Thursday, August 21, 2014 @ 1:00 p.m.
Council Chambers – 101 City Hall Plaza

Present: Mayor William V. “Bill” Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Eddie Davis, Diane Catotti, Don Moffitt and Steve Schewel. Absent: None.

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

Earlier, Mayor Bell said that due to the large crowd in the committee room, the work session meeting was being moved to the council chambers and would convene at 1:30 p.m.

Mayor Bell called the work session meeting to order asking for priority items from the City Manager, City Attorney and City Clerk.

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

After the Mayor announced each item on the printed agenda, the following items were pulled for comments and/or discussion.

Subject: Joseph Bushfan

To receive comments from Joseph Bushfan on the funding and support of the Angier/Driver streetscape project.

Joseph Bushfan shared with the council an update on the positive activities taking place at the Angier/Driver corridor. He said he appreciated the council’s support.

Subject: Approval of Public and Private Pre-Development Costs for the Redevelopment of Southside Rental Phase 2 with McCormack Baron Salazar Development, Inc.

On June 20, 2012, City Council approved a Master Development Agreement with McCormack Baron Salazar, Inc. (MBS) that established the roles and responsibilities of the City and MBS for the redevelopment of the former Rolling Hills site. The MDA is the document that defines the roles and responsibilities of the parties and which governs the general terms of all individual loans and grant agreements, the provision of the land, deeds of trust, promissory notes, budgets, development schedules, income guidelines, tenant eligibility, phase maps and any additional information that is integral to this project, and most specifically, the number and type of low and moderate housing units obtained in return for the City’s subsidy. It specifies the responsibilities of the City and of MBS as the project developer, including the terms for disbursement of funds during the pre-development and construction phases for Phase 1 and for Phase 2.

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As Phase 1 construction progresses toward a December 31, 2014 placed in service date, discussion has begun on the second phase of development. In preparation for a 2015 Tax Credit Application to the North Carolina Housing Finance Agency, the rezoning process as well as site preparation and infrastructure design and design of the proposed 79-unit project must begin promptly. Approximately forty-eight of the proposed seventy nine units will serve families at 60% or below of the area median income. The site preparation and public infrastructure design for the entire remaining site, to include Phase 2, will be funded by way of a Community Development Block Grant (CDBG) grant to MBS with the design of the private site improvements and the Phase 2 residential buildings themselves to be funded by a repayable predevelopment loan made with funds repaid to the City from prior housing bond loans, along with funds that MBS will provide. As with the CDBG grant, the loan amount is included as part of the overall financial plan for the Community Development department.

A right of entry agreement is also required as it will allow MBS to enter on the City-owned site and conduct required associated activities in support of preparing the required documents for the submittal of a tax credit application.

The Department of Community Development recommends that City Council authorize the expenditure of up to \$449,630.00 in CDBG funds for site preparation, public infrastructure design and design of on street parking services, authorize the expenditure of \$500,000.00 in housing bond program income for the design of the 79-unit Southside Revitalization project Phase 2, and authorize the City Manager to execute the following agreements with McCormack Baron Salazar Development, Inc., a CDBG contract in an amount up to \$449,630.00, a housing bond program income predevelopment loan agreement in an amount up to \$500,000.00, and a right of entry agreement.

Council Member Catotti voiced concern with the absence of minority SDBE goals/low WSDBE goals on the Southside Revitalization East Site design project.

Community Development Director Reginald Johnson said the goals were reviewed by the Equal Opportunity Equity Assurance Department and he would need to speak with them further to obtain additional details.

Assistant Community Development Director Larry Jarvis briefed the council on the management fee of 16% to be paid to McCormack Baron Salazar and its purpose.

For clarification, City Manager Bonfield said this is a fee that would be paid to someone for managing the infrastructure, design and installation on that phase of the project.

Council Member Schewel said if this item is approved, will the May and August deadlines be met as described related to the tax credit application.

Community Development Director Reginald Johnson stated yes, if the item is approved on this current cycle. He said they do have a schedule that would allow McCormack Baron to be in a position to apply for the tax credits and have all of the work done that is needed in time for the submission in May.

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Referencing the predevelopment loan, Council Member Moffitt asked if full repayment of this particular loan is expected.

