

**DURHAM CITY COUNCIL WORK SESSION
THURSDAY, MARCH 9, 2023 @ 1 PM
IN-PERSON & VIRTUAL MEETING**

The Durham City Council held an in-person and virtual Work Session on the above date and time in the City Hall Council Chamber, 101 City Hall Plaza in Durham, North Carolina with the following members present: Mayor Elaine O’Neal, Mayor Pro Tempore Mark-Anthony Middleton and Council Members Javiera Caballero, DeDreana Freeman, Monique Holsey-Hyman and Leonardo Williams. Excused Absence: Council Member Jillian Johnson.

Also present: City Manager Wanda Page, City Attorney Kim Rehberg and City Clerk Diana Schreiber.

[CALL TO ORDER]

Mayor O’Neal called the meeting to order at 1 p.m. and welcomed all to the meeting.

[ANNOUNCEMENTS BY COUNCIL]

Mayor O’Neal called for announcements.

Council Member Caballero requested a resolution in support of temporary protected status of Guatemalans. There was consensus to bring the resolution forward at a future work session.

Council Member Holsey-Hyman announced she was a keynote speaker for International Women’s Day at Pfizer in Rocky Mount, NC.

[PRIORITY ITEMS OF THE CITY MANAGER, CITY ATTORNEY AND CITY CLERK]

City Manager Page, City Attorney Rehberg and City Clerk Schreiber had no priority items.

Mayor O’Neal read the agenda items from the printed agenda into the record. The following items were pulled for more discussion: Item 10.

Mayor O’Neal encouraged those attending in the Chamber and virtually for Item 19) Unified Development Ordinance Text Amendment - Simplifying Codes for Affordable Housing (SCAD), to voice their comments during the public hearing period at the March 20, 2023 Council Meeting.

City Attorney Rehberg explained the speaker process on public hearing items; if speakers wanted to speak on subject matter of a public hearing itself, they should do so within the context of the public hearing and after the public hearing had been opened. In

this case, the public hearing has been scheduled for Monday, March 20, 2023. Related to Citizen's Matters, in accordance with Council Procedures, speakers could generally address the Council on any topic they liked, topics may overlap with a public hearing's subject matter but comments shared with Council will not be taken within the context of the public hearing because the speakers were not present after the public hearing had been opened. The comments shared at the Work Session would not be considered part of the official record of the public hearing.

[CITIZEN'S MATTERS TO BE HEARD AT 1 P.M.]

SUBJECT: JASON DAVIS (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Mr. Davis, Firefighter and President of Local 668 requested Council to fix the pay compression within the ranks; noted that after the pay steps were updated, the employees were not placed in their appropriate steps; asked that the updated steps be implemented and pay adjusted by Human Resources.

SUBJECT: ADAM CLARK (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Mr. Clark, representing World Relief Durham, an organization serving immigrants across the Triangle; spoke to ongoing challenges experienced by immigrants related to health and education and urged support for multi-lingual language access and grant funds targeting immigrant needs.

SUBJECT: BONITA GREEN (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Ms. Green, President Inter-Neighborhood Council (INC) of Durham, expressed concerns about UDO (Unified Development Ordinance) Text Amendments related to SCAD (Simplifying Codes for more Affordable Housing) Amendments by Raleigh based developer James Anthony.

SUBJECT: MIMI KESSLER (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Ms. Kessler, resident of Durham, spoke about the SCAD Amendment; referenced the January version, Page 31 and referenced under the category of affordable housing, that rental units be affordable for five years and for sale units, for the first sale; questioned how these practices assured generational wealth; and requested Council to read the SCAD report.

SUBJECT: DONNA FREDERICK (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Ms. Frederick, Durham resident, expressed concerns about the SCAD amendment that was scheduled to be presented by staff at the March 20th Council Meeting; questioned the public involvement in the document's outreach; noted the proposal was elitist and

should focus on affordable housing, and encouraged Council to read the document, in-depth.

