

**DURHAM, NORTH CAROLINA  
MONDAY, DECEMBER 1, 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 Councilmembers Eugene Brown, Diane Catotti, Eddie Davis, Don Moffitt and Steve Schewel. Absent: None.

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

Mayor Bell called the meeting to order with a moment of silent meditation followed by the Pledge of Allegiance led by Councilmember Brown.

There were no ceremonial items for presentation.

**[ANNOUNCEMENTS BY COUNCIL]**

Mayor Bell asked if there were any announcements by Council; there were no announcements.

**[PRIORITY ITEMS]**

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

The Mayor stated the consent agenda would be approved with a single motion and items pulled from that agenda by any citizen or councilmember would be discussed at the end of the agenda.

Mayor Bell read the items on the consent agenda.

Victoria Peterson, a citizen, requested Items 7 and 13 be removed for further discussion.

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to approve the consent agenda as amended was approved at 7:06 p.m. on the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**[CONSENT AGENDA]**

**SUBJECT: APPROVAL OF CITY COUNCIL MINUTES**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to approve the City Council minutes for the October 9, 2014 Work Session and the October 20, 2014 City Council Meeting was approved at 7:06 p.m. by the following vote: Ayes: Mayor

**December 1, 2014**

Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: DURHAM CITY-COUNTY APPEARANCE COMMISSION - APPOINTMENT**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to appoint Anne Abney to the Durham City-County Appearance Commission with the term to expire on April 1, 2016 was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: CITY WIDE STRATEGIC PLAN PERFORMANCE AUDIT REPORT OCTOBER 2014**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to receive and accept the City Wide Strategic Plan Performance Audit Report (October 2014) as presented and approved at the October 27, 2014 Audit Services Oversight Committee was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: TAKE HOME VEHICLE PERFORMANCE AUDIT REPORT OCTOBER 2014**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to receive and accept the Take Home Vehicle Performance Audit Report (October 2014) as presented and approved at the October 27, 2014 Audit Services Oversight Committee Meeting was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30 2014**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to receive and accept the Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2014 as presented and approved at the October 27, 2014 Audit Services Oversight Committee Meeting was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: FY15-16 BUDGET DEVELOPMENT SCHEDULE**

**December 1, 2014**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to approve the FY2015-16 Budget Development Schedule was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: 2015 CITY COUNCIL MEETING SCHEDULE**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to approve the 2015 City Council Meeting Schedule; and

To adopt an Ordinance Cancelling the City Council Work Sessions for June 18, 2015 and July 9, 2015 and Cancelling the City Council Meetings for July 6, 2015 and July 20, 2015 was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**ORDINANCE #14697**

**SUBJECT: NC 55 (ALSTON AVENUE) WIDENING MUNICIPAL AGREEMENT WITH NORTH CAROLINA DEPARTMENT OF TRANSPORTATION - U3308**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to authorize the City Manager to execute a Municipal Agreement with the North Carolina Department of Transportation for U-3308 NC 55 (Alston Avenue) Widening at an estimated City cost of \$57,327.00 was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: BID REPORT- OCTOBER 2014**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to receive a report and to record into the minutes bids which were acted upon by the City Manager during the month of October 2014 was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.



December 1, 2014

CITY OF DURHAM, NORTH CAROLINA

**Date:** November 4, 2014  
**To:** Thomas J. Bonfield, City Manager  
**Through:** Wanda S. Page Deputy City Manager  
**From:** David Boyd, Finance Director  
Jonathan Hawley, Purchasing Supervisor  
**Subject:** Bid Report - October 2014

**Recommendation**

To receive a report and to record into the minutes bids which were acted upon by the City Manager during the month of October 2014.

**Apparatus, Supplies, Materials, Equipment, Construction and Repairwork:**

1. **Bid:** Long Range Communications Unit
- Purpose of Bid: Provides the Police Department with a LRAD 300X dash mounted module for long range communications.
- Comments: This module provides security personnel with long range communications and a highly effective hailing and warning capability where needed.
- Opened: 10/9/2014
- Bidders:
- |                         |   |             |
|-------------------------|---|-------------|
| Safeware                | * | \$17,355.00 |
| Raleigh, NC             |   |             |
| LRAD                    |   | \$18,244.67 |
| San Diego, CA           |   |             |
| Mallory Safety & Supply |   | \$21,227.12 |
| Longview, WA            |   |             |

\*Awarded based on:            x            Low Bid            Other (See Comments)

CORPORATION STATISTICS

Total Workforce	78		# Black Males	7	9%
Total # Females	<u>32</u>	41%	# White Males	<u>36</u>	46%
Total # Males	<u>46</u>	<u>59%</u>	# Other Males	<u>2</u>	3%
			# Black Females	<u>11</u>	14%
			# White Females	<u>21</u>	27%
			# Other Females	<u>1</u>	1%

**2. Bid: Pump Replacement**

Purpose of Bid: Provides the Water Management Department with twenty-three (23) Aluminum Diffusers for dechlorination for use by the Water & Sewer Operations Division.

Comments: 23 units @ \$909.00 each.

Opened: 10/15/14

Bidders:	Pollard Water	*	\$20,907.00
	New Hyde Park, NY		
	TEC Utilities Supply Inc.		\$23,236.31
	Greenville, NC		
	Water Works Inc.		\$25,813.48
	Raleigh, NC		
	Integra Chemical Co.		\$70,512.00
	Kent, WA		

\*Awarded based on:            x            Low Bid            Other (See Comments)

WORKFORCE STATISTICS  
CORPORATION STATISTICS

Total Workforce	36		# Black Males	0	0%
Total # Females	<u>5</u>	14%	# White Males	<u>26</u>	72%
Total # Males	<u>31</u>	<u>86%</u>	# Other Males	<u>5</u>	14%
			# Black Females	<u>0</u>	0%
			# White Females	<u>5</u>	14%
			# Other Females	<u>0</u>	0%

**3. Bid: Waste Radiation Monitor**

Purpose of Bid: Provides the Solid Waste Department with two (2) waste radiation monitors for the Durham Transfer Station.

Comments: These monitors will be used as radiation contamination triage devices, to alert the Solid Waste Department personnel of potential contaminations.



December 1, 2014

Total Workforce	<u>21</u>		# Black Males	<u>8</u>	<u>38%</u>
Total # Females	<u>1</u>	<u>5%</u>	# White Males	<u>12</u>	<u>57%</u>
Total # Males	<u>20</u>	<u>95%</u>	# Other Males	<u>0</u>	<u>0%</u>
			# Black Females	<u>0</u>	<u>0%</u>
			# White Females	<u>1</u>	<u>5%</u>
			# Other Females	<u>0</u>	<u>0%</u>

**5. Bid: Police Computer Software**

Purpose of Bid: Provides the Police Department with a software system for field arrest data.

