

**SPECIAL JOINT DURHAM CITY COUNCIL
and
DURHAM BOARD OF COUNTY COMMISSIONERS' MEETING
Monday, February 28, 2005 – 4:00 P.M.
Council Chambers – City Hall**

Present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Absent: None.

Chair Reckhow, Vice Chair Heron and Commissioners Cousin and Page. Excused
Absence: Commissioner Cheek.

Staff in attendance: City Manager Patrick Baker, County Manager Mike Ruffin, City Attorney Henry Blinder, County Attorney Chuck Kitchen, Assistant City Attorney Karen Sindelar, Deputy County Managers Wendell Davis and Carolyn Titus, City/County Planning Director Frank Duke, Public Information Governmental Affairs Manager Deborah Craig-Ray, Public Affairs Manager Beverly Thompson, City Clerk D. Ann Gray and Clerk to the Board of County Commissioners Garry Umstead.

Mayor Bell called the joint meeting to order.

Chair Reckhow requested that Commissioner Cheek be excused from the meeting.

MOTION by Commissioner Cousin seconded by Vice Chair Heron to excuse Commissioner Cheek from the meeting was approved at 4:04 p.m. by the following vote:
Ayes: Chair Reckhow, Vice Chair Heron and Commissioner Cousin. Absent At Time of Vote: Commissioner Page.

SUBJECT: DURHAM COMPREHENSIVE PLAN – FINAL DRAFT

City/County Planning Director Frank Duke presented the recommended changes to the comprehensive plan recommended by staff: 1) Text Changes; 2) Changes to the Future Land Use Map; 3) Changes proposed to the UGA; and 4) The Arrowhead Area.

Proposed Text Changes – Received 30 comments; staff recommends approval of 9 as follows:

Administrative Element – Clarify that both text and maps will be used to guide development.

- Add language to Goal 1.1 and Policy 2.21a. Future Land Use Map to clarify the issue

Land Use Element – Suburban Transit Area Phasing

- Amend Policy 2.3.2g. To ensure that development at Future Land Use Map densities will not be permitted without phasing.

- If development not phased, areas must be developed at lower density

Housing Element – Add specificity

- Objective 3.1.1. Affordable Housing
- Objective 3.1.3. Rental Housing
- Objective 3.2.1. Abandoned and Substandard Housing
- Objective 3.2.2. Lead Abatement

Economic Development Element – More support for Minority-and Women-Owned Businesses

- Add Policy 6.1.2a. Plan to Nurture Minority-and Women-Owned Businesses

Conservation and Environment Element – Stream Bank Vegetation for Wildlife Habitat

- Modify Policy 7.1.2g. To include emphasis on floodplain habitat Preservation of Areas Designated as Open Space.
- Through the UDO, ensure that areas designated as open space in adopted plans can be protected or preserved.

Water and Wastewater Element – Re-evaluating Stormwater Level of Service Standards

- Revise Policy 9.4.1e. To consider using 30-year storm as standard when considering UDO changes for stormwater.

Parks and Recreation Element – Collaboration with Community Groups

- Add Policy 10.1.2e. City Parks and Recreation Department work with community groups on areas in parks for nature study, wildlife habitat and observation.

Trails and Greenways

- Modify Policy 10.1.3f. To add wildlife habitat to purposes for system of greenway corridors.

Proposed Future Land Use Map Changes – Received 15 comments; staff recommends approval of 5 as follows:

- Expand the Suburban Transit Area to include Regency Plaza at Shannon Road
- Very Low density residential instead of recreation and open space for Duke property at Erwin Road and Pickett Road (0801-03-12-7186)
- Low-Medium density residential instead of medium density residential and industrial for property on the east side of Page Road north of Chin Page Road.
- Institutional instead of medium density residential for property south of the Guess Road State Prison facility (future State Employees Credit Union).
- Medium density residential instead of high density residential for Old West Durham area (residential blocks between Hillsborough Road and Englewood

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Avenue and between Iredell Street and Georgia Avenue, Hillandale Road, Club Boulevard, and Board Street).