SUBJECT: STEPHEN KNILL (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Mr. Knill, Vice President of the Inter-Neighborhood Council, reflected on a group that attended the last Work Session, that was led by the Durham Realty Association who presented on the topic of affordable housing; stated it was the norm in the development community that the Anthony Amendments in the SCAD document would be 'better for developers' and would institute negative changes on the most vulnerable Durham residents; and spoke in support of the INC's Deep Dive into affordable housing.

SUBJECT: JACQUELINE WAGSTAFF (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Ms. Wagstaff spoke to an experience she had where a truck had run over a veteran in a wheel chair on Hillsborough Road; stated the homeless population in Durham was out of control and that the SCAD Amendment would make matters worse; and urged Council to do something measurable to counteract homelessness in the upcoming budget.

SUBJECT: SHARI ZANN-ROSENTHAL (PUBLIC COMMENT SPEAKER/ NO AGENDA ITEM)

Ms. Zann-Rosenthal spoke to the provisions of the text amendment; and requested that the INC be provided one-hour in an upcoming meeting to allow them to explain their concerns and detailed some of their concerns about the private text amendment.

In regard to the speakers on Item 10, Mayor O'Neal admitted the original text amendment was very complex and there was a request to have the document's content broken out in more manageable pieces by staff, for Council's understanding; and requested a discussion of the item at the end of the Work Session to determine direction.

Planning Director Sara Young responded that the document could be broken into parts for discussion or set up a special meeting to discuss; mentioned that the original document had been broken down from 87 pages to 52 pages due to removing portions not being changed and staff organized the document into parts and discussion could follow.

Mayor O'Neal asked what the process for a developer looked like through the City-County Planning Department; and how would the amendment fit within the process.

[ITEM PULLED FROM THE CONSENT AGENDA]

SUBJECT: CHANGE ORDER #9 TO THE CONSTRUCTION MANAGER AT RISK CONTRACT WITH SKANSKA USA BUILDING INC. FOR THE MERRICK MOORE PARK (FORMERLY HOOVER ROAD PARK) PROJECT (ITEM 10/ PR 15927)

Mayor Pro Tempore Middleton inquired about the criminal act of vandalism (stolen materials) that caused the change order; and what did the change order consist of, replacement wise; and what security protocols were defeated by the vandals.

Rod Florence, General Services, provided an update on the vandalism that occurred shortly after the park opened; described what was stolen – parts of breaker panels, equipment stolen from the ground and disconnected wiring from the poles; police patrols, new cameras, additional locks on the panels and increased attendance/traffic were expected to minimize future vandalism.

[PRESENTATIONS]

SUBJECT: BUILT2LAST (ITEM 14/ PR 16086)

Council Member Williams presided over Item 14; and invited leadership of Built2Last for presentation: Chair Anita Daniels and Executive Director Dr. Joyce Blackwell. Due to technical difficulties, the audio for the video was not available.

Chair Daniels thanked Council for their commitment to Built2Last; recognized Rev. Dr. Keith Daniel; spoke to the three components of the program- Bull City Enterprise Training Center, Durham Collaborative formerly known as the Durham Compact, and developing Bull City Equitable Distribution Venture Fund.

Chair Daniels continued explaining how funding sources were being leveraged; recruited board members and identified them; explained the business plan with elements of staffing, financing, and future partnerships to historically under-represented businesses and persons from historically marginalized communities.

Dr. Blackwell thanked Council for the funding of the non-profit, start-up Built2Last innovation lab and spoke to its background starting in 2021; elaborated on initiatives, outreach and partnering for teaching staff.

Mayor O’Neal and Council appreciated the work of Built2Last; and congratulated the organization for their leadership within the community.

Council Member Caballero expressed gratitude for the work and its development since 2018; and concurred with the efforts toward shared economic prosperity.

Council Member Holsey-Hyman echoed the sentiments and looked forward to the programming within the community.

Council Member Williams expressed appreciation for the Built2Last program; and noted their webpage: www.Built2Lastinnovationslab.org

SUBJECT: WATER QUALITY AND LAND USE CHANGES IN THE LICK CREEK WATERSHED (ITEM 15/ PR 16069)

Council Member Freeman presided over Item 15.

