

MINUTES

Regular Meeting
City Hall Council Chamber

October 19, 2015
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members David W. White, 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 Finance Justin S. Merritt, MPA, Director of Human Resources Deborah C. (Deb) Jolly, Director of Energy Services Julie R. McMurry, Director of Water Resources David W. Hux, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Planning and Development Services Walter (Walt) Scharer, AICP; Bill Harrelson of Cleveland Community College/C19TV

Absent: Council Member Eric B. Hendrick

Mayor Anthony called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. The Mayor gave the invocation and Mr. Bailey led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

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

B. Public Comment: None

C. Public Hearings:

- 1) Consideration of an ordinance to extend the corporate limits of the City of Shelby, North Carolina: Ordinance No. 51-2015

Utilizing a location map of the area, Mr. Scharer stated this property is located at 730 Washburn Switch Road. It is approximately 1 acre in size and home to a convenience store. The property currently meets the statutory requirements for satellite annexation as it is within three (3) miles of the primary corporate limits and not closer to another municipality. This petition was reviewed for compliance with City policy, which along with State law, requires the City to be able to serve the same services to the proposed

annexation parcel as it provides within the existing City limits. Mr. Scharer added in this case staff reviewed and commented on the request and found that given the existence of satellite annexations further to the northwest including PPG Industries and KSM Castings, the City is able to provide such services.

Mayor Anthony opened the public hearing at 6:06 p.m. and invited comments from the public:

Harry Italia who resides at 2918 Laura Road in Shelby, North Carolina spoke in support of his Petition for Satellite Annexation. Mr. Italia stated he has been in business in Shelby since 2002, noting small businesses such as his are vital to the local economy. He further stated the site has been used as a convenience store and as the new owner, he intends to continue operating a convenience store on the property.

Mayor Anthony closed the public hearing at 6:08 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 51-2015 entitled, "AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SHELBY, NORTH CAROLINA".

- 2) Consideration of an ordinance to update the City of Shelby Unified Development Ordinance (UDO) Appendix A: Information Required with Applications: Ordinance No. 52-2015

Mr. Scharer introduced Ordinance 52-2015 for Council's consideration. He stated the City of Shelby Unified Development Ordinance (UDO) currently specifies a complete list of items required for plans of subdivisions and sites. However, the current list was adopted in November 2001. Since that time technologies have changed and new requirements such as stormwater control and backflow prevention are part of the City's mission.

Mr. Scharer stated staff proposed an update to the checklist found in Appendix A of the UDO. The proposed UDO amendment creates an updated checklist that addresses and formalizes new City, State, and Federal requirements as well as technologies.

Mayor Anthony opened the public hearing at 6:10 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:11 p.m.

ACTION TAKEN: Upon a motion made by Mrs. Patterson, City Council voted unanimously to approve and adopt Ordinance No. 52-2015 entitled, “AN ORDINANCE TO UPDATE THE CITY OF SHELBY UNIFIED DEVELOPMENT ORDINANCE (UDO) APPENDIX A: INFORMATION REQUIRED WITH APPLICATIONS”.

- 3) Consideration of an ordinance amending a Special Use Permit to allow the conditional use of auto repair services at 724 West Marion Street:
Ordinance No. 53-2015

First, Mr. Bailey reported a series of ex-parte communications which occurred after his discussion at the Council meeting of October 5, 2015. The initial discussion centered on his possible request to be recused from this hearing since he was notified by the City and his property may be impacted by this proposal. Mr. Bailey was undecided whether or not to exercise his option to testify as an expert witness with his professional designations or whether his testimony would create an undue burden for fellow Council members. He contacted the School of Government in Chapel Hill, North Carolina for an opinion. The School of Government recommended, for practical purposes, having a Council member testify in a case may create an awkward situation for the other Council members, the other parties, and the community at large. It was mentioned since the proposal does not have a direct financial impact, it could be argued that Mr. Bailey not be allowed to recuse himself. For determining experts, the Council is the decision-maker to determine if an individual is a qualified expert for matters such as property values and traffic impacts. The School of Government further recommended to a board member who is recused to step out the Chamber for the hearing, deliberation, and vote.

