

**JOINT DURHAM CITY COUNCIL
AND DURHAM BOARD OF COUNTY COMMISSIONERS' MEETING
COUNCIL CHAMBERS – CITY HALL
Monday, August 29, 2005 – 7:00 p.m.**

City Officials Present: Mayor William V. Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members John Best, Jr., Eugene Brown, Diane Catotti, Howard Clement III and Thomas Stith. Absent: None.

County Officials Present: Chair Ellen Reckhow, Vice Chair Becky Heron and Commissioners Lewis Cheek, Philip Cousin and Michael Page. Absent: None.

Staff in attendance: City Manager Patrick Baker, County Manager Mike Ruffin, City Attorney Henry Blinder, County Attorney Chuck Kitchen, City Clerk D. Ann Gray, Clerk to the Board of Commissioners Vonda Sessoms and Deputy City Clerk Linda Bratcher.

Presiding – Chair Reckhow.

SUBJECT: UNIFIED DEVELOPMENT ORDINANCE

Chair Reckhow called the meeting to order and welcomed everyone in attendance. Also, she noted the purpose of the meeting is to receive citizens comments on the proposed UDO.

Planning Director Frank Duke provided an overview of UDO Technical changes and UDO Legal changes. He recommended that the council and commissioners hold the public hearing this evening then provide the staff with direction on how to proceed and then set a date for a joint meeting for the staff to bring back the results. He recommended that the effective date for the proposed ordinance be changed to January 1, 2006 as a result of the recent changes in the state law.

Lee Einsweiler, of Duncan Associates, made a power point presentation on the UDO providing background information on the process.

It was noted by the Planning Director Frank Duke that the UDO did not address fees. He stated fees are set by both the City Council and the County Commissioners on an annual basis usually through the budget process based on cost recovery.

Consultant Lee Einsweiler defined the following terms: density, buffer, planning tiers, clear cutting, floodway and floodplain.

Planning Director Frank Duke made comments on signs illegally posted within the right-of-way which they make every effort to remove.

Vice Chair Heron expressed concern with the illegal signs and asked when will the administration begin fining the individuals.

Planning Director Frank Duke stated they will need to revise their current rules/procedures. He noted the current process calls for a warning initially and a period of time to correct. He stated as a result of the UDO they will be revising the rules of procedures for zoning enforcement and pursuant to the direction received from the Joint City/County Planning Committee - to make certain there is an elected body review of the administrative guidelines produced. He noted the current cap on zoning enforcement issues is \$300 and state law allows that to go up to \$500 per violation per day if the ordinance calls for that amount.

Vice Chair Heron mentioned numerous illegal signs in Durham County directing people to housing in Wake County because they cannot put the illegal signs up in Wake County due to their strict regulations.

Council Member Clement questioned the ADA regulations as it relates to the UDO.

Lee Einsweiler noted the ADA regulations apply through the building permit process and applies to every building permit whether it includes a driveway or not.

At this time, Planning Director Frank Duke stated if a proposal is submitted before the UDO is adopted which can be approved it would have to be approved and reviewed under the zoning ordinance that is currently in effect. He stated a date should be set to comply with the UDO and allow projects that come in before that date to be reviewed under the ordinance in effect prior to that date.

Planning Director Frank Duke stated the UDO is not about urban renewal. He noted there is nothing in the UDO that is associated with urban renewal. Also, the Planning Director addressed the issue of clear cutting provisions in the UDO and the special legislation granted by General Assembly.

Chair Reckhow opened the public hearing and the following citizens spoke.

Glenn Martin, a resident of 2404 Indian Trail, stated he was being affected by the new ordinance and he was very concerned. He noted it was quite a complex document and if it is implemented he felt things would be revealed that were not expected. He noted his neighborhood association, Watts-Hospital Hillandale, has provided a document for the elected officials to review and asked the council and county officials to listen to their point of view and accept some of their proposals to improve the UDO.

John Schelp, President of Old West Durham Neighborhood Association, stated his association would like to encourage the elected officials to support the recommendations from the urban tier neighborhoods for the UDO. He noted since 1991, no zone category has allowed quad-plexes in Old West Durham and the UDO as it stands would allow quad-plexes which would be a major change for the neighborhood. Also, he made

comments on being encouraged by what Mr. Duke proposed to merge their RU3 and RU5 and take away multiplexes from the merged categories.

Judy Kincaid, a resident of 6 Harvey Place, asked the elected officials to include in the UDO language that addresses energy efficient development. She stated the Comprehensive Plan has language that addresses this issue. Also, she stated she provided the planning staff with some redrafted language of the various sections in the UDO that would address this and are modeled on other jurisdictions in the country.

Valerie Everette, a resident of 1409 Maryland Avenue, asked the elected officials to include solar orientation language in the UDO for more energy efficient building designs. She stated this would also make it easier for people to install solar energy technology on their homes.

David Sokal, a resident of 5601 Pelham Road, thanked Durham for the bicycle friendly policy in the Comprehensive Plan and stated he was surprised to learn that the UDO neglects to implement several of the important bicycle policies. He noted the UDO has detailed review criteria for motor vehicle and pedestrian facilities in new development it does not have a section on bicycles. He stated the UDO should establish standards for bicycle facilities in new developments, including the provision of bicycle parking facilities as well as bicycle travel lanes, tailored to the unique character of each tier and encourage the inclusion of a system of off-road trails in new residential development, with connectivity where feasible to adjacent development, community facilities, and transit.

