

MINUTES

Regular Meeting
City Hall Council Chamber

June 15, 2015
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Jeanette D. Patterson, Dennis C. Bailey, Ben Kittrell, Dicky Amaya; City Manager Rick Howell, City Clerk Bernadette A. Parduski, NCCMC, MMC, City Attorney Robert W. (Bob) Yelton, Director of Human Resources Deborah C. (Deb) Jolly, Engineering Services Manager Ben Yarboro, Fire Chief William P. Hunt, MPA, EFO, Director of Planning and Development Services Walter (Walt) Scharer, AICP; Reporter Casey White of The Shelby Star, Broadcasting and Cable Access Director Greg Tillman of Cleveland Community College/C19TV

Absent: Council Members Eric Hendrick and David W. White

Mayor Anthony called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. Mr. Amaya gave the invocation and Boy Scout Kesh Italia of Troop 100 chartered through Shelby Presbyterian Church led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

At the request of Mr. Howell, Mayor Anthony announced the addition of Item E-12 under the Consent Agenda as follows:

- Approval of a resolution in support of the proposed Rail-Trail in Cleveland County: Resolution No. 41-2015

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve the agenda as amended.

B. Special Presentations:

- 1) Don Gibson Theatre update – Stan Lowery, Executive Director

Mr. Lowery began the presentation by expressing his appreciation and that of Destination Cleveland County (DCC) and Mrs. Bobbi Gibson of Nashville, Tennessee for all the City's support given to the theatre to date. Next he

presented an update of calendar year 2014 which highlighted the happenings at the Don Gibson Theatre. He stated there were 25,000 visitors to the theatre, which hosted 120 days of events/rentals and produced 31 concerts with attendance averaging 74 percent of capacity. Reports from local hotels stated the theatre generated 500 room nights of stay.

Mr. Lowery reviewed the breakdown of the patrons who visit the theatre as follows:

- Shelby residents – 43 percent
- Travel less than 50 miles – 29 percent
- Travel more than 50 miles – 19 percent
- Out-of-state visitors with 21 states represented – 6 percent
- Visitors from Charlotte, North Carolina include 3 percent
- Visitors from eight foreign countries

Mr. Lowery said the theatre maintains strong partnerships and relationships with many organizations including the Shelby Police Department, Christian Cooperative Extension, Boys and Girls Club, Uptown Shelby Association, Cleveland County Arts Council, Foothills Merry Go Round Festival, Teen Summit, Cleveland County School System, Keep Shelby Beautiful (KSB) Commission, Junior Charity League, several local churches, and the Earl Scruggs Center.

Mr. Lowery discussed noteworthy developments taking place at the theatre including:

- Effective January 2014 sales taxes were collected on admission charges to entertainment events and remitted to the North Carolina Department of Revenue. The theatre collected \$15,000 in taxes in 2014.
- The website was redesigned to include interactive capabilities for patrons.
- The success and extension of the LP Shelby Street Project sponsored by the Don Gibson American Music Foundation of Nashville, Tennessee.
- The Chubby Checker shows and Cruise In at the theatre on June 20, 2015.
- The announcement of upcoming shows.

Mr. Lowery concluded his presentation by distributing the official Don Gibson Theatre baseball hats, which are commissioned by Mrs. Gibson and given to all the entertainers who perform at the venue, to Mayor Anthony, Council members, and Mr. Howell.

2) Tar Heel Leagues State Baseball Tournaments – Charlie Holtzclaw,
Director of Parks and Recreation

For the fourth consecutive year, Mr. Holtzclaw was pleased to announce Shelby City Park will host the Tar Heel Leagues State Tournaments beginning July 16 and running through July 19, 2015. These tournaments will feature three Shelby host teams and combine for a total of 24 boys baseball teams with over 380 players and coaches participating in the four-day event. The tournaments will consist of eight teams in the Little Tar Heel (ages 11-12), eight teams in Junior Tar Heel (ages 13-14), and eight teams in Senior Tar Heel (ages 15-17).