Mr. Duke stated the other requests that are not being recommended for approval does not mean they do not have merit, the issue is they need to be evaluated more fully and dealt with through the typical plan amendment procedures over the coming months.

Proposed Changes to the Urban Growth Area

Mr. Duke made reference to the Map for the Proposed UGA Changes. He stated everything in blue represents an addition to the UGA: In Eastern Durham, the UGA is proposed for expansion outward to correspond with the critical area of the Falls Lake; in Southern Durham it is expanded outward to reflect the critical area of the Jordan reservoir. He stated the changes are reflection of the fact that growth in Raleigh and Cary will have an impact in Durham. Mr. Duke stated in Orange County there is also an expansion of the UGA outward (to the west along I-85 US 70). He stated this reflects Orange County's request as a result of their designation of this area as an economic development area which would require centralized water and sewer. He stated in Northern Durham County there is a slight retrenchment of the UGA to reflect topography, and a large retrenchment of the UGA around Arrowhead done initially at the request of the community.

The Arrowhead Area

Mr. Duke stated the direction given by the governing bodies for Arrowhead [would like to have rural densities with utilities]. Mr. Duke stated this was a problem. He noted the way the comprehensive plan is set up – you treat different areas differently. He noted the only way to obtain rural densities with utilities would be to start the process all over again. He noted the two options for Arrowhead: 1) Suburban Option – would bring Arrowhead back into the UGA, would allow for the extension of utilities and designate Arrowhead as very low density no more than two units per acre. 2) Rural Option – this option would leave Arrowhead in the rural tier. If the rural option is selected, the staff would recommend a series of other changes as follows: 1) Distinguish densities in watershed and non-watershed areas; 2) Authorize community wastewater treatment systems; and 3) Designate for more detailed study.

Mr. Duke recommended the rural option for Arrowhead and that the Durham Comprehensive Plan – Final Draft be approved with the changes as recommended by staff and adopt the appropriate resolutions.

Mayor Bell thanked Mr. Duke for the work on this plan.

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Council Member Clement requested language be incorporated into the plan recognizing the ultimate decision for interpreting the plan should be the responsibility of the elected bodies rather than the Planning Director.

City/County Planning Director Frank Duke stated if he could not interpret the plan then he could not provide any recommendations on rezonings; he could not respond to use permits before the Board of Adjustment. He stated he would have to bring all of the interpretations to the full elected body. Mr. Duke stated he needed to make that interpretation and when the decision regarding the land use amendments/rezonings are brought forward – the policy makers will make the ultimate decision at that point. He noted someone has to make that initial interpretation to get the process moving and if it is not the Planning Director and it has to be the decision makers – that means every time an application for a rezoning is received we will bring that to the elected body and ask if this is consistent with the comprehensive plan.

Council Member Clement noted he did not see language in the plan noting the planning staff making recommendations to the elected body and the elected body making the ultimate decision, and requested language be added to reflect same.

Council Member Stith stated there is still some level of expertise needed to interpret this plan and the staff would have to make an interpretation to make a recommendation to the elected body with the final decision made by the governing body.

Chair Reckhow stated the staff administers the policies/ordinances approved by the elected bodies. She noted it would be inappropriate to insert the governing bodies in Item #11 because the item is how the staff deals with policies that the elected officials have adopted.

City/County Planning Director Frank Duke stated people will always have the right to bring forward a request to the governing body.

To address Council Member Clement's concern, Mayor Bell suggested the following language: Administratively the Director of City/County Planning Department shall be responsible for interpreting the Durham Comprehensive Plan with the ultimate responsibility of interpretation by the elected bodies.

Assistant City Attorney Karen Sindelar stated there are a variety of ways that people can be heard when they are not in agreement with the Planning Director [appealing through the Board of Adjustment; asking for a revision to the plan which goes to the planning commission then to the governing body; or come directly to the Council or the County Commissioners]. Therefore, the proposed language noted by the Mayor would take away the Board of Adjustment option.