Kelly Jarrett, Vice President of Old West Durham Neighborhood Association, asked the elected officials to incorporate into the UDO suggestions that were made by the urban tier representatives specifically that multiplexes be removed as defined from the UDO. She made comments on how the residents of Old West Durham have felt misled by letters received from the Planning Department stating that the proposed UDO categories would have very little impact. She made comments stating that if multiplexes are allowed the areas would be less desirable for people to invest in. She asked that the lack of clarity about the neighborhood protection overlay be addressed.

Anita Keith-Foust, a resident of Trinity Avenue, stated the Old North Durham Neighborhood Association does not recognize the needs of children that reside in the area. She made comments on people being insensitive to people who do not own property and choose to rent.

Nick Tennyson, representing the Homebuilders Association, made comments on Section 1.10.4.B entitled Property Zoned with a Development Plan. Mr. Tennyson stated they believed and recommended a list of projects should be obtained. Also, he spoke on Section 13.1.6C External Access Required.

Frank Wiesner, President of Durham-Orange Homebuilders Association, made comments on Section 6.7 of the UDO entitled “Cluster.” He stated the open space rules

for this type development result in a very inefficient, expensive development patterns. Open Space requirements that are no more than 12% of PDR's are added on top of the "per lot" open space contribution that comes from reducing the lot sizes from the existing zoning. This makes use of the cluster provision a disincentive, instead of making it more attractive. The requirement for wider lot frontages is also not in keeping with the effort to make cluster development, with the open space gains and more efficient infrastructure utilization it offers, less usable. Relative to Article 9, he noted delivery of affordable housing requires lot sizes that are so small that the best practice is to grade the site in larger sections rather than lot by lot. The negative reaction to this pattern has resulted in punitive changes for mass grading and will make development for first time buyer homes un-necessarily difficult and expensive. At least in terms of buffers, mass grading should only be buffered from the side were the development is happening or happened already, or from the roadway, not buffered on side were development cannot take place due to other constraints of the ordinance.

Ned Kennington, a resident of Pennsylvania Avenue, spoke in support of the adoption of the recommendations from the urban tier neighborhoods. Specifically, he recommended the following: Section 1.2 - Purposes and Intent – should incorporate a strong statement that it is the purpose and intent of the ordinance to protect residential neighborhoods, to prevent their decline, to promote their livability, and to protect the investments citizens and their neighbors make in their own homes. The UDO should declare that this policy, for the urban tier at least, is paramount and that no other expression of policy contained in the UDO, Comprehensive Plan, or other Planning documents should be read to override it.

Tracy Stark, a resident of Williamsburg Way, raised concern about development happening so quickly in her area and they are losing so many of the natural features that attracted her family to the area. She made comments on Section 8.3.1 entitled Tree Coverage and Protection Standards. Ms. Stark stated it needed to be a goal of the UDO to protect significant habitat corridors or the phrases habitat preservation and healthy living environment need to be dropped from the objectives. She suggested that Section 1.2.2 (B) should read recognize and preserve geologic features and topography.

Delores Eaton, a resident of Masondale Avenue and a member of the Fayetteville Street Planning Group, made comments on the TTA plans for a regional transportation service and noted only one is planned in a residential area on Alston Avenue. She noted this station would displace hundreds of African-Americans many of whom are very elderly. She asked that the Fayetteville Street plan be studied and significantly reduce the area referred to as compact neighborhoods and delete multiplexes as indicated in a letter we received from the city. Ms. Eaton asked what is the square mile coverage of the compact neighborhood. Also, Ms. Eaton spoke on urban renewal.

Liz Pullman, a resident of Scott King Road, raised concern with water runoff. She asked if these new ordinances still allow developers to submit their site plans one phase at a time; will there be a requirement that a certain percent of open space actually be useable; will these new ordinances prevent clear-cutting land; will the new FEMA maps be used

for the 100 year floodplain delineation; will these ordinances make it impossible to fill and build in the floodplain; do these ordinances require a total width of 300 feet including the stream; will these ordinances guarantee zero intrusions into stream buffers and wetlands; are these new ordinances strong enough to avoid the incredible profusion of temporary signs for developments that sprout up every weekend; will there be a requirement that stormwater runoff be calculated as cumulative on the basis of all previous development in the entire watershed, not just as run-off from the current project looking for approval, and is there an ordinance dealing with construction noise. Also, Ms. Pullman provided a graphic illustration of how the heavy development upstream results in mud and silt laden water in Northeast Creek as it enters Jordan Lake.