Samantha Krop, Neuse Riverkeeper and representative of Sound Rivers, made PowerPoint presentation that contained the following:

- Role of Sound Rivers and the Neuse Riverkeeper
- Background of Lick Creek Watershed
- Satellite imaging of deposits
- Photos from different waterways/creeks
- Sound Rivers Water Sampling Results by site
- Sound Rivers Water Sampling Results summary
- Sediment Pollutes our Waterways
- Turbidity and us
- What can be done?
- Sedimentation and Erosion Control Text Amendment
- The Work Ahead – mapping

Council Member Williams expressed concerns about pausing development; addressed the duration of time that had transpired in the waterways related to turbidity; and noted that Durham had the strictest water management regulations in the state.

Senior Deputy City Attorney Don O’Toole noted that a number of elements were conflated during the presentation; there were two phases of construction (construction, regulated by the Durham County Division Manager Ryan Eaves; state dictates rules on sediment in water; Lick Creek is located in Triassic soils; state regulations are geared toward sediment not fine clay particles in the water; and explained the process of creating more stringent sedimentation and erosion control standards during construction by Durham County’s Sedimentation and Erosion Control Division. The city’s Public Works administered post-construction stormwater control measures, Durham has the tightest ones; the city is divided up into three divisional rules: Jordan Lake, Falls Lake and Neuse River. He stated the city falls under the stormwater NPDES Permit process, a federal program administered by the NCDEQ (NC Division of Environmental Quality). According to the State, the City’s Stormwater Division is in full compliance with state regulations. Attorney O’Toole explained that the City-County Planning Department was working on revised UDO text amendments to enhance construction phased work; and did not agree that the City was violating the Clean Water Act as being definitely ‘not true’.

Council Member Williams asked Attorney O'Toole to respond since the presentation reflected what residents were seeing; and wanted the public to be aware of the effort of staff in regulating stormwater and water quality issues.

Ms. Krop differed with the remarks of Attorney O'Toole; addressed the fact that there was sediment being dumped into a state waterway above the state's surface level standard directly from a development, that was a Clean Water Act violation; explained her presentation related to the construction phase, not post-construction; and stated there were other communities with more stringent rules compared to Durham.

Mayor Pro Tempore Middleton stated that Ms. Krop was invited to the meeting by a member of Council; and that the presentation was highly unorthodox in that he had ever seen an advocacy group being given a platform to directly influence Council's decisions that were being made on behalf of the Durham people; and indicated it was precedent setting thus representing an *amicus* brief for Preserve Rural Durham; and that moving forward, Council will be compelled to accept presentations from various other organizations. He stated he awaited a letter from a regulatory and/or law enforcement agency with a Clean Water Act violation.

Council Member Freeman responded that DataWorks had made multiple presentations.

Council Member Caballero explained that there was a Deep Dive on Affordable Housing that it needed a process; insisted that a process be codified by the Procedures Committee moving forward;

Mayor O'Neal explained she issued the invitation for Sound Rivers to attend the meeting and present for educational purposes.

Council Member Holsey-Hyman appreciated the presentation in that it was educational; spoke to the word 'precedent' and encouraged Council to look at things as change agents.

Mayor Pro Tempore Middleton explained democracy and its deliberative body based on evidence; and stated it was mal-practice to not ask for proof when there were blatant accusations made without proof.

Council Member Freeman asked about phased grading and what could be reviewed by staff.

Ms. Krop addressed provisions removed from the first to second draft related to tree preservation and related to an allowance for double-counting in already mandated buffers as being included as an additional tree preservation area.

Director Young addressed the double-counting provision; stated the riparian buffers were required to be double-counted by state law; staff was working on incentivizing wider stream buffers and dis-incentivize tree replacement.

After developments were done, stormwater control measures were the obligation/responsibility of homeowner associations and for commercial, the property owners. If the control measures were not functioning as expected, then the city's Stormwater Division would follow-up to bring facilities up to standard.

Council Member Freeman spoke to the presentation about what had been happening on pre-construction sites; asked what other measures could be in place to avoid harm in the waterways.