Comments: Sungard Public Sector is the sole provider of the ONEsolution Public Safety software, which integrates with existing Police Department systems.

Opened: 10/16/14

Bidders: Sungard Public Sector \* \$63,240.00  
High Point, NC

\*Awarded based on: \_\_\_\_\_ Low Bid X Other (See Comments) \_\_\_\_\_

WORKFORCE STATISTICS  
CORPORATION STATISTICS

Total Workforce	<u>766</u>		# Black Males	<u>26</u>	<u>3%</u>
Total # Females	<u>306</u>	<u>40%</u>	# White Males	<u>362</u>	<u>47%</u>
Total # Males	<u>460</u>	<u>60%</u>	# Other Males	<u>72</u>	<u>9%</u>
			# Black Females	<u>25</u>	<u>3%</u>
			# White Females	<u>243</u>	<u>32%</u>
			# Other Females	<u>38</u>	<u>5%</u>

**6. Bid: Security Upgrade - Public Works Operations Center**

Purpose of Bid: Provides the General Services Department with a security control system upgrade for the Public Works Operations Center.

Comments: Security Integration Group (SIG) is the sole source provider for the City of Durham's badge access installations and security control systems.

Security Integration Group (SIG) is the sole source provider for the City of Durham's badge access installations and security control systems.

Opened: 10/20/2014

Bidders: Security Integration Group (SIG) \* \$61,410.00

December 1, 2014

Durham, NC

\*Awarded based on: \_\_\_\_\_ Low Bid \_\_\_\_\_ X \_\_\_\_\_ Other (See Comments)

WORKFORCE STATISTICS  
CORPORATION STATISTICS

Total Workforce	<u>3</u>		# Black Males	<u>0</u>	<u>0%</u>
Total # Females	<u>0</u>	0%	# White Males	<u>3</u>	<u>100%</u>
Total # Males	<u>3</u>	<u>100%</u>	# Other Males	<u>0</u>	<u>0%</u>
			# Black Females	<u>0</u>	<u>0%</u>
			# White Females	<u>0</u>	<u>0%</u>
			# Other Females	<u>0</u>	<u>0%</u>

**SUBJECT: MAPLEWOOD AND BEECHWOOD CEMETERIES DESIGN CONTRACT AMENDMENT ONE WITH COULTER JEWELL THAMES, PA**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to authorize the City Manager to execute an amendment to the design contract with Coulter Jewell Thames, PA for the Professional Design and Consulting Services Agreement for Maplewood and Beechwood Cemeteries Facilities and Site Improvements Study in the amount of \$202,080.00;

To establish a design contingency in the amount of \$18,000.00; and

To authorize the City Manager to negotiate and execute amendments to the Professional Design and Consulting Services Agreement for Maplewood and Beechwood Cemeteries Facilities and Site Improvements Study with Coulter Jewell Thames, PA provided the total cost does not exceed \$220,080.00 was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: PROPOSED ACQUISITION OF 320 MULDEE STREET FOR THE DEPARTMENT OF TRANSPORTATION’S SIGN AND SIGNAL SHOP OPERATIONS**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to adopt an Ordinance Amending the Capital Improvements Project Ordinance, Fiscal Year 2014-2015, as amended, the same being Ordinance #14623 for the purpose of adding funding in the amount of \$3,000,000.00 to the New Sign and Signal Shop Project (CL001); and

**December 1, 2014**

To approve the fee simple acquisition of 2.23 acres of land and improvements from Muldee Limited Partnership at 320 Muldee Street (Parcel #159525) for \$1,000,000.00 was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**ORDINANCE #14695**

**SUBJECT: SETTING A PUBLIC HEARING TO CONSIDER RESCINDING THE ORDERING OF ELEVEN PETITIONED SIDEWALK PROJECTS**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to adopt a resolution to set a public hearing to consider rescinding the ordering of eleven petitioned sidewalk projects was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**RESOLUTION #9907**

**The City Council disposed of the following agenda items at the November 20, 2014 Work Session:**

- 15. First Quarter FY14-15 Financial Report  
(A presentation was received at the 11-20-14 Work Session)
  
- 21. Elois Johnson  
(Comments were received at the 11-20-14 Work Session)

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

**SUBJECT: UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT,  
UNIPOLE FREESTANDING WIRELESS COMMUNICATION FACILITY  
(TC1400004)**

Michael Stock, of the City/County Planning Department, confirmed that all required notifications for the item and the following Planning Department-related public hearings had been performed and were on file for review.

Mr. Stock continued his comments stating that the text amendment TC1400004 was a privately-initiated amendment by Morningstar Law Group to the *Unified Development Ordinance* (UDO) to allow unipole (a.k.a. “slick-stick”) freestanding wireless communication facilities (WCF) to be considered “concealed” in all nonresidential districts except Commercial Neighborhood (CN), in all planned districts except Planned Density Residential (PDR), and in all design districts. The amendment would expand the range of allowable zoning districts where this type

**December 1, 2014**

of WCF could be located, and would allow approval within these districts to be administrative instead of requiring a special use permit (unless within 300 feet of a scenic byway).

Mr. Stock stated the draft ordinance attempted to provide clarity to the request while maintaining the intent of the applicant by creating a separate category, instead of classifying a unipole as “concealed” or “non-concealed”. In order to provide some consistency with the other types of freestanding towers, unipoles were proposed to be allowed in the RR and RS-20 districts, but only with a special use permit, which was consistent with non-concealed WCF approval standards.

He noted the staff recommended approval but preferred to incorporate the amendment into the overall revisions to the WCF ordinance standards (TC1200013) that had been under consideration by the Joint City-County Planning Committee, with impending subsequent public hearings. The applicant was provided the options to either incorporate the request into the overall revisions or to move forward with this request ahead of those revisions. The applicant chose to initiate the approval process ahead of the overall revisions in order to take advantage of both the current setback standards and the current exemption of concealed, freestanding WCFs from the minor special use permit process in all zoning districts. The overall WCF revisions may propose changes to both of the current UDO provisions.

Mr. Stock stated the Planning Commission recommended approval by a vote of 7-2 of the text amendment on October 14, 2014. The Planning Commission determined that the requested amendment was consistent with the adopted *Comprehensive Plan*; and that it was reasonable and in the public interest based on comments received at the public hearing and the information in the staff report; and reminded Council that two actions were required - the first action, a vote on the ordinance amendment itself and the second action, a vote on the appropriate statement of consistency.