Assistant Community Development Director Larry Jarvis said the predevelopment loan will be at 0%, and there will be some repayment; however, it is not like a fully amortizing loan, but it depends on how far it is projected out in the future, it might amortize.

Council Member Brown asked if phase one construction will be ready by December 1, 2014.

Community Development Director Reginald Johnson replied yes they expect that service date of December 1, 2014 to be met. He said the first tenants will be moving in next month and said there are some buildings already completed. He also noted phase 2 will have 79 units.

Subject: Grant Project Ordinance Recognizing 2014 State of Durham's Economy Breakfast

Since 1998, the Office of Economic and Workforce Development has produced the State of Durham's Economy Breakfast in order to provide updated economic information to the citizens and business leaders of Durham. In 2012, the City Council approved a grant project ordinance accepting the revenues from the 2012 event. This agenda item supersedes the 2012 grant project ordinance to allow the City Council to accept the grant documents and revenues from the 2014 State of Durham's Economy Breakfast (SODE). The funds will be used for the following purposes: neighborhood revitalization, small business and entrepreneurial development activities, the 2015 State of Durham's Economy Breakfast, and the Durham Youth Work Internship Program.

The Office of Economic and Workforce Development recommends that the City Council accept the grant documents and adopt the City of Durham Grant Project Ordinance for the State of Durham's Economy Breakfast Revenues, Superseding Grant Project Ordinance 14325.

Council Member Schewel asked is the request to have the State of Durham's Economy event to be self-sustaining and then to put the remaining funds toward the Youth Work Internship and revitalization.

Sheila Huggins, of OEWD, replied yes, and briefed the council on how the monies will be spent.

Subject: Professional Services Contract St-272C with Stewart Engineering, Inc. – Duke/Gregson Curb Extension

On April 23, 2014, submittals were received for Contract ST-272C, Duke/Gregson Curb Extensions project. This contract is for the proposed design of approximately sixteen (16) curb

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extensions at various intersections along Duke Street and Gregson Street. Stewart Engineering, Inc. was selected by the Selection Committee for the following reasons: 1) they demonstrated an understanding of the scope of work, 2) they provided a detailed outline of the potential problems along with good methodology for solving potential problems, and 3) the team from Stewart Engineering, Inc. has experience with similar projects.

The administration recommends that the City Council authorize the City Manager to execute a professional services contract for ST-272C Duke/Gregson Curb Extensions with Stewart Engineering, Inc. of Durham, North Carolina, in the amount of \$93,216.50; and authorize the City Manager to negotiate change orders provided that the cost of all change orders does not exceed the total project cost of \$93,216.50.

Council Member Moffitt asked to what extent will the Bicycle Pedestrian Commission be able to weigh in on the design of the curb extension.

Assistant Public Works Director Tasha Johnson said there are several public meetings scheduled throughout the design process for comments.

Subject: 2014 Unscheduled Pipeline Repairs Contract with J.F. Wilkerson Contracting Company

The Department of Water Management received bids on June 19, 2014 for the 2014 Unscheduled Pipeline Repairs Contract. This project addresses unscheduled or emergency repair and replacement of potable waterlines, sanitary sewer mains and manholes throughout the City service area. Work completed during this project will be on an as-needed basis in response to pipeline breaks or leaks that cannot be repaired by City crews. Two bids were received and deemed responsive. The Department recommends awarding contracts to both J.F. Wilkerson Contracting Company, Inc., in the amount of \$219,955.00 and Centurion Construction Company, Inc., in the amount of \$294,982.58.

The Department of Water Management recommends that the City Council:

1. Authorize the City Manager to execute a contract with J.F. Wilkerson Contracting Company, Inc., in an amount not to exceed \$219,955.00 for the 2014 Unscheduled Pipeline Repairs Contract; and
2. Establish a contingency fund for the contract with J.F. Wilkerson Contracting Company, Inc., in the amount not to exceed \$30,045.00; and
3. Authorize the City Manager to negotiate change orders for the contract with J.F. Wilkerson Contracting Company, Inc., provided that the cost of all change orders does not exceed \$30,045.00, and the total project cost of \$250,000.00; and
4. Authorize the City Manager to execute a contract with Centurion Construction Company, Inc., in an amount not to exceed \$294,982.58 for the 2014 Unscheduled Pipeline Repairs Contract; and
5. Establish a contingency fund for the contract with Centurion Construction Company, Inc., in the amount not to exceed \$30,017.42; and

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6. Authorize the City Manager to negotiate change orders for the contract with Centurion Construction Company, Inc., provided that the cost of all change orders does not exceed \$30,017.42, and the total project cost of \$325,000.00.

