

**SPECIAL CITY COUNCIL MEETING**  
**Monday, June 27, 2011 – 3:00 p.m.**  
**Committee Room – 2<sup>nd</sup> Floor – City Hall**

**Pursuant to the proper notification**, the Durham City Council held a special meeting on the above date and time in the Committee Room in City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Ali, Brown, Catotti, Clement and Woodard. Noes: None. Absent: None.

Also present: Deputy City Manager Wanda Page, City Attorney Patrick Baker and City Clerk D. Ann Gray.

The meeting was called to order by Mayor Bell.

**Subject: Presentation on 751 South Project Voluntary Annexation**

The Mayor stated this meeting is being held for the council to receive information from the administration on the 751 South Voluntary Annexation and said council will not be receiving comments from the public.

Deputy City Manager Wanda Page made comments as outlined below:

- We are here to discuss the 751 South Project's – Voluntary Annexation Petition
  - Under the leadership of City Manager, Bonfield we have implemented a more detailed cost/benefit analysis for annexation petitions that fully captures the impact on City operations including:
    - Operational impacts – 1 time costs – and impacts on our Capital Improvement plan
  - The council 1<sup>st</sup> saw this expanded cost/benefit analysis with the Cardinal Oaks Voluntary Annexation Petition received earlier this month.
- In front of you today in your binder is the expanded City Staff Report for 751 South that includes background information and source documents that support the summary presentation today.
- The report sections organized by tab number will be referred to by the presenters today.
- Last week, staff also made the information being discussed today available to the public on the City's internet site.
- Our residents were notified of the staff report by a press release that also included locations in City Hall where a paper copy of the report could be reviewed.
- The report remains available for review by the public in the City Clerk's Office and the BMS Department.

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- While, the administration is not making a recommendation to you today, we will be presenting information to you and listening for requests for additional information and further direction from you as we proceed.
- Robin Bibby of the Budget and Management Services Department will present the City's Cost/Benefit Analysis and Pat Young of the City-County Planning Department will present detail on valuation and build-out assumptions that are integral to the cost/benefit analysis, and finally Attorney, Baker will present legal issues surrounding annexation – some of which have been informed by very recent state annexation legislation.
- We also have invited several operational department representatives to the meeting to respond to specific questions you may have about the staff report.
- Before turning the presentation over to Robin Bibby, the administration acknowledges that the analysis you will be reviewing today is based on certain assumptions that span out a decade, certainly none of us can see into the future, but we have been and stand ready to continue to use our best *expert knowledge, present conditions, and historically significant facts* to provide a basis for our assumptions and will continue to provide the Council with all the information you request and require prior to making a final decision on the petition and related matters.

Robin Bibby, of the Budget & Management Services Department and Pat Young of the City/County Planning Department, made a powerpoint presentation highlighting the following:

- The Voluntary Annexation Process (751 South Project Features) Mixed Use; (Residential – 120 Single Family; Residential 330 Townhomes; Residential 850 Apartments/Condos; Retail 300,000 square feet; Office 300,000 square feet) Total Valuation at Build out - \$465 million
- Large project scope
- Build out over 10years: 2012 to 2022
- Location/proximity to city limits
- Context Map
- Development Map
- Voluntary Annexation Process
- Associated Processes (Land Use and Utilities)
- Valuation and Build out Assumptions
- Build out Scenario A – 100%
- Build out Scenario B – 48.1%
- Build out Scenario C – 21.9%
- Cost/Benefit Analysis

Deputy City Manager Wanda Page commented on the following options:

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- Annex – request additional committed elements to mitigate fiscal & level of service impacts; scale back or defer CIP
- Don't annex – provide no utilities; or provide utilities

Also, Deputy City Manager Wanda Page commented on the petitioner concerns as follows:

- Alternate Scenarios (Validity; Basis)
- CIP Projects (Park; Fire Station; Hwy 751 road expansion to I-40)
- Offsetting revenue (Water & Sewer Fees)

City Attorney Patrick Baker briefed council on the legal issues as outlined below:

Council has the following options regarding the annexation of this property:

- Council can annex the property pursuant to developer's voluntary annexation petition and provide utilities and City services to the development;
- Council can choose not to annex the property and then the City is under no obligation to provide either utilities or City services to the development. However, City could choose to extend utilities to the property with a utility extension agreement.
- Council can choose not to annex the property now, but provide utilities to the development with a requirement that the developer include deed restrictions requiring future property owners to consent to the voluntary annexation of their property into the City.

North Carolina annexation law is in a significant state of flux and significant logistical issues could arise with a future voluntary annexation petition potentially requiring as many as 1300 property owner signatures.