Mr. Stock stated the applicant was present to answer any questions.

Mayor Bell opened the public hearing.

#### Proponents

Patrick Byker, Attorney, Morningstar Law Group, representing Durham Tower LLC, requested approval of the text amendment that would promote installation of unipoles/slicksticks for non-residential zones; made a PowerPoint presentation with photographs of towers; explained the text amendment would promote the installation of unipoles/slicksticks through the administrative approval process for non-residential zones; described slicksticks as towers with internal or concealed antenna hardware; stated that monopines, with exterior antenna, were allowed in non-residential zones in Durham; stated the requested tower was slated for light industrial zone along Pettigrew street in the vicinity of Durham Technical Community College area; and requested Council’s approval.

#### Opponents

**December 1, 2014**

Dolly Fehrenbacher, representing Good Neighbors of 751 Durham; stated that the text amendment would change the height restrictions for concealed towers in the RR and RS zones from 120 to 199 feet in the present UDO with no increase to setbacks in any of the zoned areas; expressed concerns about opening the door to 60 foot unipole towers as defined as concealed towers could be placed in any zone by administrative approval only; referenced the compromising of safety setbacks; requested to revisit the issue after the major WCF text changes were approved; and encouraged Council to deny the request.

Mel Fehrenbacher, resident, speaking on behalf of Carol Oakland of the Bucks Crossing Neighborhood, referenced the November 2012 citizen matters' meeting that emphasized citizen engagement in wireless regulations in residential zones; opposed changing the Unified Development Ordinance for one wireless structure design; and expressed a desire to manage the discrepancy between the two text amendments.

Victoria Peterson, resident, inquired about the location of the cell tower, possible radiation release and whether the residents had been notified of the hearings.

Patrick Byker responded that the surrounding properties were zoned industrial or industrial-light, and that no residents were within 500 feet of the site.

Matthew Danielsen, 201 South Albemarle Street, representing Durham Tower LLC, addressed the issue of radioactivity; responded that cell towers did not give off radiation; stated that according to current ordinance, he could petition for and receive administrative approval for a 195 foot, obtrusive monopine; and reiterated that slicksticks were considered the least obtrusive form of cell tower but were currently not allowed.

Councilmember Schewel inquired with staff about the timing of the revisions of the WCF standards; and inquired with Mr. Byker about the timing of his client's project.

Mr. Stock, Planning Department, responded regarding the timing of changes to the WCF standards by stating the changes were slated for late winter/early spring; stated the draft was out for public comment; stated the FCC released the federal rule interpretation which impacted the timeline; and staff thought it was reasonable to package the revisions together.

Mr. Byker spoke to the time involved to process the text amendment; noted that the issue initially emerged in late June 2014; and acknowledged that six months seemed to be a long time to wait for approval of the text amendment.

City Manager Bonfield requested clarification from staff regarding the review of the FCC questions; and inquired if the tower standards would change.

Mr. Stock responded that staff had met with the City's and County's legal staff to discuss; indicated that a public hearing would be called regarding towers; and stated he expected the monopole standards to differ to include greater setbacks on larger lots regardless of the zoning district.

**December 1, 2014**

Councilmember Catotti clarified with staff regarding the special use permitting process; inquired if the monopole could proceed through the special use process under the non-concealed tower regulation; stated she preferred changes be approached with the overall revisions to the wireless communication facilities; and expressed support for such applications to continue to be made through the special use permitting process.

Councilmember Moffitt inquired from the applicant's attorney the rationale for not submitting a special use permit for the project; and inquired about the rationale to pursue approval before Council rather than pursuing a special use permit with the Board of Adjustment.

Patrick Byker responded that the project was tracking to Council quicker than it was before the Board of Adjustment; noted the Planning Commission had approved the proposal; stated that he was supportive of slicksticks being allowed only in industrial light zoning districts; and spoke to incentivizing good behavior.

Councilmember Moffitt referenced the proposed revisions and inquired if staff considered unipoles concealed or not.

Mr. Stock stated that unipoles would have a new definition in the definition section of the revision; and unipoles would be treated with the same approval process but would not be defined as concealed.

Councilmember Davis spoke about concerns regarding curbing citizen input; stated he supported the open hearing process; and was opposed to moving forward without citizen input.

Mayor Bell requested Ms. Fehrenbacher return to the podium.

Dolly Fehrenbacher reiterated her concerns regarding setbacks and pole height; stated the request would make the unipole concealed; and reiterated that the text amendment would change the height restrictions on concealed towers in RR and RS zones with no increase in setbacks within the zoned area.

Mr. Stock confirmed the height restrictions would not change for the zoning districts; and that a special use permit would continue to be required.

Mayor Bell closed the public hearing.

**MOTION** by Councilmember Catotti, seconded by Councilmember Schewel, to receive comments on the Unified Development Ordinance Text Amendment, Unipole Freestanding Wireless Communication Facility (TC1400004); and

To adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 5, Use Regulations, and Article 16, Definitions **FAILED** at 7:37 p.m. by the following vote: Ayes: Councilmember Moffitt. Noes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis and Schewel. Absent: None.

**December 1, 2014**

Steve Medlin, Planning Director, confirmed that when the motion to approve the ordinance failed, the consistency statement acknowledging the lack of passage needed to be voted upon.

**MOTION** by Councilmember Moffitt, seconded by Councilmember Schewel, to adopt the following consistency statement as required per NCGS 160A-383 was approved at 7:38 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Unified Development Ordinance  
Text Amendment Consistency Statement  
By the Durham City Council  
Regarding TC1400004, Unipole Freestanding Wireless Communication Facility

Whereas the Durham City Council, upon acting upon a zoning text change to the Unified Development Ordinance and pursuant to NCGS Section 160A-383, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

Whereas the Durham City Council, upon acting upon a zoning text change to the Unified Development Ordinance and pursuant to NCGS Section 160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:

That the final action regarding text amendment TC1400004, Unipole Freestanding Wireless Communication Facility, is based upon review of, and consistency with, the Durham Comprehensive Plan and any other official adopted plan that is applicable; and

It was the objective of the Durham City Council to have the Unified Development Ordinance promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The text amendment does not promote this and therefore is neither reasonable nor in the public interest.