Frances Kerr, representing Tuscaloosa-Lakewood Neighborhood Association, stated all the boundary streets of Tuscaloosa-Lakewood Neighborhood have businesses within walkable distance of their homes. She stated they are currently engaged in opposing a rezoning request that will come before the City Council in October. This case crystallizes what's at stake for Tuscaloosa-Lakewood neighborhood, and others in the urban tier. It's a request by the owner of an undeveloped residential lot behind Asia Market on Chapel Hill Boulevard, adjacent to the Guglhupf-Bano building, for a plan amendment that would allow the lot to be rezoned commercial. The lot's frontage is on Francis Street. What matters tonight about the case is this: the Planning Department's report approved the plan amendment. On August 9th, however, the Planning Commission voted unanimously not to approve it. That happened because when our neighborhood association presented its case and the Planning Commission understood that to rezone this one lot would destabilize the rest of the block on Francis Street, because there are several more residential lots adjacent to it. This is the domino affect. She stated the Planning Department's guidelines are not apparently designed to discourage this kind of easy rezoning where residential and non residential properties come together. Tuscaloosa-Lakewood Neighborhood Association joins the Urban Tier Neighborhoods in calling for a strong, explicit policy statement in the UDO that will prevent the domino effect in our established neighborhoods in the urban tier.

Tom Miller, representing the Watts Hospital-Hillandale Neighborhood Association, made available to the elected officials a 49 page document entitled Representatives of Durham Urban Tier Neighborhoods – Comments on the Proposed UDO. He made comments on the proposed protection overlay district in the UDO and noted the problem with this is – as it is written it has inadequate substantive and procedural provisions. He noted the planning staff has contemplated these provisions in a document dated September 2004 but those procedural and substantive provisions are not migrated into the UDO as it appears before you. Mr. Miller stated if those provisions are not in the UDO the neighborhood protection overlay provision is just an empty can. He noted if the provisions are adopted as the planning staff currently contemplates it would require a petition signed by 51 percent of the property owners in the neighborhood. He noted the neighborhoods that needed the protection of the overlay the most are the ones least capable of getting those signatures. Also, he asked the council to also review the other provisions concerning the preservation of development plans which are inadequate.

Paul Killenberg, a resident of Sheridan Drive, commended the UDO document on its emphasis on the importance of existing neighborhoods. He made comments on a developer's proposal on a two acre lot in their neighborhood four houses and buildable portions of that two acre lot are about 1.3 acres and these home sites will drain around a cul-de-sac which he understood the Planning Director has spoke in opposition to. Mr. Killenberg noted his concern was and asked if these regulations in the UDO are enforceable or does the well established developer in question know something the neighborhood does not know.

Earl Walker, a resident of Duncan Street, expressed concern with the change in zoning at 2109 Duncan Street being RU-5.

Bishop William Bunch, a resident of Collier Drive, noted what his church was doing in the community and thanked the elected officials for their service.

Janet Rawls, a resident of Cecil Street, spoke on urban renewal. Also, she spoke about illegal signs clustering the streets of Durham and requested the elected officials to be cautious about approving the UDO.

Jennifer Albright, a resident of James Street, stated neighborhood protection overlays offer neighborhoods an opportunity to reduce the risk of development inconsistent with surrounding homes. A number of years ago, the current zoning ordinances permitted the construction of multiplexes adjacent to single family homes in our neighborhood. The developers of these multiplexes appeared to show no consideration for scale, landscaping or building materials, so we are now left with eyesores that are a misfit for our neighborhood. We do not want this to happen again. There are in-fill development opportunities in our neighborhood, and we would like to increase the chances for development that is visually and stylistically compatible with the existing single family homes in Tuscalossa-Lakewood. A neighborhood protection overlay could assist us in this goal. But we are challenged to gather the percentage of signatures as required in the proposed UDO. Approximately, 50% of the residences in Tuscalossa-Lakewood are rental units. These units are frequently owned by out-of-area owners and are often managed by property managers whose focus is maintaining their property occupancy rates and who do not have the same interest in the charm and character of our neighborhood that resident owners may have. The Unified Development Ordinance as it is written requires 51% of property owners agree to support a neighborhood protection overlay. This percentage is unrealistic for neighborhoods such as Tuscalossa-Lakewood, one of many neighborhoods slowly improving the quality of its housing stock. It is essential neighborhoods like ours be able to ensure in-fill lots be developed in a manner that will not diminish the character of the neighborhood. A neighborhood protection overlay would be valuable in these efforts, but would be unattainable given the requirements of the UDO as it is written. I therefore encourage you to support reduction of the percentage of required property owner signatures to 25%, as recommended on the Urban Tier comments.

William Bradshaw made comments on the on the Historic Preservation Commission. He noted that it states the HDC shall establish regular meeting times to meet at least quarterly. He stated between now and January a lot of meetings would need to place to address the Historic District of Fayetteville Street. He noted he owned property on Fayetteville Street. Also, he stated he owned property in Walltown and the property is being changed from R-3 to RU-3. He requested that it not be changed.

William Turner, representing Russell Memorial CME Church, noted he was present tonight to receive information and stated he would like to give his remaining time to other individuals.

Andrew Balber, a resident of Nation Avenue, asked the elected officials to review the Durham Urban Tier Neighborhood comments and to incorporate in Section II [Purpose and Intent] the language recommended by the group. Also, he made comments on Item B; page 8 [The Concept of Neighborhood-Compatible Commercial Uses]. He noted this was very important to the Tuscaloosa-Lakewood neighborhood and expressed the same concerns as noted by Frances Kerr who also spoke earlier. He asked that specificities be outlined in the UDO to prevent commercial intrusion into neighborhoods.

Mary Williams, owner of property at 1603 Fayetteville Street, asked the elected officials to remove the special permit usage from the property located at 1603 Fayetteville Street.