Durham County Ryan Eaves spoke to construction site run-off controls; explained the concerns about Lick Creek and what could be done about it – related to construction volume, nature of soil, frequency and intensity of rain events. He detailed enforcement actions when developers fall out of compliance.

Mayor O'Neal inquired about the definition of flocculence.

Division Manager Eaves responded that they were chemical additives to water, most cases biodegradable, causing small particles to stick together and escalates the falling out of particulates.

Council Member Caballero insisted that processes needed to be clear and laid out to Council Members; and that she had heard what was done in Durham was top notch; and spoke to future groups of residents with their concerns advocating before Council; and wanted the public to be aware of decisions were made. She inquired about alternative/green stormwater infrastructure.

Council Member Freeman inquired about scheduled cumulative impact study.

Michelle Wolford, Public Works, addressed watershed implementation plans scheduled near Brier Creek.

Council thanked residents, the presenter and staff for their input.

Mayor O'Neal highlighted the need for presentations for educational purposes; and it was up to the individual Council Member to balance the feedback prior to making decisions.

City Clerk Schreiber announced Council-appointed board, committee, commission and taskforce nominations:

Cultural Advisory Board- Margaret E McNab;

Planning Commission- return item to the Clerk's Office for presentation at an upcoming work session;

Housing Appeals Board- Category: At-Large, Malika Langley;

Workers Rights Commission - Diverse Backgrounds: Idreese Foxworth, Krista T Kenney, Laura Serratos, Danae Willis; and

Durham Bicycle & Pedestrian Advisory Commission: Jalen R Baker

Prior to settling the agenda, City Manager Page requested guidance on the scheduling of the SCAD public hearing item.

Mayor O'Neal requested the item be broken down for easier reading.

Council had various responses that focused on various meeting types from individual to group. Staff provided their feedback; were able to revise the memo to follow the segments of the revised document to make it more digestible.

City Manager Page stated that Council could choose to conduct a special meeting consisting of a public hearing.

Council Member Caballero noted there were seven public hearings set for 3/20/23; and asked if Council was going to move the SCAD public hearing to a different date at the 3/20/23 Council Meeting.

Council Member Williams spoke to process and did not want to schedule a special meeting for one community group.

Council Member Freeman encouraged hearing from the INC, the applicant and staff in a public forum.

Mayor Pro Tempore Middleton stated he had read the SCAD amendment and stated that if Council was going to change the public hearing date it should be because Council needed to study the item and digest the voluminous text amendment. He continued that it was important to let the public know it was Council who was changing the date for their own purposes rather than reacting to a community group.

Mayor O'Neal stated that she and her newer colleagues needed to understand the text amendment's content. She stated she would like to consider a special meeting for the SCAD text amendment public hearing.

Mayor Pro Tempore Middleton encouraged his colleagues to forward their questions to staff prior to the meeting.

Council Member Caballero suggested moving the 3/20 public hearing to a date later so that Council had more time to digest the information; and to conduct the public hearing on a date where there were very few public hearings or only one hearing on the agenda.

City Attorney Rehberg clarified the role of a special meeting.

It was the consensus of Council to open the March 20, 2023 public hearing and then refer back the item to staff or reschedule the opened public hearing to a date certain.

[SETTLING THE AGENDA FOR THE MARCH 20, 2023 CITY COUNCIL MEETING]

City Manager Page stated the Consent Agenda consisted of Item 1, and Items 3 through 13; the General Business Agenda- Public Hearings consisted of Items 16 through 22.

MOTION by Council Member Freeman, seconded by Council Member Holsey-Hyman, to settle the March 20, 2023 regular Council Meeting Agenda at 4:05 p.m. by the following vote: Ayes: Mayor O'Neal, Mayor Pro Tempore Middleton and Council Members Caballero, Freeman, Holsey-Hyman and Williams. Noes: None. Excused Absence: Council Member Johnson.

Being no additional business to transact, Mayor O'Neal adjourned the regular meeting at 4:06 p.m.

Diana Schreiber, MPA, CMC
City Clerk