**SUBJECT: COMPREHENSIVE PLAN AMENDMENT – ERWIN TERRACE AT LASALLE STREET (A1300010)**

Patrick Young, of the City/County Planning Department, stated the applicant, Erwin Terrace Limited Partnership, was seeking to change the tier designation; the location was the north side of Erwin Road at the intersection of South LaSalle Street of four parcels of land totaling 19.64 acres from its current designation in the Urban Tier to the Compact Neighborhood Tier; the applicant had maximized the residential density under the Urban Tier Designation and the proposed Compact Neighborhood Tier Designation would allow increased density and a more transit-oriented design, as City policy encouraged near future transit stations; staff found that the request to change the tier designation met the 4 criteria for *Comprehensive Plan* changes, as outlined in the staff report and recommended approval.

**December 1, 2014**

The Planning Commission recommended approval by a vote of 9-1 at its October 14th, 2014 meeting and no change in the Future Land Use Map designation was requested.

Mayor Bell opened the public hearing.

### Proponents

Attorney Patrick Byker, Morningstar Law Group, representing Erwin Terrace Limited Liability Company; stated that in attendance were Robinson Everett, Manager, Erwin Terrace, and landscape architect Dan Jewell of Coulter Jewell Thames; project manager Robert Everett of NEMA Management; financial advisor Keith Wells of Northmarq Capital; and Lyle Overcash, traffic engineer, the principal VHB; spoke to the vibrancy of the Erwin and LaSalle area; noted the associated public bus infrastructure; stated the application was submitted to staff in November 2013; stated the Planning Department had not disclosed any negative impacts from creating the new compact neighborhood tier designation; expressed support for the designation relative to the proposed light rail transit station; indicated that to allow the current urban tier standards to remain in place would hamstring efforts to implement sound land use planning principles to support Triangle Transit's proposal to the Federal Transit Administration; and asked for Council's approval of the plan amendment.

Dan Jewell, representing Coulter Jewell Thames, spoke to thoughtful urban development consisting of a quality transit corridor; promoted denser, more sustainable building patterns; addressed the development of vertical mixed-use district of Erwin Terrace on existing bus routes; spoke to pioneering the Compact Neighborhood Tier into the *Comprehensive Plan*; expressed support for neighborhood walkability; indicated future light rail line station's accommodation for retail options; and asked for Council's approval of the proposal.

Robinson Everett Jr., Erwin Trace Manager, spoke to experiences with urban growth along LaSalle Street and Erwin Road; stated the plan amendment would allow for more mixed-use amenities in a walkable setting across from the medical center and university research corridor; spoke to future transit plans by Triangle Transit and the required density to support such; spoke in support of Council's resolution in regard to Housing Needs Assessment Plan which call for affordable housing; emphasized the desire to assist with addressing affordable housing issues by contributing twenty-five thousand dollars to the City of Durham's administration; stated the Planning Commission and city staff had approved of the proposed project; stated the Crest Street Community Council provided a letter of support of the project; requested supporters in the audience to stand; asked for Council's approval; and stated that his team members were in attendance to answer questions.

### Opponents

Lorisa Seibel, representing Durham People's Alliance and affordable housing advocate, stated that high rents were excluding average working people from the local housing market; stated Durham needed incentives to ensure long-term affordable housing; stated the amendment would give high density away and would decrease the percentage of homes for people with income under \$35,000; asked Council to wait to work with the developer and future developers to create

**December 1, 2014**

mixed-income communities with subsidized housing for veterans, the disabled and fixed-income and low-wage working persons; and asked supporters stand to be recognized.

Rheba Heggs, representing Durham CAN (Congregations, Associations, and Neighborhoods), referenced the joint adoption of a resolution by Council and Durham County Commissioners calling for a minimum goal of 15% affordable housing in residential developments built around and adjacent to light-rail transit stops; urged Council to wait and negotiate with the developer to prevent a precedent for future rezonings that would not include affordable housing; and spoke to the proposed light-rail station site and the vital nature of affordable housing for the workforce.

Jim Svarna advocated for affordable housing with a goal of 15% affordable housing near transit stations; spoke in support for more sustainable development that involved equity and inclusion; encouraged affordable housing be incorporated into new developments; and inquired about the rationale for omitting affordable units from the proposed project.

Selina Mack, representing Durham Community Land Trustees, reiterated opposition to the exclusion of affordable housing in the project; stated it was crucial that affordable housing units be included into the project; encouraged Council consider what would be affordable over the long-term; and to devise strategies for inclusion of such units into future projects.

Vicki Ryder spoke in support of including affordable housing into any proposal approved by Council; supported intelligent urban design, walkable mixed-use communities and enhanced mass transit; and led a chorus highlighting homelessness and the need for affordable housing.

Melissa Norton, representing Downtown Durham Incorporated, advocated for an affordable housing component; stated that density was the key bargaining chip in getting affordable units incorporated into new developments; stated the proposed project was close to transit, jobs and amenities; and requested 15 of 100 units be provided for workforce housing.

DeDreana Freeman, representing the City/County Planning Advisory Board, stated she supported the project but disagreed with the process; and spoke in support of developing a policy to ensure low-wage earners could reside along the transit lines.

Rebuttal from the Proponent:

Robinson Everett, Jr. expressed appreciation to the opponents who mentioned that the project was a great one; referenced his father's participation as a founding member of the Affordable Housing Group of North Carolina (1966) along with his father's involvement in developing mixed-use and affordable housing; stated the developer was local with connectivity to the community; indicated that job creation, tax base expansion and transit would be enhanced by the project; stated that there was an abundance of affordable housing at the site; reiterated the goal of the resolution was 15%; and reaffirmed the donation to the City of \$25,000 for the housing needs' assessment plan.

Mayor Bell asked if there were comments from Council.

**December 1, 2014**

Mayor Pro-Tem Cole-McFadden asked Mr. Everett to clarify why 15% could not be allotted for affordable housing of the new build; and inquired where in Durham could he take a project and include the 15%.

Mr. Everett stated that underwriting lenders insisted the project would not be financeable due to the difference in construction costs and potential failure rates; discussed the impact of population demographics on construction; and referenced the project consisted of high density, complicated retail around a wrap-around parking deck.

Keith Wells, representing the lender, Northmark Capital, addressed the issue of construction financing; referenced air rights versus fee-simple construction; spoke to high density construction, the parking garage and cross easements engineering costs; and stated it was unlikely the project would get financed in the current economics relative to income expenses versus total cost of the property.

Councilmember Brown expressed appreciation for the speakers on both sides of the issue; referenced his attendance at CAN meetings; referenced the Council's unanimous vote on the resolution containing the 15% affordable housing stat within a half mile of a transit stop; stated that CAN inserted a statement in the resolution that all new housing must contain 15% and stated that Council had not agreed to that in May 2014; stated that Council looked at the aggregate of housing close to a train stop; reiterated the current project had nearly 75-80% of affordable housing in the vicinity; commenting on the lender approving the project; stated the perfect must not become the enemy of the good; stated that without the required density, that light-rail transit would not happen; referenced an estimated cost of \$1.8 billion for the transit project; and acknowledged that a mandated 15% set-aside was not legal.