Water Management Director Don Greeley briefed the council on the purpose of this item.

Subject: Contract with Biohabitats, Inc. for Algal Turf Scrubber Mobile Pilot System Installation and Operation

The Falls Lake Nutrient Management Strategy requires large reductions of nitrogen and phosphorus (i.e., nutrients) from the City of Durham. The existing rules provide direction for stormwater control measures (SCM's) to be installed to mitigate nitrogen and phosphorus from new development, existing development and agricultural land uses. Stormwater & GIS Services within the Public Works Department had a feasibility study done on the Algal Turf Scrubber[®] (ATS[™]) system, which is a patented algae growth and harvesting system that can be sized to fit the available land and water volume. Based on the feasibility study, there are enough potential cost-benefits when compared to traditional SCM's to move forward with an ATS[™] pilot study. The feasibility study concluded that the ATS[™] system in the Ellerbe watershed to have a potential cost between \$19 to \$648 per pound for nitrogen removed and \$67 to \$1,534 per pound of phosphorus removed from the ten areas evaluated. The ATS[™] estimate of the dollar amount per pound removed appears to be a fraction of the calculated cost of nutrient removal from the top sixteen SCM's documented in the 2009 Ellerbe Creek Watershed Implementation Plan. The calculated nutrient removal used the capital improvement costs in the Executive Summary, Table ES-5, and SCM performance which estimated the nitrogen removal, to cost \$2,450 to \$39,573 per pound nitrogen removed and \$11,270 to \$195,214 per pound of phosphorus removed. The completion of the pilot study will determine the system's projected performance, harvesting /composting projections and system design for a full-scale facility that could, provide significant and cost effective nutrient removal for the City of Durham.

The administration recommends that the City Council accept a presentation on the proposed project, authorize the City Manager to execute a contract with Biohabitats, Inc. for Algal Turf Scrubber[®] Mobile Pilot System Study for nutrient removal in the amount of \$358,540.00; establish a contingency in the amount of \$35,000; and authorize the City Manager to executed amendments to the contract, as long as the total contract amount, including amendments, does not exceed \$393,540.00.

In addition, Danielle Mir, of the Public Works Department, provided a power point presentation on this item.

Mayor Bell raised concern with the lack of minority participation by the vendor Biohabitats.

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The administration will contact the Equal Opportunity Equity Assurance Department and provide a response to the Mayor's concern prior to the September 2, 2014 meeting.

Mayor Pro Tempore Cole-McFadden asked if the city would ever be able to reach the State goals.

Michelle Wolff, of Public Works Department, replied in her opinion, they could meet stage 1.

Subject: City Manager's Report in Response to Recommendations from the Human Relations Commission and Civilian Police Review Board

City Manager Bonfield introduced the item; thanked the staff, volunteers and advocacy groups for their contributions to the report; and read the following statement:

Durham's greatness is enhanced by its willingness to publicly discuss and debate difficult issues and difference of thought and opinion and the issues of police – community relations and unexplained racial disparities are no different.

Here are some takeaways from our work: We have a great and dedicated nationally recognized Police Department staffed by men and women who are committed to public safety – a consistent highest priority from our resident satisfaction surveys.

We found numerous areas the recommendations were either already in practice or were in the process of being responded to. The Police Department's data and analytics practices are some of the best in the state if not the country. The Police Department needs to better and proactively use these capabilities to inform the Command Staff and the City Manager when trends indicate inequities or issues that negatively impact positive police/community relations. Our review and the data tells us in some areas unexplained racial disparities do exist and we need to use these data capabilities to better understand and explain trends and underlying specifics of disparities and respond to what we learn and discover. We need to do all of this proactively, at the highest levels, as regular and routine part of our work. Finally, to be effective, many of the issues at hand regarding disparities and community relations extend well beyond the boundaries of the Durham Police Department. Meeting Durham's community standards, expectations and aspirations regarding safety, justice, and equity will take dialogues and collaboration between the entirety of our local criminal justice system... the City of Durham and its police department, Durham County, Durham County Sheriff's Office, the District Attorney's Office, the District Court and others.