Chair Reckhow asked the Planning Staff to meet with Mary Williams to make certain they understood her issue.

Carol Young, a resident of Williamsburg Way, stated conservation subdivision should be required near adjacent critical wetlands and requested that it be employed south of Scott King Road where the rural tier has been removed. She raised concern with PDR not being used as it was intended; made comments on Section 8.3.1 which describes the purpose of tree protection and coverage to reduce glare, noise, air pollution and soil erosion; to moderate temperatures, to reduce storm water runoff, to preserve remnants of Durham's native plants and wildlife; and to provide a healthy living environment. She stated a token of 2.5 inch caliper trees along the streets will not achieve these goals any time soon. With regards to the tree survey, she stated more needs to be done to address working significant trees into a site plan; she made comments on parking in the floodway fringe exceeding 20% as the watershed is developed and more surface will become more impervious. She made comments on Section 8.7 which addresses watershed protection standards. She noted current development practices render a tract virtually 100% impervious. The proposed impervious surface limits of 24% for low-density option and 70% for high-density option do not adequately protect those downstream from intensive development. She made comments on Section 11 which addresses temporary signs allowed without a permit. She stated most of these signs create an eyesore and should be banned and most of them are in violation of the existing ordinance. She stated development directional sign standards should not be lowered as proposed in the UDO and the limit should remain 5 signs per project limit, located no more than one road mile

from a project and placed only at intersections and define what an intersection is, and prohibit non Durham County development signs. Also, she asked that new development not be approved beyond Durham's ability to provide adequate levels of service.

Bill Newton, a resident of Legion Avenue and representing Tuscalossa –Lakewood Neighborhood, noted many of the homes in his area were built in the thirties and asked that the existing neighborhoods be protected from commercial encroachment. He spoke in support of a policy statement in the UDO to protect established neighborhoods and that this policy can only be overwritten in extraordinary circumstances.

Helen Wolfson stated that the response to the fifth question in the frequently asked question of the UDO states that a project in an established neighborhood must, among other things, resemble the existing area with regard to orientation to the street. She noted she had concerns about this limitation. She noted one of the simplest and cheapest ways to increase the energy efficiency of a dwelling is to place it on the lot so that it takes advantage of the position of the sun. A long south-facing wall can absorb heat from the low winter sun while inexpensive overhangs can keep the house from overheating when the sun is higher. According to the California energy commission "there is no substitute for a site with good southern exposure." She noted the commission goes on to say : In most parts of the U.S., however, just making the building the right shape, properly placing its windows and pointing it in the right direction can cut the building's total energy use by 30 percent – 40 percent at not extra cost. She noted if Durham restricts the orientation of houses, it will severely restrict the possibilities for passive solar design/ Ms. Wolfson urged the elected officials to modify the UDO so that orienting a building to improve its energy efficiency is permissible regardless of its orientation to the street.

Bobbie Deason, a resident of Vickers Avenue, noted she was a member of the Urban Tier Neighborhood Group and urged support of the plan. Ms. Deason stated that Section 2.2.5.B of the UDO regarding public notice requirements "notice shall be published, mailed and/or posted not less than 10 days before the date fixed for the public hearing" which represents a substantial reduction from the current 14 day minimum. She stated the importance of the 14 day period is the resulting 2 weekend buffer allowing citizens time to study the issues. Given the complexities of the UDO and the daily complications life affords, a return to the 14-day minimum notification period would affirm the importance of citizen input to the development process.

John Dagenhart, a resident of Dollar Avenue, made comments on the document presented by the Durham Urban Tier Neighborhoods and urged the elected officials to give full consideration to the recommendations.

Melanie Eberhart, President of Morehead Hill Neighborhood Association, spoke in support of the Durham Urban Tier Neighborhoods recommendations. She noted in reading the document she did have concerns relative to the relationship of the historic district overlays and the neighborhood protection overlay which are mutually exclusive and she did not think this would serve them in the urban tier in preserving neighborhoods if we only allow a historic district or a neighborhood protection overlay. She urged the

governing bodies to review the comments and consider them being placed concurrently on a neighborhood in order to offer more protection.

Bob Jentsch, a resident of Springstop Lane, stated there are 81 policies in the Durham Comprehensive Plan that state they will be implemented in the UDO. He noted most of these policies start with the words, “Through the UDO” and then go on to state the policy to be implemented. He provided a list of the policies and respectfully requested that the UDO consultant and/or staff set down under each policy those sections and subsections of the UDO that relate specifically to the implementation of that particular policy. Mr. Jentsch stated there have been many changes and corrections to the UDO over the last year or so and, as you know, the UDO can be difficult to understand. The purpose of this request is so that citizens, including myself, can check to see how the Comprehensive Plan policies have been carried forward to the UDO and to make sure that no policy has been omitted or inadvertently altered during the many recent changes that have been made to the UDO.

Denise Hester, representing the Fayetteville Street Planning Group, made the following comments: We recognize the tremendous amount of work that has gone into preparing the new UDO and the Comprehensive Plan. Nevertheless, there are certain key principles that should never be overlooked in any planning process – namely protection of citizens’ rights to own property and the preservation of due process. Given the development pressures that are growing in all urban areas, care must be exercised that the rights of individual citizens not be sacrificed for a nebulous promise of development for the “public good”. Anytime I feel the need to talk to my people or any other persons in here who may be subject to undo process of law and unconstitutional taking or property through developmental pressure – I am going to do that.