Councilmember Moffitt inquired of the Planning staff regarding the impact of the plan amendment to enlarge the Compact Neighborhood Tier.

Mr. Young clarified that the plan amendment proposed to change the development tier; the development tier was changed through the *Comprehensive Plan* amendment plan process; the amendment authorized through the UDO (Unified Development Ordinance) additional density and changed the site development standards by reducing buffers and allowing a more urban, mixed-use and intense urban form than the urban tier.

Councilmember Moffitt summarized staff's comments that the amendment added density and reduced buffers but did not change the underlying zoning; and inquired if the tier change allowed for additional entitlements.

Mr. Young responded "no" to entitlements in the tier change; and stated that entitlements would be allowed through subsequent zoning actions and site plan actions.

Councilmember Catotti inquired of the Planning staff regarding the planned approach moving forward to transit and stationary planning as a whole and the associated timeframe, plans for improving affordable housing incentives, addressing new units and maintaining existing affordable units and revisions to the UDO's mixed-use guidance.

**December 1, 2014**

Mr. Young responded that staff was working to ensure the City/County resolution's goals, dated May 2014, continued to be met; that a detailed update on seven initiatives would be presented to the Joint City/County Planning Committee on January 7, 2015; stated two broad categories goals ensured good basic data and opportunity sites, incentives and tools; referenced a grant through Triangle Transit for economic analysis for value capturing; and spoke to housing preservation strategies.

Aaron Cain, of the City/County Planning Department, referenced design districts, suburban transit areas, affordable housing incentives and compact neighborhood planning; and stated that updates would be provided on January 7<sup>th</sup>.

Councilmember Catotti inquired about the urgency to move on the request for the *Comprehensive Plan* change in this area rather than approaching the compact neighborhood and station area plans in a holistic fashion.

Mr. Cain responded that waiting would be an option to better define compact neighborhoods' placement and zoning in the defined station areas; and that it was a timing issue.

Councilmember Catotti favored waiting to make a decision on a comprehensive basis rather than approving *Comprehensive Plan* amendments parcel by parcel.

Councilmember Davis addressed the opponents by inquiring about the amount of time desired to wait and what kinds of discussions were desired to have with developers during the interim period; and to the opponents, could the contribution of \$25,000 be viewed positively or as money to buy-off opposition.

Lorisa Seibel responded that it would be great to use the \$25,000 to resolve the issue this evening; referenced a 80/20 tax-exempt bond program from the N.C. Housing Finance Agency; stated that there were lenders to finance affordable and mixed-use housing; and reminded Council that it was up to the developer to offer affordable housing.

Attorney Byker responded that the development team had carefully considered the May 2014 resolution; stated the resolution called for an established plan or toolbox; indicated the \$25,000 for the Planning Department was intended to bring in expertise or to allow the administration to construct a toolbox or framework focused on gaining financing and to incorporate affordable housing at appropriate levels at the different stations; and was dedicated to moving the resolution forward.

Keith Wells, of Northmark Capital, responded that his firm had financed affordable housing; compared the financing of garden apartments to the proposed high density, mixed-use structure; and stated financing a mixed-use development was more complicated due to involving regulations pertaining to air rights, cross easements and traffic flow.

Councilmember Schewel inquired if the numbers had been run with affordability assumptions built-in; and asked about various levels of affordable housing being included in the project.

**December 1, 2014**

Mr. Wells spoke to affordable housing projects that involved tax credits and tax-free bonds; and compared the financing of affordable housing projects to the proposed project with market rate lenders.

Councilmember Schewel complimented staff on the planning processes; and inquired how the process differed from the planning involved with Lee Village.

Mr. Young spoke to the timeline of the development of the transit stop location; referenced Phase 2 that aligned along Route 54; and expressed the desire for additional community engagement in the development pattern for light-rail boundaries.

Councilmember Schewel inquired about the Station Area Infrastructure Plan process and how did they interact with planning.

Mr. Young stated the Station Area Infrastructure Plan process would continue and referenced its timeframe.

Councilmember Schewel asked about the formulation to implementation timeframe involved with the affordable housing toolkit.

Mr. Young spoke to completion of the toolkit by the end of the fiscal year.

Councilmember Schewel inquired with the developer about the phasing of the build-out.

Attorney Byker responded that the real estate market was bullish on commercial and office opportunities; noted that the real estate cycle of multi-family residential was going down; that upon approval, financing arrangements could begin; and stated that timing was a concern.

Councilmember Schewel inquired about residential applications; spoke to the affordable housing toolbox which would be available to promote financing in time for the residential build-out and suggested a match or other program be devised.

Attorney Byker referenced preservation as a part of the toolbox and committed to maintaining pre-existing affordable housing on site at Poplar Manor; and stated that the Poplar Manor site could be maintained until the administration was able to devise housing incentives to come forward.

Councilmember Schewel inquired if the developer would be willing to work with Poplar Manor as potentially longer-term affordable housing in the future toolkit.

Attorney Byker responded with an understanding that the developer would be at the table to participate in the incentive process; and proffered that Poplar Manor would not be redeveloped until December 1, 2015.

Councilmember Schewel spoke in support of the developer and the \$25,000 proffer to devise an affordable housing toolkit; spoke to how to preserve pre-existing affordable housing; expressed concerns about moving the compact neighborhood districts along the proposed rail line;

**December 1, 2014**

supported the walkability aspect of the proposed development; acknowledged the restrictions on affordable housing and that difficulties would have to be overcome; stated that inclusionary zoning and rent controlled units were not legal; spoke to incentivizing projects with developers; stated 5% of housing was taxpayer subsidized; and noted that developers needed to contribute to private sector participation to support affordable housing.

Councilmember Schewel suggested keeping the hearing open and defer approval until the developer could indicate ways to achieve some level of affordable housing into the project.

Mayor Bell reminded council and audience members that he was an affordable housing advocate; stated that one cent of the property tax had been dedicated to affordable housing; referenced the South Side revitalization and Sedgefield Apartments and others areas as being focused on affordable housing; commented on being a member of the Triangle Transit Authority Board; and noted that Council was addressing the topic tonight pertaining to the resolution from May 2014; and inquired about, relevant to the transit stop, how many affordable units were in the vicinity.

Mr. Young confirmed there were 2030 units (2012) within one-half mile of the proposed transit stop.