The administration also provided the possible next steps as follows:

- Identify and respond to any Council questions
- Council direction (annexation request; utility extension agreement)
- Set annexation effective date
- Set public hearing date

The following questions were asked by the City Council:

Council Member Ali asked why does summary show 4.3% for fire department but 100% for other departments.

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Robin Bibby stated the annexation area is only 4.3% of battalion service area. Whereas for police, this development tips threshold requiring 6 new officers for the new police beat.

Council Member Ali asked how many officers cover the area from the Sheriff's Department.

Robin Bibby stated they did not analyze county services.

Council Member Catotti asked where are park costs reflected on spreadsheet.

Robin Bibby replied the spreadsheet shows developer paid impact fees for park facilities for this development only (parks capital facilities and open space impact fees). The full cost of a new park is \$5,000,000.

Council Member Catotti stated it is important that the alternative scenarios be considered. She stated she found it challenging to believe that they would be able to get single family residential with an average price of \$775,000. She spoke on the development The Hills at Southpoint and what they have been selling for less than \$400,000 per home which is less than one-half mile from the proposed site. Also, she stated in Chatham County which is not far from this development there is an estimated 20 year supply of homes in the price range of \$600,000 and above.

Council Member Catotti asked if utilities were extended without annexation how would the water and sewer rates offset the additional capital costs.

Deputy City Manager Wanda Page said no additional revenues from utilities will be used to offset new costs. The utility funds are self-contained.

Council Member Catotti commented on the developer declining to proffer additional elements to address transit or parks. She stated it was her understanding from City Manager Bonfield that they have declined.

Mayor Pro Tempore Cole-McFadden stated she was interested in transportation services to the site.

Transportation Director Mark Ahrendsen stated Renaissance and 751 is the closest bus stop.

Mayor Pro Tempore Cole-McFadden stated she was interested in jobs and asked for details on jobs [what are the jobs; what would be the recruitment area; who will provide training for jobs].

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Deputy City Manager Wanda Page stated the questions regarding jobs is outside of the scope of the annexation analysis; however, they we have OEWD look at these questions raised.

Mayor Pro Tempore Cole-McFadden asked who will ensure that affordable housing is incorporated into the development.

Assistant Planning Director Pat Young noted that committed element #26 states that 10% of the residential units will be affordable with an annual report submitted to the Director of Community Development that documents compliance.

Mayor Pro Tempore Cole-McFadden asked what will be done to mitigate construction debris in the water supply.

Director of City/County Planning Steve Medlin stated every construction site is required to file a sedimentation erosion control plan with the County. He stated they have to show how they are containing stormwater on site during construction with temporary stormwater devices and typically a sedimentation silk fence would be put up around the site to ensure the runoff is contained.

Paul Weibke, of the Stormwater Division, stated the construction debris would need to retained on site and disposed of offsite with monitoring by the County.

Council Member Brown asked if the administration will be making a recommendation to the council regarding adoption of the annexation.

Deputy City Wanda Manager Page commented on the administration's purpose of the meeting today and stated after additional questions from the meeting are answered, the staff will provide council with a recommendation once all information is obtained.

Council Member Brown asked on a scale from one to ten and one being frivolous, how serious is the pending lawsuit.

City Attorney Baker stated given what is at state, the lawsuit is not frivolous and he could not answer the likelihood of its success.

Council Member Brown asked what impact could lawsuit have upon the city and the development if it goes forward [would it give the developer vested rights if the city agreed to extend water and sewer].

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City Attorney Baker stated from the city's perspective it is really unclear. He stated this is an issue for the developer – if they get water and sewer and proceed with the development that is a potential risk that they take.

Council Member Brown asked would the developer change the committed element language related to land for school if we do not annex but extend water and sewer.

Deputy City Manager Wanda Page stated they would review that question and provide a response.

Council Member Brown stated that the comparisons used for Scenario A he found rather dubious. He commented on many people feeling that Meadowmont properties in the Durham public schools system are not as attractive to families as properties in Orange County, as the perception is that the Chapel Hill schools are the best in the State.

Mayor Bell stated if the council chose to extend water and sewer service utilities and not annex, he would not want this council or future council members' hands to be tied when and if they chose to annex the property, also he spoke on the new legislation in Raleigh regarding annexations. Mayor Bell commented on the costs to annex and no revenues being generated for some period of time. He stated the petitioner has now said they would like to see water and sewer without annexation and he felt that analysis needs to be done. He made comments on annexing the property when the city could see a return on investments [not having expenditures until the property is annexed and would like to see an analysis with this option]. If the city extends water and sewer and does not annex, what would be the time that the administration would recommend annexation and what would the costs look like. The Mayor stated also with the Scenario D analysis he had problems because it shows revenue. Referencing the committed element for affordable housing, the Mayor asked why did the developers choose 80% median income for affordable housing. He asked if this is being applied to rental or sale units.