Due to the sad history of wealth transfer in African American neighborhoods, we must ask for “whose good” are some of the new zoning ordinances being enacted. Both the Comprehensive Plan and the UDO espouse protection of existing neighborhoods, yet these two documents are in conflict in some of those areas-particularly concerning encroachment by governmental and quasi-governmental agencies, whether they be as schools or transit authorities. We find as we did our Fayetteville Street Plan two governments local and state working together but depriving citizens of due process, such as the planned implementation of two traffic circles on Fayetteville Street at the intersection of Fayetteville and Larson and the intersection of Fayetteville and Cecil without any input from the public. We are gravely concerned about these types of trends and the planning process is not well understood by the public and inherently governments have the advantage when making the rules. We urge the City of Durham to make the planning process more transparent and more participative for its taxpayers.

If the UDO is to be used as a tool to implement the Comprehensive Plan, we object to the UDO’s implementation of compact neighborhoods in the area south of NC Highway 147 and the proposed RC zoning designation. The overriding reason is the creation of development pressure that has the potential to displace hundreds of single family households under the guise of creating the needed density around the Alston Avenue site.

Now I understand that TTA is having some issues with the government using their formula for ridership and density which is this area around Alston Avenue - plays key into that. Out of the five rail stations, only one has the potential to displace homes and residents in Durham. The others are at Duke, Ninth Street, RTP, and Metro Center.

The O&I-1 appears twice – once under nonresidential districts and again under overlay districts. O&I-1 cannot be both OI and TO (transitional office overlay) at the same time. So perhaps this was an error. We, therefore, recommend that O&I-1 adhere to the existing uses under the current zoning laws, that all other uses be included under the existing O&I-2 category and most importantly, that the existing O&I-1 and O&I-2 zoning designations remain unchanged.

Ms. Hester stated when an overlay is being done, people are not being notified of zoning changes overlay. We object to notification of the overlay zoning change that is proposed for compact zoning via the UDO – versus notification to individual property owners within a certain distance from the proposed zone as it is now done. My final comment is about the university college zoning. There are references that there is a master plan that will be incorporated by reference in the UDO that will make the area of NCCU – that they will be able to take in whatever area in the UC zone that they want. We have been asking the Chancellor for the past month for a copy of this plan and have not received it and I think that it is unconstitutional and an injustice to rezone something by reference when the citizens have never seen the document and the document seems to be a closely held secret. We object to the use of the UC District to allow the “camel’s nose under the tent” and its future encroachment into neighborhood by reference. We want Central to stay away from Fayetteville Street, we do not feel that state government should be competing with private enterprise and we feel it is wrong with these planning sessions between the state and the city government to go on in secret.

Larry Hester, representing Fayetteville Street Planning Group, noted the consultant earlier defined a compact neighborhood as an intense development opportunity. Mr. Hester asked what land are they talking about – the compact neighborhood starts at Lincoln Street and it goes all the way to north Durham and encompasses Alston Avenue. He spoke on preserving established neighborhoods and the intense development opportunity does not preserve neighborhoods. Mr. Hester spoke on intensive code enforcement at Hillside Avenue and Chestnut Street whereby the city will pile violations after violations upon them and place a note on the property until they no longer own them – he asked if this was eminent domain by code enforcement which is under the UDO. He spoke of someone asking the City of Durham to increase the level of service [police and other kinds of community development activity] and the person was told the city was on the enforcement side. He stated the individual was also told if he improved his property it would be worth less than the dollars he put in it because it was a targeted area and this area was visible to American Tobacco and buyers were standing by. He stated looking to the south, he would see a revised UC university zone designation in the UDO which references the master plan of NCCU which they have and is incorporated into the UDO. We have asked Mr. Duke if he has a copy of this plan and he replied no. Mr. Hester asked why would this council incorporate by reference a master plan into the UDO

without knowing what it is about. Mr. Hester stated the master plan at NCCU could involve the taking of many peoples' homes and they are not aware of it and the UDO makes it law. Mr. Hester stated looking to the east you would see a proposed transit stop at Alston Avenue which is part of the need to develop density to justify its funding for the TTA. Mr. Hester stated the city is creating a compact neighborhood zoning designation. He stated right now the zoning for the area east of Fayetteville Street is proposed to be compact neighborhood which will allow according to some maps up to 150 units per acre and in the Comprehensive Plan it states 60 units. He made comments on regarding an individual calling him whose property is less than 1200 feet from the Alston Avenue Rail Station and questioned how the zoning on her property could be changed without an explanation of what was being proposed in its entirety. He stated in the African American neighborhood you will have more than multiplexes – we will have multiplexes multiplied by five and he asked when will the black community stop being sacrificed.

Nancy Scott, a resident of Gloria Avenue, spoke in support of the Durham Urban Tier Neighborhoods comments and asked that they be incorporated into the UDO.