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Chair Reckhow suggested adding another section in the plan regarding the process for amending the plan.

Relative to Item 18, Commissioner Page spoke in support of providing protection for single family neighborhoods particularly the neighborhood referenced by Julia Spencer at the January 31, 2005 public hearing. Also, Commissioner Page asked if the connectivity issue (Item #26) would apply more to the UDO or will it affect the comprehensive plan services.

City/County Planning Director Frank Duke noted the real mechanism to protect the area raised by Ms. Spencer is not through the comprehensive plan but through the unified development ordinance which does include things like neighborhood protection overlay which would allow a neighborhood to craft regulations to expressly control how dwelling units can be converted or what can be done on vacant property. Also Mr. Duke noted connectivity will be addressed in the UDO.

Council Member Clement requested the planning staff provide a written response informing the citizens who spoke at the public hearing on the staff's recommendation to the comprehensive plan.

Commissioner Page asked the staff to correspond with Ms. Spencer informing her of the options she has regarding her concern.

Commissioner Page expressed concern with Item #10 [Triple Crown Farms] request not being approved. He made comments on the new library that will be constructed in the area and supporting the request low density residential instead of very low density residential.

Regarding Commissioner Page's concern with three parcels not being approved, Vice Chair Heron noted the persons she spoke with were willing to wait and to come forward with an amendment after the comprehensive plan is approved.

Vice Chair Heron made comments on the purpose of the comprehensive plan.

Council Member Stith made comments on Commissioner Page's concern regarding the three parcels not being approved for low density residential.

City/County Planning Director Frank Duke noted the reasons why he would support a plan amendment. First, if a mistake was made; second reason would be for an additional level of detail [something that was not considered at the time the plan was done]; and thirdly a change in circumstance.

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Council Member Catotti stated that all the land use map changes have not been considered by the Steering Committee or the Planning Commission or Joint City/County Planning Committee and she would feel more comfortable with a full and thorough review.

Vice Chair Heron made comments on the location of the new library referenced by Commissioner Page. She stated the library is already under construction and the area in question needs to be given more thought due to environmental issues.

Commissioner Page expressed concern with property at the northeast corner of Guess and Latta Roads and not being able to make a left in the area. He asked how much more analysis is needed for this area.

City/County Planning Director Frank Duke made comments on the plan amendment submitted to City Council for the parcel immediately south that generated more neighborhood opposition and the residents did not want any further expansion of commercial in the area.

Council Member Best made comments on the commercial establishments already existing at intersections along Guess Road. He noted history has shown there is not very much new residential development on any of the major intersections along Guess Road.

City/County Planning Director Frank Duke made comments on the proposed future land use map changes noting the reasons for approval and non approval.

Commissioner Cousin asked what is the success rate for the city and county on plan amendments.

City/County Planning Frank Duke stated in the past year, three plan amendments did not make it through the city process and the applicant withdrew the rezoning request. He stated with regard to the county, he could not recall any plan amendments where there has been a denial and actually gone before the board of commissioners.

Council Member Brown questioned the housing numbers noted on page 6 regarding the Housing Element of the plan.

City/County Planning Director Frank Duke stated they did consult with the housing department on the numbers and reminded the council these are targets and on an annual basis staff will be providing an evaluation/assessment report on the progress.

Mayor Pro Tempore Cole-McFadden thanked the staff for providing more detail information on the economic development element.

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Council Member Clement again raised concern with authority of interpreting the plan and stated he was opposed to the staff recommendation (Item #11) under the text changes.

Chair Reckhow asked the staff to come back with language to the Joint City/County Committee for Chapter one to address Council Member Clement's concern and how to address amendments to the plan.

Council Member Best noticed in the Resolution it stated the Durham 2020 Comprehensive Plan and Small Area Plans are hereby repealed.

City/County Planning Director Frank Duke replied yes.