In the spirit of full disclosure, Mr. Bailey discussed and advised Charles Hamrick, a Planning and Zoning Board member, about evidentiary hearing rules prior to that Board’s hearing of the case.

Under the assumption he would testify, Mr. Bailey had contact with former Council Member and Mayor Mike Philbeck, Mark Stepp of Carolina Appraisal Group, Senator Wes Westmoreland, Real Estate Broker Stephanie Williams, Bonnie and Randy Sweeting, and Morris and Brenda Hudson about various aspects of the case.

If no conflict is found to exist and Mr. Bailey is not recused for any of the above reasons, he added the School of Government determined there is value in having his expertise as part of the decision-making board. Mr. Bailey further declared he does not have a fixed opinion about the proposal and will

consider only the compelling evidence presented during the hearing in his decision. He deferred to Mr. Yelton.

Council discussed the recusal and by consensus, agreed to allow Mr. Bailey to continue and to vote as a Council member.

Next, after taking his oath and utilizing location and zoning maps of the area, Mr. Scharer pointed to the subject property with an address of 724 West Marion Street. In 1993, City Council approved a zoning change for this property from Residential (R6) District to General Business-Conditional Use (GBCU) District for Warehousing and Wholesale activities, which is the current zoning. Mr. Scharer stated this proposed zoning amendment is basically amending the existing Special Use Permit, adding automotive repair and automotive detailing as possible uses. A public hearing is required in order for City Council to approve a Special Use Permit. City Council approved a revised landscaping plan for the site in 1997 and the proposed development will comply with the same plan. He added the property has been vacant since 2010.

Mr. Scharer stated the site is more than an acre in size. Land uses in the area are primarily single family dwellings. There are also multi-family dwellings in the area. He indicated the corresponding zoning classifications include Residential 6, Residential 8, and Residential 10 Districts.

Mr. Scharer reiterated the 2009 Shelby Comprehensive Land Use Plan designates the subject property to be in a Medium Density Residential area. Corresponding City of Shelby zoning classifications include Residential 10 and Residential 8 Districts.

Mr. Scharer instructed when considering a Special Use Permit application, City Council should use the following process:

- The City Council shall consider whether the application is complete.
- The City Council shall consider whether the application complies with all of the applicable requirements of the UDO.
- If the City Council concludes that the application fails to comply with one or more requirements of the UDO, the application shall be denied.
- If the City Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Mr. Scharer certified the following:

- The requested permit is within the jurisdiction of the City of Shelby according to the UDO; and
- The application is complete; and
- If completed as proposed in the application, the proposed development will comply with all the requirements of the UDO.

According to the UDO, even if City Council finds that the application complies with all other provisions of this Ordinance, it may still deny the permit if it concludes, based upon the testimony and evidence submitted at the hearing, that if completed as proposed, the development, more probably than not:

- Will materially endanger the public health or safety; or
- Will substantially injure the value of adjoining or abutting property; or
- Will not be in harmony with the area in which it is to be located; or
- Will not be in general conformity with the Comprehensive Land Use Plan or other plans officially adopted by the City Council.

Mayor Anthony provided additional instructions as to the evidentiary or quasi-judicial hearing process to the witnesses and the audience as follows:

- Applicants may present substantial, competent evidence that a proposal meets the standards within the UDO.
- Opponents may also present substantial, competent evidence that the proposal does not meet the applicable standards or may endanger public health and safety, injure property values, not be in harmony with the area in question, or will not be in conformity with the Comprehensive Land Use Plan or other official plans.
- Information concerning the application can only be presented at scheduled hearings. There may not be any discussion with City Council outside the hearing.
- Witnesses are sworn or affirmed as in a court of law. The controlling North Carolina General Statute 160A-393 specifically states that only qualified experts may testify that:
 - The use of the property would affect the value of other property, or
 - Increased vehicle traffic would pose a danger to public safety.

Other issues, such as harmony with an area or conformity with the comprehensive plan may be presented by any interested citizen.