Bill Bren, a resident of Shoemaker Drive and President of Black Horse Run Homeowners Association, made the following comments: We are in support of the new UDO; specifically as it applies to the RR zone and the watershed protection overlay, which is our primary concern. Secondly, and equally important, we would like to thank the City Council, the Board of Commissioners and the Planning Department for their efforts. We don't say "thank you" often enough to our elected officials and their staff. We recognize that much work has gone into this project. We'd like to thank Ellen Reckhow for pushing the separation of the Durham Comprehensive Plan from the UDO. Although it may have delayed the implementation, the separating of these two projects allowed for a better outcome in the long run. We'd also like to thank Frank Duke and his staff. Many of them have put in long hours on this project. They have worked long days putting in hours at work that cut into their own personal time, holding workshops that required them to be away from their home and families beyond the normal workday and we appreciate their efforts.

Liz Rooks, representing the Research Triangle Foundation, stated they have found one last item that stills needs to be addressed in the UDO. She noted currently in the research district Section 4E.1.2 allows shopping centers providing that the gross store area does not exceed 30,000 square feet. She stated this provision is not carried forward in the UDO. She noted RTP companies are very interested in increasing the availability of amenities such as restaurants, retail and services to their employees. She felt it would be a good idea to carry forward this provision and allow shopping centers which do not exceed 30,000 square feet as an accessory use in the science research park district.

Patrick Byker, a resident of Stuart Drive, made comments on the neighborhood meetings requirements. He suggested that after the neighborhood meeting process a written form be pre-printed so that people in attendance can write down issues they were discussed whether in agreement or disagreement and everyone signs and you have a record of what was discussed. Also, he suggested involving some sort of mediator in the

discussion perhaps a former elected official or former planning board member who could really help with discussions between neighborhood representatives and the applicant.

Antoinette Hawes, a resident of Chanticleer Drive in Kentington Heights stated her concern with the document is the language. She stated they had to work hard to lobby to get people to support Kentington Heights with commercial zoning/commercial land use. She felt the UDO would increase litigation and could go into the area of eminent domain.

Chair Reckhow asked Ms. Hawes to meet the planning staff to make certain the elected officials and the staff understood what her issues are.

Victoria Peterson, a resident of Ridgeway Avenue, noted many of the citizens on Ridgeway are homeowners and elderly. She noted a lot of the residents are concerned because they can not afford any changes in the community. She noted she visited the Planning Staff and she was very disturbed about the information they were trying to give her. She noted the various streets in her area are not indicated on the map and to obtain a copy of this report would cost \$17.00. She made comments on the area being Residential Urban 5 which would include urban; compact neighborhood and downtown. Ms. Peterson noted that Russell Memorial Church was also in this area and asked how will this area continue to be compact when they already have several public housing units.

Steve Cohn, representing Watts Hospital Hillandale Neighborhood Association, made the following comments: I am in support of the comments submitted by Durham Urban Tier Neighborhoods. I want to call your particular attention to these neighborhoods' comments and proposals on lighting standards which appear both in the Section entitled "Lighting Standards" and also in the preceding section on the University-College Zone. I note that the Urban Tier Neighborhoods are strongly recommending that this zoning classification should be expanded to encompass the School of Science & Math, as a large residential school similar in most ways to a college. Because the School of Science and Math has for a long time been announcing its intention eventually to build a lighted athletic stadium on the back end of its property, my neighbors and I have visited many lighted athletic fields, not only in Durham but also at places like Cary Academy and North Raleigh Christian that have state-of-the art athletic lighting. It is our clear conclusion from those visits that placing athletic type lighting in close proximity to neighborhood residences, without sufficient buffering, is obnoxious and intolerable, and will rapidly degrade the surrounding neighborhood. Having these lights close to your house is like looking constantly into a set of headlights on their high beams. We value the School as a neighbor and we understand the need for athletic fields at schools. But whether the purpose of the lighting is commercial (as with Mark Jacobsen Toyota) or athletic and educational, the effects of glaring lights on extra-tall poles for a bordering neighborhood is the same: it will inevitably degrade the quality of life for the neighbors, resulting eventually in degradation of the neighborhood. We hoe you will protect our neighborhood by placing Science & Math in the U-C zone. But even if you do that, we believe what the Urban Tier neighborhoods are asking for, in terms of protection from lighting glare and distance of athletic-type lights from neighboring houses, is crucial for

other neighborhoods in Durham. I ask the elected officials to support these proposals in full.

Phil Lawless, a resident of American Village, stated it was the responsibility of the elected leaders to insure that new development does not really impact on existing neighborhoods. He noted although the UDO currently requires notification in matters of rezonings, he stated they were concerned when developers come in under existing zoning with site plans or subdivision plans that neighbors are not required to be notified. He asked that site plans or subdivision plans also be included in the notification process in the UDO.

Risa Foster, a resident of Trinity Heights Neighborhood Association, expressed concern with multiplexes and spoke in support of the recommendations from the tier neighborhoods. Also, on behalf of Audrey Mitchell of Walltown, she wanted the elected officials to be aware of her concerns with multiplexes and wanted to have single family.