In terms of economic development and travel tourism, Mr. Holtzclaw stated several hundred spectators are expected daily until the Sunday championship games. There will be a total of 45 games played at both the Ball Field Complex and the Recreation and Sports Complex. The vast majority of these teams and families will be staying in the local motels. The teams will come from all across the state, from the coast to the mountains, and will also patronize Shelby's restaurants and businesses.

Mr. Holtzclaw extended his personal invitation to attend the opening ceremonies for all teams on July 16, 2015 at 2:00 p.m. at the City Park Recreation and Sports Complex.

Lastly Mr. Holtzclaw expressed his appreciation to City Council for their continued support of the Parks and Recreation Department's youth programs. He also mentioned those involved in the planning process for the tournaments particularly Assistant Parks and Recreation Director David Fisher, who has been very instrumental in bringing the Tar Heel Leagues events to Shelby.

C. Public Comment: None

D. Public Hearing:

- 1) Consideration of a resolution confirming the City of Shelby's intent to offer an economic development incentive grant: Resolution No. 35-2015

Mr. Howell introduced Resolution No. 35-2015 together with the proposed incentive agreement under code name, "Project Stallion". The agreement

was negotiated with a local existing company and presented for Council's consideration. Mr. Howell stated the agreement essentially provides that the company will invest \$8 million over two years and begin operations within those two years. They will also hire 20 additional full time employees over the next five years at an average wage of \$45,000 per year. In return, the City of Shelby and Cleveland County are proposing to provide a 40 percent incentive grant back to the company over a five-year period based upon the net new investment. The grantee must also be current in the payment of all applicable local taxes on the assessed value of the project, utility charges, and fees imposed by the City and County. After that timeframe, 100 percent would be retained by both taxing entities.

Mr. Howell anticipated a public announcement confirming the company's name and intentions in the very near future.

Mayor Anthony opened the public hearing at 6:19 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:20 p.m.

ACTION TAKEN: Upon a motion made by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 35-2015 entitled, "A RESOLUTION CONFIRMING THE CITY OF SHELBY'S INTENT TO OFFER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT".

E. Consent Agenda:

ACTION TAKEN: Mayor Anthony presented the consent agenda. Mr. Amaya made a motion to approve the consent agenda and each item as presented. The consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Regular Meeting of June 1, 2015
- 2) Approval of Special Event Permit Application:
 - a. Mt. Calvary Baptist Church Community Explosion, requested date: July 18, 2015
- 3) Adoption of ordinance authorizing demolition of a dwelling: Ordinance No. 34-2015
- 4) Adoption of ordinance authorizing demolition of a dwelling: Ordinance No. 35-2015

- 5) Adoption of ordinance authorizing demolition of a dwelling: Ordinance No. 36-2015
- 6) Adoption of Fiscal Year (FY) 2014-2015 Budget Ordinance Amendment No. 14: Ordinance No. 37-2015
- 7) Adoption of an ordinance establishing a capital project and budgets for the City of Shelby's Foothills Commerce Center Mass Grading Project: Ordinance No. 38-2015
- 8) Approval of a Reimbursement Resolution with regard to installment financings for Fiscal Year (FY) 2015-2016: Resolution No. 36-2015
- 9) Approval of a resolution authorizing the City Manager to reactivate the Center City Master Plan Steering Committee: Resolution No. 37-2015
- 10) Approval of a resolution supporting the implementation of the Community of Entrepreneurial Opportunity Program: Resolution No. 38-2015
- 11) Approval of Notice of Cancellation in the Regular Meeting Schedule of Shelby City Council
- 12) Approval of a resolution in support of the proposed Rail-Trail in Cleveland County: Resolution No. 41-2015

END CONSENT AGENDA

F. Unfinished Business:

- 1) Consideration of a resolution granting a Special Use Permit to County Home Solar Center, LLC for a solar energy system farm at 1129 County Home Road: Resolution No. 39-2015

Mr. Yelton reminded Council of their decision to deny a Special Use Permit for a solar farm on County Home Road in February 2015. County Home Solar Center, LLC appealed Council's decision and Superior Court Judge Robert Ervin overturned that decision on May 21, 2015. Judge Ervin's order stated Council's decision was not based on findings supported by material, substantial, competent evidence in the record. Council based their decision on the testimony of lay witnesses, insufficient evidence, absence of data, and subjective, personal opinion. Judge Ervin remanded the matter to Council with instructions to adopt a resolution and issue the permit as previously

submitted. Mr. Yelton added if Council does not comply with the court order, they could be held in contempt of court.

