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January 24, 2012

Mr. Patrick Baker  
Durham City Attorney  
101 City Hall Plaza  
Durham, NC 27701

Re: 751 Assemblage's Utility Extension Agreement Application

Dear Mr. Baker:

Southern Durham Development, LLC ("Southern Durham") is writing to request the City of Durham and Durham City Council calendar and vote on its Utility Extension Agreement Application (the "Application") for the 751 Assemblage (commonly referred to as "751 South"). I have enclosed a copy of the Application.

As you know, Southern Durham filed the Application on April 5, 2010, along with a Petition for Voluntary Annexation. Required fees were paid at that time. On April 20, 2010, Coulter Jewell Thames, P.A. submitted a detailed water-sewer plan to the City of Durham Public Works. The application materials state that it is City policy that it will be processed within five (5) months.

The City has not. In fact, it has been over twenty-one (21) months.

Durham has ample capacity to meet the needs stated in the Application – the project will require approximately 500,000 gallons per day ("GPD") at full build out and the City has approximately 15,000,000 GPD of capacity. It is Southern Durham's understanding that the City invested considerable taxpayer funds for this additional capacity over the last decade. City facilities are at approximately fifty (50%) percent of capacity.

As an applicant outside the City – but inside the Urban Growth Area ("UGA") – Southern Durham will pay double regular rates to the City, creating over \$1,000,000 in additional revenue, without significant additional utility expense. Southern Durham bears the burden of paying for all new utility infrastructure and its dedication to the City.

In many months of meetings the only concern voiced by City staff or the City Council with the Application has been related to a lawsuit filed by Chancellor's Ridge Homeowner's Association and others (10-CVS-5868) challenging the County's vote to approve the 751 South zoning

application (the "Zoning Lawsuit"). On January 13, 2012, judgment was granted to Southern Durham and Durham County *as a matter of law* and the Zoning Lawsuit was *dismissed with prejudice*. A copy of the Order is enclosed.

Now, the Plaintiffs face a Motion for Sanctions, Costs and Attorney Fees for frivolous litigation. I encourage you to read the Motion. It is also enclosed.

Plaintiffs pled in their lawsuit and moved in the proceedings for injunctive relief to stop Durham County and Southern Durham from proceeding under the approved zoning. No injunction was ever granted. Plaintiffs have stated an intent to appeal, in order to interfere in the City's deliberations on the Application. If they do not post a bond or seek a stay, the Order of the Court remains in effect.

In short, county zoning is determined. Southern Durham intends to move forward.

Since 751 South is in the UGA, the City is responsible for provision of water to the 751 South site. In fact, the City Council already entered a water and sewer utility extension agreement for 751 South investor F. Neal Hunter's "Seven Five One" project, a predecessor development on the same site as the proposed 751 South.

One year after the UGA was adjusted, on January 16, 2007, the City Council voted (motion by member Stith, seconded by member Cattoti, unanimous vote) to grant the City Manager authority to enter the agreement with Mr. Hunter.

We are aware of no precedent for the denial of a utility extension agreement for an applicant within the UGA. All similarly situated developments about which we are aware have been granted utility extension agreements in a timely manner.

In an August 18, 2011 memorandum to the Mayor and City Council, City Manager Tom Bonfield recommended "moving forward with the utility extension agreement" even though the Zoning Lawsuit was still pending. I have enclosed Mr. Bonfield's recommendation.

Southern Durham has previously agreed to three (3) draft versions of documents entitled "Utility Extension Agreement for Water, Sewer, and Stormwater Services" – one draft each related to three scenarios for the City Council: (1) utilities without annexation; (2) utilities with immediate annexation; and (3) utilities with delayed annexation. Southern Durham is agreeable to any one of these versions, as drafted.

All that remains is a vote of the City Council on the Application – if the City Council has concerns about annexation, it should at least vote on utility extension.

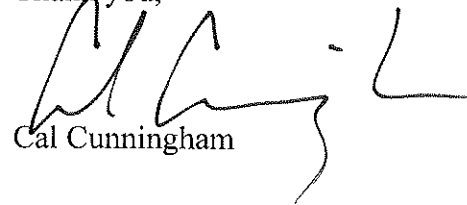
In addition to jobs and tax base, the 751 South development contains considerable additional benefits to the public, including: an elementary school site, a sheriff substation, over \$7 million in transportation improvements, dedication of land for a fire station and an allocation of residential building to affordable housing. At the same time, 751 South will meet the most stringent environmental standards of any development in this region.

With the dismissal of the Zoning Lawsuit, we are aware of no reason the City Council should not vote to approve the Application. No reason has previously been articulated to Southern Durham or its representatives.

We would be grateful for your calendaring of the Application at the next available session of the City Council and the City Council's favorable consideration of the Application. It is Southern Durham's expectation that the Application will be brought to a vote within thirty (30) days.

Southern Durham is available to answer any questions or concerns. Please direct them to me at the above phone number or email address.

Thank you,



Cal Cunningham

c: Mayor William V. Bell  
Members of the City Council  
City Manager Thomas J. Bonfield