Patricia Carstensen, representing Inter Neighborhood Council of Durham, made the following comments: The Inter Neighborhood Council has spent considerable time examining and discussing the UDO draft. In general, we are enthusiastic about the UDO. A framework that acknowledges that urban areas are not like the suburbs that tries to protect neighborhood character, and formalizes processes and requirements is an immense step ahead. We support passage of the UDO as quickly as possible to get its benefits – but there are a number of areas that need fixing first. Some specific areas of concern are: 1) We oppose shortening the notification interval from 14 days to 10 days; 2) We need to tighten up the regulation of driveways and front-yard parking; 3) We need to make sure that no new destabilizing uses are introduced into long-established neighborhoods by the UDO. We can improve both the restrictions on destabilizing uses and the incentives for stabilizing uses in neighborhoods. 4) We support the idea of Neighborhood Protection Overlays but have concerns about getting the details filled in; 5) We need to put sufficient resources into training the Planning Department and citizens to use the new ordinance, as well as planning to thoroughly review the UDO in 12-18 months; and 6) The threshold for doing a traffic impact analysis should be lower than 2.5 cars per minute.

Olivia Singleton, resident of Arthur Lane in Greenway/American Village, encouraged the elected officials to set a date for the adoption of the UDO. She felt all the comments could be incorporated fairly easily. She made comments on the UDO having a few pages dedicated to design standards and having no specific standards on design and the need to be fine-tuned. Also, she asked that it be a deadline as to when a development actually takes place and happens.

Cathy Wides, a resident of American Village/Greenway, spoke in support of preserving existing neighborhoods. She spoke of a development in her neighborhood where hundreds of multi-family units will be constructed on a street where it was a dead end (sleepy little street) and she stated this will significantly change the traffic in their neighborhood and the UDO does not address the situation where a development presents

this type of impact on the traffic. She stated they would like the UDO to address this type of situation and require that the developer incorporate on the site plan traffic calming devices that are necessary and that the developer pay for those devices and not the taxpayer.

Anne Sporn, a resident of McKinley Street, stated she appreciated Council Member Brown mentioning the Greenway at American Village. She made comments on the four acres of red dirt she has to look at every morning which is right next door to her home. She stated she understood that the UDO cannot undo what is already done but she stated her neighbors had some real strong feelings about what might be done to prevent the continuance of these types of things in other neighborhoods so they will not be affected as they are. She stated buffers needed to be addressed in the UDO for stormwater detention facilities and requested UDO be specific on what the buffer is.

Sharon Lunk, a resident of Arthur Lane in Greenway/American Village, noted the residents in the area were very concerned that their neighborhood was about to change very drastically. She spoke in support of the UDO protecting existing neighborhoods when multi-family will suddenly approach upon single family housing. She stated there needs to be an opportunity for neighborhood input during the site plan process especially if the new neighborhood is going to significantly impact the traffic patterns. She stated developers needed to be responsible for traffic calming devices not only in the neighborhood they are developing but in the neighborhood they are going to abut. She also requested that the language in the UDO be tighten up concerning standards for visual appearance in some of these multi-family housing developments that will be abutting single family housing. She spoke in support of appropriate buffers; screening, and raised concern that a developer can clear cut an area that is right next to their neighborhood and leave it a mess and a total eyesore, and there should be time limits in the UDO that a developer has to start developing an area [include language for completion of projects].

Isaac Woods, a resident of Winberry Drive and representing a family located near Creek Side Elementary School, stated the property is currently zoned R-20. He noted in reviewing the Comprehensive Plan the property is proposed to be high density and there is a transit station planned. Mr. Woods asked why the Comprehensive Plan is not being followed that was approved. He noted this property needs higher density to provide sewer service. He asked the elected to make sure the UDO complies with the Comprehensive Plan. Also, Mr. Woods stated that the R-20 zoning was removed from the group homes particularly when it is allowed in residential zoning and ask that this be revisited. He made comments on receiving two separate letters regarding R-15 going to R-20 zoning and R-15 to R-10. Also, he made comments on another parcel of land on Scott King which is currently zoned R-20 and questioned discrepancies.

City/County Planning Director Frank Duke stated the UDO is not engaging in a change of zoning designation of any parcel. He noted a number of speakers spoke about NCCU being rezoned UC, Mr. Duke stated this is not going to happen. He stated people have spoke about the area around Alston Avenue being zoned RC, he noted this will not happen. He noted none of that is accurate, none of that is true. He noted the property just

mentioned by Mr. Isaac Woods – the Comprehensive Plan does designate that as suburban transit area where higher densities would be appropriate. He noted the Board of Commissioners voted to revisit that at their last meeting. He noted the UDO does not make that change. He noted as it relates to the R-15 property, the transitional provisions provided in the UDO recognizes that in 1994 when the merged zoning ordinance was adopted there were some R-20 cluster developments in the county that had 15,000 square foot lots and there were some R-15 developments. He noted those that were R-15 cluster developments in the county are being converted back to R-20 through the UDO and those that were not the R-20 cluster that got converted in 1994 are going to R-10. He noted there is some difference but it does follow a pattern. As it relates to the R-20 going to 30,000, Mr. Duke stated that was not accurate. He noted the R-20 dimensions are not changing and staying at 20,000 square feet.

Ernestine Hooker, a resident of Walltown, asked that the zoning does not change in the Walltown area from R-3 to RU-3. She stated they have spent a considerable amount of time trying to convert duplexes into single family houses. She stated the only triplex or multiplex they wanted in the area is the Walltown Community Center.

Virginia Stone, a resident of Ridgeway Avenue, expressed concern with McDougal Terrace and gunshots coming from this area.

Patrick Mitchell asked for the specific date the UDO would take effect.

A citizen spoke in support of the suggestions recommended by the urban tier neighborhoods.