Mr. Amaya requested the City consider amending its process to shift the burden of proof completely on the applicant and not on the opponents to the solar farms.

Discussion followed as to the burden of proof on the issue of whether or not a development will comply with the requirements of the City's Unified Development Ordinance (UDO) rests with the applicant or with the opponents urging that the requested permit be denied.

Mr. Scharer clarified the applicant's application must comply with the requirements set out in the current UDO.

Mr. Howell advised Council that City staff is currently studying revisions to the City's UDO with regard to quasi-judicial hearings for special use permits. He explained the City must determine if any amendments are made with regard to process or code, they are compliant with North Carolina law.

Upon questioning, Mr. Yelton responded although Council has the option to appeal, he advised against it.

Lastly Mr. Bailey argued the standard of harmony with the surrounding area should be left to be decided by the elected body.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 39-2015 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO COUNTY HOME SOLAR CENTER, LLC FOR A SOLAR ENERGY SYSTEM FARM AT 1129 COUNTY HOME ROAD".

G. New Business:

- 1) Consideration of a resolution authorizing sale of a public utility easement from the City of Shelby to the North Carolina Department of Transportation: Resolution No. 40-2015

Mr. Howell introduced Resolution No. 40-2015 for Council's consideration. The resolution would authorize the conveyance of a right-of-way and temporary construction easement across the Hanna property to the North Carolina Department of Transportation (NCDOT) to be used in conjunction with the construction of the US 74 Bypass Project. Mr. Howell explained this right-of-way and easement conveyance have a relatively minimal impact on

the intended use of the donated property as a City park in the future. The driveway access to the existing building must be relocated and some frontage access onto McBrayer Springs Road is diminished but not to the extent it would negatively affect a future park entrance. Mr. Howell stated it is reasonable for the City to grant the right-of-way and temporary construction easement, adding the compensation offer in the amount of \$61,225 is fair and reasonable.

Mr. Howell recommended the approval of the resolution and NCDOT's contingent offer to purchase real property.

ACTION TAKEN: Upon a motion made by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 40-2015 entitled, "A RESOLUTION AUTHORIZING SALE OF A PUBLIC UTILITY EASEMENT FROM THE CITY OF SHELBY TO THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION".

H. City Manager's Report:

- 1) With regard to the Foothills Commerce Center, Mr. Howell provided an update regarding the final section of paving of Partnership Drive and the numerous showings taking place at Shell Building No. 2.
- 2) With regard to the East Elevated Water Tank Project, Mr. Howell stated the design and permitting work has been completed. The City is proceeding with the financing, approvals, bidding, and construction of a new 500,000 gallon elevated storage tank on Kemper Road in order to satisfy future growth and flow demands on the eastern side of the City. Mr. Howell added the total cost of the project is \$2.5 million.
- 3) With regard to the Brushy Creek Sewer Project, Mr. Howell explained that due to rock and topography issues, engineers must redesign the upper portion of the project to the northeastern side of the creek. The cost of this project is more than \$2 million. The remainder of the project, together totaling \$6.5 million, has been placed on hold at this time due to the uncertainty of the economic development prospect interested in the Washburn Switch Business Park. Mr. Howell stated this part of the project currently is not funded.

I. Council Announcements and Remarks:

- 1) Mrs. Patterson mentioned the Foothills Farmers Market is adding an evening to its schedule to include Thursdays from 4:00 p.m. to 7:00 p.m. at City Pavilion.

- 2) Mayor Anthony reminded all to attend the Tar Heel Leagues State Baseball Tournament opening ceremonies on July 16, 2015 at 2:00 p.m., Recreation and Sports Complex at City Park.

J. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to adjourn the meeting at 6:37 p.m.

Respectfully submitted,

Bernadette A. Parduski, NCCMC, MMC
City Clerk

O. Stanhope Anthony III
Mayor

Minutes of June 15, 2015