Council Member Woodard asked if the maps were produced by the Planning Department.

Robin Bibby replied yes.

Council Member Ali stated he wanted to make sure costs for fire, police; etc are distributed correctly. He requested a revaluation if 6 new officers are really needed.

Deputy City Manager Wanda Page stated it is a new beat because of the 24/7 (365 days).

Lew Wardell, Planner for the Police Department, stated a new beat required 6 officers and 1 car to provide full coverage 24/7 365 days. This allows time for training and court, as well as

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vacation and sick leave. He stated soon as construction starts the calls start day one; therefore, officers are needed on day one.

Council Member Ali stated he just wanted to make certain the cost allocations are correct for the project.

Council Member Brown raised concern about a one mile section of Hwy. 751 needing expansion.

Wesley Parham, of the Transportation Department, stated the build out of this site would require expansion of that 9/10<sup>th</sup> mile section of 751, likely around the 50% build out point. The estimated cost for expansion would be about \$6.9 million in today's dollars including right-of-way acquisition and construction costs. He said there are no city funds earmarked for this project in the capital improvements program and no funds earmarked in the adopted transportation improvement program to fund a project of this size. If it were to be funded it would occur at the expense of reallocating funds that have been earmarked for other projects through the state TIP.

Council Member Brown stated if we approve this project even just to extend water and sewer we could be creating a traffic hazardous unless that section of 751 is expanded and we do not currently have the funds to do so.

Wesley Parham replied that is correct. You would have a facility that is way over capacity without an identified funding source to correct the problem.

Council Member Brown stated it was his understanding that this project would adhere to the new Jordan Lake Rules. He asked if a development of this size could be engineered out of the environmental concerns that have been expressed.

Paul Weibke, of Stormwater Division, replied I believe so. He stated certainly there will be an onsite requirement as part of the Jordan rules. He stated whether they can meet the entire reduction on site, he did not think so.

Council Member Clement stated there are folks in the community who are opposed to the project and do not want a resolution. He asked how fair is that to the developer and asked why is Council here today if no decision is going to be made today.

Council Member Catotti stated it was her understanding that the developer could build at the former density and still make a profit.

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Council Member Brown stated he was pleased to have this meeting and have questions answered. He stated it is not the council's responsibility to worry about developers but to do what is best for the city.

Council Member Woodard stated the meeting has been very informative and he appreciated it.

Relative to the court case that is now being considered, Mayor Bell asked the City Attorney assuming if the court rules in favor of the plaintiff, what would happen.

City Attorney Baker stated the court would be essentially ruling that the protest petition was valid and it would need to go back to the County for presumably another decision with the idea that you need 4 votes to get the zoning that they were able to get with 3 votes.

Mayor Bell asked assuming that this council for whatever reason grants the developer's request to extend water and sewer without annexing, what could the developer proceed to do without the court case being decided.

City Attorney Baker stated the current zoning that is on the property now is the zoning that would guide them in their development.

Mayor Bell asked the City Attorney assuming that the court rules in favor of the petitioner, what would be the other alternatives for the developers. I would think they could petition the city to annex the property.

City Attorney Baker replied that is correct.

Mayor Bell stated and if the city agreed to that - they would be bound under the city's rules.

City Attorney Baker replied that is correct.

Mayor Bell said all of the analyses that have been done to date [depending on what Scenarios we choose A, B, C or D] would pretty much apply. Mayor Bell said the developers have made a request to extend water and sewer without annexation and he would like to see the staff prepare an analysis and say here is the point and time that we would annex this property. He stated if a future council chose to annex, he wanted to see something that is iron clad allowing that to occur independent of what stage it is being developed. Also, the Mayor stated a lot has been said even if you grant water and sewer and did not annex we will be getting double the revenues [what are the related costs for the city]. He stated he was not convinced by the fact that you are going to get double rates.

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Mayor Bell stated he would like to know what would be a reasonable time for the administration to come back before the council to provide answers to the follow-up questions.

Budget Director Bertha Johnson said they could probably respond to several of the questions very quickly. She stated they will need to work with the Water & Sewer Department to obtain some information regarding providing utilities without annexation.

Mayor Bell suggested that the council schedule an additional meeting for the administration to respond to questions raised.

Also, Mayor Bell stated he needed to understand what safeguards the city has in terms of environmental protection with Jordan Lake.

**[Excuse Absence for Council Member Catotti]**

Motion by Mayor Pro Tempore Cole-McFadden seconded by Council Member Woodard to excuse Council Member Catotti from the July 21, 2011 Work Session.

The motion was approved unanimously.

There being no further business to come before the City Council, the special meeting was adjourned at 4:54 p.m.

D. Ann Gray, MMC  
City Clerk