Council Member Best asked the Planning Director if he knew of any rezonings or anything in that nature that could be affected immediately that the Council needed to be aware of. He stated he would hate for someone to do all their marketing and property owners do their due diligence and pay all the fees and money and all of a sudden the Council passes this plan and next week they find out – well sorry you have to start over from scratch. Council Member Best stated he really didn't want this to happen and asked the Planning Director to explain the difference between highly subjective plan and a more detailed oriented rezoning process.

City/County Planning Director Frank Duke replied as follows: What we have done on all the rezonings that have a plan amendment associated with them – we have converted those requests to amendments of the small area plan or we will be converting them to request an amendment to the comprehensive plan so we are not actually slowing anyone down at all. On all rezonings which were consistent with the small area plan at the time that they were filed, I have indicated to that particular applicant that I am not going to push them for a subsequent plan amendment because they did not need one when they filed it. What we will do is bring forward a – as part of our recommendation to the governing body in association with that rezoning - is that you direct staff to initiate the plan amendment that would now be required so that the applicant is not penalized in anyway. Because our goal is not to penalize people who have been following the rules, but by that same token begin a length the comprehensive plan.

Council Member Best stated as far as plan amendments are concerned I think we can all agree it a very highly subjective issue and with a whole different body up here you probably would come up with something different. There is no scientific or mathematical fact about planning. It is really a bunch of opinions personally. I just feel as far as a plan amendment we really need to look as how it comes to the respective bodies. You mentioned that you would recommend a denial to the Planning Commission and some say well staff recommended denial we will recommend denial or vice versa. With something that so highly subjective I think should come pretty much straight to the board and if it is within the city's jurisdiction, it should go from planning to city. It shouldn't

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bounce all around different boards that really have no enforcement over what the City Council says and vice versa. Also, when this plan is passed, I hope – I am sure it will be used, but I hope the excuses for denial – one excuse I hope will not be used – well we just passed a plan. Well I think the records shows there are a lot of people and I am sure people that are not aware of this process – thousands of citizens and property owners that are not aware, but when they go to develop their land or sell their property they will be affected, and when they come forward let's not give them the excuse – well we just passed a plan. So I hope that is not used in the future.

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to adopt a Resolution approving the Durham Comprehensive Plan – Final Draft with additional amendments as recommended by staff including Numbers 1-9 of the plan text comments; Numbers 1-5 on the future land use map changes; including the Rural designation for the Arrowhead community; and including the UGA boundary changes as proposed; and to provide direction to staff to prepare wording that will reflect Council Member Clement's concern particularly regarding the government body being the ultimate authority; and to insert the word "administratively" at the beginning of Policy 1.1.2a; and to add a section in the introduction on the process for amending the plan was approved at 5:57 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement and Stith. Noes: Council Member Best. Absent: None.

Resolution #9224

Council Member Catotti asked the staff to bring the recommended wording reflecting Council Member Clement's concern back to the governing bodies for review.

MOTION by Vice Chair Heron seconded by Commissioner Cousin to adopt a Resolution approving the Durham Comprehensive Plan – Final Draft with additional amendments as recommended by staff including Numbers 1-9 of the plan text comments; Numbers 1-5 on the future land use map changes; including the Rural designation for the Arrowhead community; and including the UGA boundary changes as proposed; and to provide direction to staff to prepare wording that will reflect Council Member Clement's concern particularly regarding the government body being the ultimate authority; and to insert the word "administratively" at the beginning of Policy 1.1.2a; and to add a section in the introduction on the process for amending the plan was approved at 5:58 p.m. by the following vote: Ayes: Chair Reckhow, Vice Chair Heron and Commissioner Cousin. Noes: Commissioner Page. Excused Absence: Commissioner Cheek.

At this time, Council Member Clement expressed concern with issues of the school board and how it is impacting the entire community. Mr. Clement suggested that the elected bodies register some concern to help remedy the situation.

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County Attorney Kitchen stated the County Commissioners could not consider Council Member Clement's request because one of the commissioners is not present to consent to another item being discussed.

Mayor Bell adjourned the joint meeting at 6:01 p.m.

D. Ann Gray, CMC
City Clerk