Mayor Bell voiced support for market rate housing in the new development; expressed support for incentives devised by staff; could not support a delay; reiterated that if the developer was willing to proffer that nothing would be done to Poplar Manor until 12 to 18 months until the toolbox was ready, then affordability could be kept there; stated that this was the wrong project to test the resolution on; and voiced opposition with keeping the public hearing open.

Mayor Bell closed the public hearing.

**MOTION** by Councilmember Brown, seconded by Mayor Pro-Tem Cole-McFadden, to receive comments on the Erwin Terrace at LaSalle Street (A1300010) Plan Amendment; and

To adopt a Resolution to Change the Tier Boundary on the Future Land Use Map of the Durham Comprehensive Plan from Urban Tier and Compact Neighborhood Tier was approved at 9:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Davis and Moffitt. Noes: Councilmembers Catotti and Schewel. Absent: None.

**RESOLUTION #9908**

**SUBJECT: ZONING MAP CHANGE - ERWIN ROAD AT LASALLE STREET  
(Z13000031)**

Patrick Young, of the City/County Planning Department, stated Zoning Case Z1300031, Erwin Road at LaSalle Street, was a request to change the zoning designation of 9.86 acres located in the northwestern corner of Erwin Road at and LaSalle Street from Mixed Use with a development plan to mixed-use with a development plan under the compact tier standards.

**December 1, 2014**

Mr. Young stated if approved, the zoning map change would allow for up to 322 residential units, 268,000 square feet of office space, 45,000 square feet of public or civic uses, and 192,911 square feet of commercial uses. He referenced that the totals were cumulative, as there was existing development of 104 residential units and approximately 180,000 square feet of commercial and office space on the subject site.

The staff determined the request was consistent with the *Comprehensive Plan* and other adopted policies and ordinances which designated the site as Commercial and Compact Neighborhood Tier and the request included an accompanying development plan, which included numerous text, graphic, and design commitments associated with the request provided in detail in the staff report; and the Planning Commission recommended approval on October 14, 2014 by a vote of 10-0.

The site is located at North side of Erwin Road at Lambeth Circle, west of LaSalle Street, PINs 0812-19-51-6770, -4516, -0374.

Mayor Bell opened the public hearing.

#### Proponents

Attorney Patrick Byker, with Morningstar Law Group, representing Erwin Terrace Limited Liability Company, spoke to three reasons to approve the zoning map change for approximately ten acres; he noted approval of the Mixed Use Zoning District application was the best way to implement the *Comprehensive Plan* amendment that was just approved to expand the Compact Neighborhood Tier; explained that many provisions in the *Comprehensive Plan* and *Unified Development Ordinance* encouraged pedestrian-oriented and transit-oriented development; visual and anecdotal evidence suggested that the section of Durham had provided residents with a lifestyle opportunity where it was possible to walk or use transit to commute; and stated that it was not necessary for a two person household to be, of necessity, a two car household in this section of Durham.

Attorney Byker stated the second reason to approve the request was the redevelopment of Erwin Road had not only been a success for Durham from a planning perspective, but also from an economic development perspective. For example, the Trinity Commons development just one block away from Erwin Terrace, generated over \$800,000 in property taxes from just four acres. Even greater than that was the Hock Plaza complex, another four-acre site, which generated one and a quarter million dollars in property tax revenue for the City of Durham and Durham County. The tax revenue numbers represented stewardship of land in Durham; the increase in property taxes just described, resulting from the redevelopment of Erwin Road, was a significant achievement that most people had fully recognized, and it was something to be thankful for he noted.

Attorney Byker stated the third reason to approve the zoning map change was to continue the positive momentum Durham had gained from the redevelopment of Erwin Road by its successful redevelopment over the past ten to fifteen years, and the interest in current market conditions. That success was based on successful mixed-use projects such as Trinity Commons, Lakeview,

**December 1, 2014**

Hock Plaza, and Erwin Terrace. The next phase of Erwin Terrace could bring further commercial and office development to the section of Erwin Road, giving Durham an area that competed for economic development with mixed-use projects in peer cities. He referenced the Mayor Pro Tem often saying that great things were happening in Durham and that the next great thing would be the next phase of Erwin Terrace; and requested Council's approval of the text amendment.

Attorney Byker confirmed two additional committed elements into the record: to assist with addressing affordable housing issues, the developer would contribute \$25,000 to the City of Durham administration within 45 days of the approval of Zoning Map Change Z1300031; and the developer agreed not to submit a site plan for the redevelopment of Poplar Manor for at least eighteen months from the date of approval for Zoning Map Change Z1300031; and stated he would email the elements to the Planning Director.

Judith Welch Wegner, former Dean and Professor at UNC-Chapel Hill and trustee of Kathleen Everette Charitable Trust, stated there was a financial impact to delaying the project that could become further complicated by liability issues; detailed her municipal volunteer board experiences; and stated North Carolina General Statutes did not include mandatory inclusionary zoning nor affordable housing.

Councilmember Schewel addressed speaker Dean Wegner by stating that the advice she provided had also been provided by the City Attorney earlier in the day.

### Opponents

Lorisa Seibel referenced the plan amendment discussion; noted the affordable housing in the area was predominantly located in Morreene Court; urged Council to wait in order to work with the developer to develop a proposal to reflect the needs of affordable housing; and encouraged Council to move forward with toolbox incentives for developers to incorporate affordable homes for veterans and others into development plans.

The Mayor stated there were no additional speakers to the item.

Mayor Bell requested staff to re-acknowledge the number of affordable housing units located in the half-mile radius of the proposed transit stop.

Mr. Young addressed the statistics of affordable housing in the area; stating there were a total of 2030 units that were affordable to persons at 60% of area median income; of those, 391 (11%) were subsidized and contractually required to remain affordable; and added there were approximately 1600 market rate units.

Mayor Bell addressed the resolution's stipulation for 15% affordable housing in a half-mile area of the transit stop; and reiterated that there were nearly 80% affordable housing units within a half-mile radius which was well above the resolution's minimum threshold of 15%.

Councilmember Moffitt acknowledged the passion associated with both sides of the rezoning case; emphasized that affordable housing today was not affordable tomorrow, if not protected;

**December 1, 2014**

avored a long-term perspective similar to that involved with environmental properties' conservation easements; expressed appreciation for the developer and staff working together to devise the housing toolbox, funding the work, not redeveloping Poplar Manor for a considerable period of time and for orderly development; and concurred that density was important for light-rail development.

Councilmember Catotti reminded the proponent that there were 46 additional students and if the applicant was willing to support a donation to the Durham Public Schools.