The report and recommendations therein stand on their own and I am prepared to clarify, answer and respond to questions from city council as you deem appropriate. As we have worked through this process, the resounding themes of Trust, Accountability, and Transparency were clear and are evidently critical to moving forward and we are committed to see that they remain so.

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As it relates to Transparency, it is my intention that the recommendations, once confirmed will be tracked and our progress transparent to community through the city's website, periodic PAC updates, and other community presentations. I am certain that some will never be satisfied with the level of transparency but privacy laws and security will prevail.

As it relates to Accountability, from the City Manager, to the Police Chief, the Police Department, and the entire City organization we expect to be held accountable to the Mayor and City Council and the community for our work, for our actions, and most importantly, for our results. No one is perfect and while we may strive for perfection, we expect excellence in everything we do as employees of this organization.

Finally, as it related to Trust. The public trust is an awesome responsibility and none more important than the Trust a community has with its police department. Trust between the police department and all segments of the community is in every resident's best interest and is essential for a civil society and a progressive and progressing city. While Trust certainly must be earned it equally must be given. I look forward to using this report and the resulting discussion to strengthen the bridge connecting this Trust.

At this time, Mayor Bell recognized council members for comments.

Councilmember Moffitt voiced appreciation to the Human Relations Commission and FADE (Fostering Alternative in Drug Enforcement) for their work.

Councilmember Schewel thanked the City Manager and staff and the Legal Department for their contributions; indicated the report laid the ground work for discussions; addressed the Police Department reiterating confidence in the department's officers; was pleased to see proactive response from police on the key recommendation concerning the instituted training on bias-based policing; spoke to the well-developed crisis intervention training levels, alliances in behavioral health, and stressed the importance of such training; referenced the adopted practices to improve data collection practices and accountability; addressed low-level marijuana possession offenses and the desire to move ahead with relevant discussions; spoke to consent searches and body cameras which has the potential of reducing the use of force; and supported a firmer guideline regarding the operation of body cameras on officers.

City Manager Bonfield deferred to Deputy City Manager Bo Ferguson to speak to the topic of body cameras.

Deputy City Manager Ferguson responded to the usage of body cameras by officers; clarified that in current practice, cameras captured the event, and when officers stepped out of range, problems occurred with the technology; and added that when a microphone/camera was mounted on a vehicle, that range was limited.

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Councilmember Schewel voiced support for a firmer guideline on camera usage; recommended that cameras be used as often as possible; spoke to methods utilized to handle stops and consent searches; stated he understood the rationale that officers wanted the discretion to make decisions within limited time constraints; and spoke to working with judges/district attorneys to address marijuana drug arrests.

Mayor Pro Tempore Cole-McFadden thanked the Human Relations Commission for taking on the project and for the sharing of concerns by citizens; stated her greatest concern was associated with consent searches and wanted more details pertaining to them; questioned the recruitment and employee orientation at the local government level; and spoke to ensuring that demographics, culture, and expectations were discussed with new employees of the police department.

Councilmember Davis expressed support for the members of clergy, schools and neighborhoods continuing community dialogue to address issues facing youth, as well as, topics identified in the manager's report; stated Durham could lead; and commended staff.

Councilmember Catotti appreciated the careful review, analysis and community input; looked forward to additional review of the report; noted the recommendations met best practices nationally and in the State; requested the report be reissued with page numbers; addressed consent searches (Recommendations #9, #10, #11) and wanted the rationale that only the HEAT teams would be utilizing audio/video recording; requested the proportion of the current force with recording equipment; requested the rationale for supporting semi-annual versus quarterly reporting on traffic stops; referenced the implementation of fair and impartial policing and the training schedule for new recruits and other officers; inquired when training would be completed; requested cost estimates and identification of resources for Crisis Intervention; expressed support for ongoing collaboration of Police Chief, Sheriff, District Court and District Attorney on making marijuana a low-level priority arrest; and requested that in addition to reporting to the Durham Crime Cabinet, requested an invitation be sent to all city council and county commissioners regarding those briefings.