Chair Reckhow stated the public hearing is closed and this completes the public comment period for the UDO. She noted she heard a consistent theme this evening and that was the need to preserve the existing neighborhoods. She stated it would be appropriate to refer the comments to the staff and ask them to review them and bring back a report.

Planning Director Frank Duke stated based on what they have heard from the citizens this evening the earliest he could get a report back to the elected officials would be 90 days.

Mayor Bell noted this was a very serious issue that the elected officials are going to undertake and the comments by the citizens needed to be reviewed. He noted if the staff needed 90 days to report back he could support that.

Based on the advice of the City Attorney, Planning Director Frank Duke noted if the public hearing is closed tonight, the elected officials would be limited to making any substantive changes to issues that were raised during the public hearing and any additional issues that come up can't be dealt with through this initial action.

Chair Reckhow asked her colleagues if they wanted to keep the public hearing open. At this time, she asked for advice from the County Attorney.

County Attorney Chuck Kitchen noted at a certain point you need to have the public hearing which was held tonight and he was not sure of leaving it opened – unless it remains open to get into other substantive areas that have not be raised. He noted the risk is that you will have changed the ordinance to such an extent that you will start the process over again. He stated he did not see a problem with closing the public hearing unless the elected officials wanted to have another public hearing.

Commissioner Cheek stated if another public hearing is needed it can be done. He stated he would rather close the public hearing this evening and proceed with what we have. Commissioner Cheek asked the staff to come up with some sort of summary/recommendations based on the citizens’ comments this evening to be reviewed initially by the Joint City/County Planning Committee.

For clarification and under the county statue 153.A - Attorney Chuck Kitchen stated the public hearing needs to remain open and continued to a date certain – otherwise there will be a problem with the public hearing expiring before any action is taken and then a whole new public hearing will have to take place.

Chair Reckhow asked the county attorney to discuss this issue with the city attorney on further advice on how to deal with the timing issue.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to receive the citizens’ comments on the proposed UDO was approved at 10:35 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

MOTION by Commissioner Page seconded by Commissioner Cousin to receive the citizens’ comments on the proposed UDO was approved at 10:35 p.m. by the following vote: Ayes: Chair Reckhow, Vice Chair Heron and Commissioners Cheek, Cousin and Page. Noes: None. Absent: None.

Council Member Brown stated the elected official should do everything possible to avoid another public hearing. He noted the process has been going on for at least three years and made comments on the numerous public meetings that have already taken place.

Mayor Pro Tempore Cole-McFadden noted the neighborhoods in Durham are very important.

Vice Chair Heron also made reference to the process which started three years ago. She noted the public comments needed to be taken into consideration; however, the discussion must end at some point. Also, she stated once the discussion ends, there is nothing that says you can’t go back. She commented on changes that have taken place with the zoning ordinance.

Council Member Stith made comments on the citizens wanting to protect neighborhoods and personal property rights. He stated he would be bringing to council a resolution for consideration as a result of the recent Kelo decision.

Council Member Catotti thanked all the citizens for sharing their comments/concerns with the elected officials. She noted there were some misunderstandings that needed to be addressed particularly takings and eminent domain. Council Member Catotti stated to address the concerns, she would propose a format similar to the comprehensive plan where staff listed the concern and then made a recommendation. She noted many of the concerns heard this evening she has heard previously. She stated that she was unaware of the concerns raised about the TTA station and compact neighborhoods.

Planning Director Frank Duke stated the TTA station is not a UDO issue. He noted it was a comprehensive plan issue and he has explained this on previous occasions to Mr. & Mrs. Hester. He noted their concern would require an amendment to the comprehensive plan. Also, Planning Director Frank Duke referenced many of the comments presented by the speakers and noted several concerns cannot be dealt with through the UDO. He noted to review all the comments heard this evening would take a minimum of 90 days and the earliest they would be able to bring a report to Joint City/County Planning is December.

Planning Director Frank Duke referenced items in the department's work plan that were not in the UDO.

Council Member Catotti expressed concern with this item returning to Joint City/County Planning Committee.

Commissioner Cousin voiced concern with sending this item back to the Joint City/County Planning Committee.

Planning Director Frank Duke stated they believe they could have everything completed by the week of December 5th if they could bypass the Joint City/County Planning Committee.

Planning Director Frank Duke stated item #2 on the agenda [Fee Resolution Modifications] needed to be referred back to the administration. He stated this item will come back before the governing bodies along with the proposed UDO because it is related to the adoption UDO. Also, he noted it was his understanding that the transition date will be set on the date the UDO is voted on.

MOTION by Vice Chair Heron seconded by Commissioner Cousin to hold a joint meeting on Monday, December 5, 2005 at 9:00 a.m. in the City Council Chambers to discuss the UDO was approved at 11:05 p.m. by the following vote: Ayes: Chair Reckhow, Vice Chair Heron and Commissioners Cheek, Cousin and Page. Noes: None. Absent: None.

MOTION by Council Member Clement seconded by Council Member Brown to hold a joint meeting on Monday, December 5, 2005 at 9:00 a.m. in the City Council Chambers to discuss the UDO was approved at 11:05 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

There being no further business to come before the governing bodies, the meeting was adjourned at 11:06 p.m.

D. Ann Gray, CMC
City Clerk