Attorney Byker responded that the developer shall provide \$23,000.00 (\$500.00 per 46 additional students) as a donation to the Durham Public School System prior to the approval of any site plan containing new residential units within the prescribed development; and stated he would email the information to the Planning Director.

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown to receive comments on the zoning map change for Erwin Road at LaSalle Street (Z1300031); and

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1300031 out of Mixed Use with a development plan (MU(D))/Urban Tier and placing same in and establishing same as Mixed Use with a development (MU(D))/Compact Neighborhood Tier was approved at 9:43 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**ORDINANCE #14698**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Catotti, to adopt the following consistency statement as required by GS 160A-383 was approved at 10:03 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Unified Development Ordinance  
Zoning Map Change Consistency Statement  
By the Durham City Council  
Regarding Z1300031, Erwin Road at LaSalle Street

Whereas the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160A-383, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

Whereas the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

**NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:**

**December 1, 2014**

That final action regarding zoning map change Z1300031, Erwin Road at LaSalle Street, is based upon review of, and consistency with, the *Durham Comprehensive Plan* and any other officially adopted plan that is applicable; and

That the proposed zoning map change is reasonable and in the public interest based upon the information provided within the report and associated documents submitted to the City Council, and the information provided through the public hearing.

**SUBJECT: ZONING MAP CHANGE-GRANDIN TRACE (Z1300035)**

Patrick Young, of the City/County Planning Department, stated that Zoning Case Z1300035, Grandin Trace, was a request to change the zoning map designation of 20.05 acres located between Herndon Road and Grandale Drive, south of Barbee Road, from Residential Rural to Residential Rural with a development plan and Planned Development Residential 3.322; and the applicant was committing to a maximum of 54 single-family residential units. Staff determined the request was consistent with the future land use designation of the *Comprehensive Plan* which identified the property as Low Density Residential (4 DU/Ac. or less).

The request included an accompanying development plan for which there were text, graphic, and design commitments associated with the request; referred to Table D5, Summary of Development Plan, in the staff report; and Mr. Young indicated there was an error in the staff report in Section G (Infrastructure) of the staff report which was being corrected for the record as follows:

“The actual proffered commitment by the applicant in the 751 Assemblage case (Case Z08000003) was to construct a northbound right-turn lane *on Grandale Drive (onto Barbee Road)* with adequate storage and taper.”

The staff determined that the request was consistent with the *Comprehensive Plan* and other adopted policies and ordinances; and the Planning Commission recommended approval on October 14, 2014 by a vote of 10-0.

The site is located at Herndon Road and Grandale Drive, south of Barbee Road, PINs 0728-03-22-1015, -1636 (p/o), -0268 (p/o), -21-0884, -23-4279, -2381, -4180, -13-8047 (p/o).

Councilmember Moffitt requested clarification about the applicant proffering paved bicycle lanes and requested status on the lanes.

Bill Judge, of the Transportation Department, stated that the applicant was dedicating enough right-of-way that bicycle lanes could be constructed for full frontage; and acknowledged the applicant proffered construction for a portion of the frontage.

Mayor Bell opened the public hearing.

Proponents

**December 1, 2014**

Tony Tate, landscape architect/planner representing Regis Development, spoke to conducting neighborhood meetings; addressed neighborhood concerns; spoke to closing a portion of Amanda Road to facilitate the project; detailed the single-family detached housing; and requested Council's approval.

Mayor Bell requested staff to speak to tree recovery; specifically, if the trees would be removed along Grandale.

Bill Ripley responded to the Mayor's question about a group of pine trees along Grandale; stated the trees would be removed and replaced with screening; stated a double-fringe buffer was required; and spoke to the landscaping plans.

### Opponents

George A. Brine, resident of Durham, spoke in support of having a left-turn lane at Grandale Drive at Barbee Road constructed; expressed concerns about increased traffic on Huntsman Drive with vehicles cutting-through his neighborhood; and requested Council to support the left-turn lane construction.

Mayor Bell closed the public hearing.

Mayor Bell inquired about plans for the roundabout at Herndon and Barbee Roads.

Wesley Parham, of the Transportation Department, stated NCDOT was proceeding with the development of the roundabout project and was in the process of relocating utilities; expected construction to begin next year; stated the redesign would provide traffic control benefits to the Herndon and Barbee Roads; indicated the turn lane at Grandale was an off-site improvement; and added the level of traffic had not triggered a traffic impact analysis to warrant the improvement.

Bill Ripley responded that he lacked personal experience of the left-turn lane delay; stated Grandale Drive was at 46% capacity; estimated the traffic improvement cost at \$150,000; and spoke to the impact of the proposed development on area roadways.

Councilmember Davis inquired about what factor would trigger the installation of a traffic light near the proposed roundabout; and could there be a light installed at the corner of Grandale and Barbee.

Wesley Parham stated there had been no studies showing the benefit of a traffic signal at that location; however, he noted there was an advantage of installing a separate left and right-turn lane; and if the intersection increased to a greater volume, the proximity to the roundabout downstream would need to be considered.

Councilmember Moffitt addressed concerns of the Planning staff about access to/from Herndon Road; and addressed Mr. Ripley, asking about the rationale for the lack of an access plan for Herndon Road.

**December 1, 2014**

Mr. Ripley responded that there was linear acreage along Grandale Road lined with cow pastures on east side, the area was not being developed; referenced the stub to the west, north of Huntsman, on the west side of the project; stated when the property was developed in the future, it made more sense to line a road there and tie it back to Herndon, north of Senator McKissick's house; and recognized that the development would empty traffic onto Grandale.

Mr. Young clarified that the double-frontage lots required a berm, wall, fence or tree plantings along Grandale to soften the visual impact and to prevent direct access onto Grandale.

Also, Mr. Ripley provided the council with a handout noting that prior to approval of first final plat, the applicant shall provide a payment of \$4,500.00 to the Durham Public School System.

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to receive comments on the zoning map change for Grandin Trace (Z1300035); and

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1300035 out of Rural Residential (RR) and placing same in and establishing same as Rural Residential with a development plan (RR(D)) and Planned Development Residential 3.322 (PDR 3.322) was approved at 10:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis and Schewel. Noes: Councilmember Moffitt. Absent: None.

**ORDINANCE#14699**

**MOTION** by Councilmember Moffitt, seconded by Councilmember Schewel, to adopt the following consistency statement as required by GS 160A-383 was approved at 10:02 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Unified Development Ordinance  
Zoning Map Change Consistency Statement  
By the Durham City Council  
Regarding Z1300035, Grandin Trace

Whereas the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160A-383, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

Whereas the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:

That final action regarding zoning map change Z1300035, Grandin Trace, is based upon review of, and consistency with, the *Durham Comprehensive Plan* and any other officially adopted plan that is applicable; and

**December 1, 2014**

That the proposed zoning map change is reasonable and in the public interest based upon the information provided within the report and associated documents submitted to the City Council, and the information provided through the public hearing.