City Manager Bonfield explained the preference for semi-annual vs. quarterly reports; noted that semi-annual reports contained more meaningful - trend analysis; and requested Deputy Chief Marsh to respond to employee training.

Deputy Chief Anthony Marsh spoke to the training timetable; stated that the last group of recruits had been trained prior to reporting for duty and that the plan was to have every officer trained, including recruits; and stated that the information needed to be fresh prior to the officers going on patrols.

Councilmember Moffitt spoke to his review of the report; and that he supported future discussions of the report by Council.

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Mayor Pro-Tem Cole-McFadden inquired about the rotation of officers from stressful circumstances; referenced recommendation HRC #5 regarding psychiatric evaluations; and inquired about previous work experiences that could possibly impact law enforcement.

City Manager Bonfield indicated that the general order was attached to the recommendation that contained specifics on the positions in stressful environments and that previous experience was not included in the recommendation; and stated more information could be provided.

Mayor Bell recognized the following citizens for comments:

Ian Mance, Attorney with the Southern Coalition for Social Justice and member of FADE Coalition, spoke in support of the five FADE recommendations, supported written consent policy for use by patrol officers for vehicle stops; referenced Michigan Law Review article, 'Erasing the Fourth Amendment' and memorandums from the UNC School of Government related to written consent and marijuana LEP, and said the District Attorney's Office supported having a written consent policy.

City Manager Bonfield interjected that the report referenced conversations with District Attorney Roger Echols and Judge Morey and others and the preference was documented consent not written consent; and said that Council charged him to respond to recommendations by the Human Relations Commission and Civilian Police Review Board; and deferred to the City Attorney to comment on the information provided by the UNC School of Government mentioned by Mr. Mance.

Minister Rafiq Zaid, President of Black Concerned Citizens, FADE member, spoke to the five recommendations from FADE; spoke to the lack of police targeting white youth; referenced his conversations with black youth regarding organizing public protests; and urged all to make the world a better place upon departure.

Charlie Reese, representing Durham People's Alliance, stated the City Manager's report proposed measures were insufficient to eliminate racial disparities that existed in the Police Department's enforcement practices; and spoke in support of written consent for vehicular searches.

Victor Bynum stated he did not feel safe around the police; asked audience members to raise their hands if they felt that racial disparities existed by police; stated suspects were multi-racial but not all races were searched; and stated that there had been no economic development in his neighborhood.

Howard Machtinger, Member of FADE Coalition, referenced the interactions between police and black youth; emphasized the importance of addressing racism in realistic terms; and stated the fifth racial training was not recommended by the FADE Coalition.

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Phil Wiggins, retired Durham Police Captain, spoke in support of Police Chief Lopez and the department; spoke to diversity training practices; community policing and outreach; and felt the accusations of racism by a few in the community were unfounded.

Stella Adams, of Cobblestone Place, spoke to her background with data collection and incident reporting; and requested that the phrase *whether the suspect is a stranger to the area* be removed from General Order 4004-R-2 relevant to the determination of reasonable suspicion, due to its implications on racial profiling. Also, she spoke in support of representation from all PACs on the review board.

Chris Tiffany provided the report's table of contents to Council; expressed concerns about police taking complaints about police; and favored complaints being documented through the One Call system.

Pastor Mark Anthony Middleton, representing the Durham CAN Clergy Caucus, voiced support for the staff of the police department but said the city has an issue; spoke in opposition to racial profiling; said the time for studying and deliberating is winding down and called on the city council to do what the citizens have placed their sacred trust in them to do; supported written consent for vehicle stops and searches; and requested council adopt the recommendations and move forward with continuing to build the great City of Durham.

Mike Evans, Retired Durham Police Officer & representing the Local Fraternal Order of Police, Lodge #2; expressed support for Police Chief Lopez and the police department. He also said they concurred with the results of the manager's report and with the implementation of City Manager Bonfield's findings/policies, and with the policies revisions that the police department has already begun to implement, he said it should put to rest a lot of the concerns raised.