**SUBJECT: ZONING MAP CHANGE-WAFFLE HOUSE NC 55 HIGHWAY  
(Z1400019)**

Patrick Young, of the City/County Planning Department, stated that Zoning Case Z1400019, Waffle House – NC 55, was a request to change the zoning designation of 1.5 acres located at 4203 NC 55 Highway, south of Carpenter Fletcher Road and north of Meridian Parkway from Office Institutional to Commercial Neighborhood to allow for development of a proposed 1,875 square foot restaurant.

Mr. Young stated the request was consistent with the future land use designation of the *Comprehensive Plan* which designates the site as Commercial.

Staff determined that the request was consistent with the *Comprehensive Plan* and other polices and ordinances; and he stated if the requested CN zoning designation was approved, a range of uses would be permissible. The applicant indicated the intent to develop the site for a restaurant.

Planning Commission recommended approval on October 14, 2014 by a vote of 10-0.

The site is located at 4203 NC 55 Highway, south of Carpenter Fletcher Road and north of Meridian Parkway, PIN 0738-01-27-1525.

Mayor Bell opened the public hearing.

Opponents

Sharon Maddox, of 5816 Henner Place, addressed flooding potential at the site of the proposed project; stated that storm water run-off negatively impacted her property along with adjoining properties; expressed concerns about the project's traffic impact; and asked the council to consider her concerns.

Mr. Young stated that flooding had not been discussed at the Planning Commission meeting; and stated that the area in question was not located in the flood plain; and spoke to the storm water ordinance.

After stating there were no additional speakers, Mayor Bell closed the public hearing.

Councilmember Moffitt spoke to the proposed development; commented on the current storm water facilities being constructed; and referenced future construction required storm water controls.

**December 1, 2014**

**MOTION** by Mayor Pro-Tempore Cole-McFadden, seconded by Councilmember Brown, to receive comments on the zoning map change for Waffle House – NC 55 Highway (Z1400019); and

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1400019 out of Office Institutional (OI) and placing same in and establishing same as Commercial Neighborhood (CN) was approved at 10:12 p.m. by the following vote: Ayes: Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: Mayor Bell. Absent: None.

**ORDINANCE #14700**

**MOTION** by Councilmember Schewel, seconded by Mayor Pro-Tempore Cole-McFadden to adopt the following consistency statement as required by GS 160A-383 was approved at 10:12 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Unified Development Ordinance  
Zoning Map Change Consistency Statement  
By the Durham City Council  
Regarding Z1400019, Waffle House – NC 55

Whereas the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160A-383, is required to approve a statement describing how the action is consistent with the Durham Comprehensive Plan; and

Whereas the Durham City Council, upon acting upon a zoning map change to the Unified Development Ordinance and pursuant to state statute GS 160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

**NOW THEREFORE, BE IT ADOPTED BY THE DURHAM CITY COUNCIL AS APPROPRIATE:**

That final action regarding zoning map change Z1400019, Waffle House – NC 55, is based upon review of, and consistency with, the *Durham Comprehensive Plan* and any other officially adopted plan that was applicable; and

That the proposed zoning map change is reasonable and in the public interest based upon the information provided within the report and associated documents submitted to the City Council, and the information provided through the public hearing.

**[SUPPLEMENTAL ITEM]**

**SUBJECT: APPROVAL OF LANDLORD CERTIFICATE BY THE CITY OF DURHAM FOR THE TENANT, SHANER SPE ASSOCIATES LIMITED PARTNERSHIP**

**December 1, 2014**

**MOTION** by Councilmember Catotti, seconded by Councilmember Schewel, to authorize the City Manager to execute the Landlord Certificate as requested by the tenant, Shaner SPE Associates Limited Partnership for the Durham Marriott City Center was approved at 10:13 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

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

**SUBJECT: MEMORIALS ON CITY PROPERTY OR RIGHTS-OF-WAY**

Deputy City Manager Ferguson highlighted the elements of the policy.

Mayor Bell stated there was a speaker to the item.

Victoria Peterson, resident, requested City Attorney Baker to review the first page of the policy to clarify ‘unauthorized memorials’ on public property and right-of-ways; spoke to the time frame of 45 days; and spoke to her experiences with memorials.

Councilmember Davis stated the policy was for voluntary, spontaneous placement of memorials.

**MOTION** by Councilmember Moffitt, seconded by Councilmember Brown, to adopt a Resolution Affirming City Policy Pertaining to Memorials on City Property or Rights-of-Way was approved at 10:19 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**RESOLUTION #9906**

**SUBJECT: FY2014 BYRNE CRIMINAL JUSTICE INNOVATION PROGRAM:  
PLANNING GRANT AWARD**

Mayor Bell stated there was a speaker to the item.

Victoria Peterson, resident, stated that the City received a lot of federal money to fight crime; expressed a concern about using such funding at a Greensboro-based university to collect criminal data on Durham; spoke to local crime concerns and unemployment; and inquired why North Carolina Central University was not called upon.

Assistant Police Chief Ed Sarvis indicated the university referral came from the U.S. Attorney’s Office to use UNCG where that particular type of research had previously been conducted; and stated a request for proposal was not required. He confirmed that no local Durham dollars went into the grant; and confirmed that future federal grant funds for implementation would be contingent on the City’s participation.

**December 1, 2014**

**MOTION** by Councilmember Moffitt, seconded by Mayor Pro-Tempore Cole-McFadden, to authorize the City Manager to accept the FY2014 Byrne Criminal Justice Innovation: Planning Grant by executing the grant documents; and

To adopt the FY2014 Byrne Criminal Justice Innovation: Planning Grant Project Ordinance, in the amount of \$100,000.00 was approved at 10:24 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

**ORDINANCE #14696**

Mayor Bell asked if there were any additional matters to be come before the Council.

For the record, City Clerk Gray corrected a vote by Mayor Pro Tempore Cole-McFadden on Item #16, Unified Development Ordinance Text Amendment, Unipole Freestanding Wireless Communication Facility (TC1400004). She stated that the Mayor Pro-Tem's vote was 'no' on the item and Mayor Pro Tem Cole-McFadden confirmed the fact.

There being no further business to come before the Council, the meeting was adjourned at 10:25 p.m.

Dianalynn Schreiber, CMC, NCCMC  
Deputy City Clerk

D. Ann Gray, MMC, NCCMC  
City Clerk