Jesse H. Gibson referenced the City Manager's statement regarding not seeing a need for psychological evaluations of new police recruits; referenced a report sent to city council regarding 90% of police departments across the nation utilize some sort of psychological evaluation as a part of testing for their new officers; in addition he sent to council a psychological inventory - a tool which measures fitness for continued duty for officers, and he spoke to changes needed in the composition and structure of the Durham Police Review Board.

City Manager Bonfield said he knew the council was aware of this; however, he requested that others refer to HR #5 which has all the background information and response which corrects all the inaccuracies that Mr. Gibson just referred to. The manager said the facts are that psychological evaluations are already being done for new recruits.

Roland Staton, representing the Durham Branch NAACP, expressed appreciation to staff for the efforts in compiling the report; supported investigative authority being given to the Citizen Police Review Board; spoke to racial discrepancies in marijuana enforcement; spoke in support

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of written consent for vehicle searches; and stated the recommendations were good first steps but not a journey complete.

Jackie Wagstaff voiced concerns with the city manager's recommendations in the report. She said if the Durham police force and their best practices are some of the best in the State, then why has Durham had so many unexplained murders at the hands of the police department; expressed disgust about the recommendations in the report and referenced eyewitness accounts from citizens regarding harassment; racial profiling; etc., and said she was disturbed that the manager's report spoke about protecting the officers from frivolous complaints, which led her to believe that the manager felt the testimony from the citizens was frivolous and had no merit, which she said is not true. Ms. Wagstaff did agree with the recommendation of low-level drug enforcement of marijuana.

Nancy Wilson, representing the FADE Coalition, invited the Mayor, City Manager and Councilmembers to join them on a trip to Seattle to research LEEP programming used to assess racial disparities; voiced appreciation for the Mayor's efforts on this project; and stated that black men are being harassed and oppressed across the country.

DeCarlos Stanley, former military service member, referenced personal experiences where he dealt with being arrested; and encouraged council to confront problems directly.

Phil Seib, representing the Human Relations Commission, stated the commission would like to take time to digest the executive summary and that the commission may consider formally responding.

Chris Kuster, of Foxcroft Lane, provided a handout to the Clerk; encouraged the Police Department to invest in body cameras; spoke to the potential abuses of camera equipment; and noted the need for oversight of the equipment.

Omar Beasley, of Skybrook Lane, expressed appreciation for the report and meetings with the Human Relations Commission; referenced high statistics of arrests for African-Americans associated with simple possession of marijuana in Durham, the disproportionate vehicle stops/searches of black men and the resulting racial disparities in Durham County; and encouraged the use of written consent forms for vehicle searches.

Umar Muhammad, member of the FADE Coalition, said he felt targeted; stated the Police Department was a threat; expressed being tired and stressed with trying to survive in the community; and encouraged the Mayor and Council to remain involved and to keep their word.

Mayor Bell thanked the citizens for their comments and said the value of receiving the comments will allow him to focus on certain parts of the report that he might not have focused on.

Mayor Bell said this item will be placed on the September 2, 2014 city council agenda for council discussion/recommendations they may have for the city manager.

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Mayor Bell said he would be writing a letter to the District Attorney's Office, the District Court Judge; the Sheriff's Department; Probation Department, Magistrate's Office, as well as the City and County Managers asking for a meeting to sit down and have a discussion on how to deal with the issue of marijuana arrests.

At this time, the City Clerk announced the ballot votes for the Durham Bicycle and Pedestrian Advisory Commission and the Durham City/County Environmental Affairs Board.

Settling the Agenda – September 2, 2014

City Manager Bonfield referenced the following items for the September 2, 2014 City Council meeting agenda: Consent Items 1 thru 3; 5 thru 12; and General Business Agenda Item 4.

Motion by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to approve settling the agenda for the September 2, 2014 council meeting as stated by the City Manager.

The motion was approved unanimously at 3:56 p.m.

There being no further business to come before the council, the meeting was adjourned at 3:58 p.m.

D. Ann Gray, MMC, NCCMC
City Clerk