- Because the only purpose of this hearing is to introduce evidence as to whether or not a proposal meets specific standards of the UDO, no other information can be presented. No lay person's opinions, no inadmissible hearsay, and no information on any related issue can be considered.
- Those testifying must follow rules of evidence set out in State statutes. Just as in Court, if an opposing party objects to inadmissible evidence, the objection will be sustained and the inadmissible evidence will not be allowed in the record.
- City Council makes a determination whether the proposal is in accordance with the standards of the UDO and issues specific findings.
- The only appeal to a quasi-judicial decision made in an evidentiary hearing is to Superior Court.

Mayor Anthony opened the public hearing at 6:24 p.m. and sworn testimony was given as follows:

Stevie Brooks who resides at 866 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Miss Brooks stated, in her opinion, an automotive use would not be in harmony with the neighborhood.

Randall Sweeting who resides at 858 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mr. Sweeting stated he reviewed the 2009 Shelby Comprehensive Land Use Plan, adding Council can deny the application on the grounds it is not in general conformity with the adopted plan. He requested Council confirm the testimony of the the City's Planning Director, who testified the proposal is inconsistent with the Comprehensive Land Use Plan. Based on the fact that this proposal is inconsistent with the Comprehensive Land Use Plan, Mr. Sweeting requested Council to deny the proposal.

Charles Hamrick who resides at 911 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mr. Hamrick stated an automotive use would not be in harmony with the surrounding residential properties. In his opinion, the original residential zoning designation for West Marion Street has been compromised over time and requested the trend be reversed to return West Marion Street to residential status. Mr. Hamrick provided copies of photographs of several representative residences in support of his request.

Jim Toole who resides at 514 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mr. Toole urged Council to follow the City's Comprehensive Land Use Plan and agreed with the previous speakers that an automotive use does not fit into the harmony of the residential zoning. In his opinion, the automotive use would also harm the values and properties on West Marion Street.

Morris Hudson who resides at 503 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mr. Hudson stated, in his opinion, an automotive use would not be in harmony with the neighborhood for obvious reasons. He agreed with the previous speaker, Charles Hamrick.

Carole Arey who resides at 506 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mrs. Arey agreed with all the previous speakers. She urged Council to deny the proposed change of use due to the fact it is inconsistent with the Shelby Comprehensive Land Use Plan as testified to by City Planning Director Walt Scharer.

Wes Westmoreland who resides at 849 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mr. Westmoreland addressed the harmony of West Marion Street, defining harmony in two words: Agreement and accord. He stated the location map clearly depicts the subject property is not in agreement or accord with that area of West Marion Street which is surrounded by residential properties. Mr. Westmoreland contacted an appraiser to provide his expert opinion as to property values and summarized "the change would further disrupt the harmony of the surrounding neighborhood".

Wren Westbrook who resides at 405 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mrs. Westbrook stated her family moved to the West Marion Street neighborhood with the understanding a Comprehensive Land Use Plan was in place, enforceable, and with the intention the neighborhood would return to a more residential sense. If the plan changes and is amended against its intended purpose, Mrs. Westbrook stated the hope for the community is challenged.

Richard Craver who resides at 522 West Marion Street in Shelby, North Carolina introduced **Stephanie Williams** who resides at 109 Windy Hill Drive

in Cherryville, North Carolina. Mr. Craver stated his purpose was to qualify Mrs. Williams as an expert witness with her background in real estate in order to testify regarding marketability and property values. After Mr. Craver's questioning, Council, by consensus, accepted Mrs. Williams as an expert witness. In her professional opinion, Mrs. Williams stated she compared a comparable residential neighborhood in close proximity to an auto repair service with the same zoning and found the property values of those homes had decreased 18 percent. Mrs. Williams provided an Appraisal Report prepared by Carolina Appraisal Group dated October 18, 2015 on the effect of the proposed Conditional Use Amendment No. 1042-2015 on the residential values to the West Marion Street residential neighborhood. She quoted the appraiser's conclusion: "Based on my 22+ years of experience as a residential appraiser, with well over 5,000 residential appraisals performed, it is my opinion that the change in the permitted use of the subject property would indeed have a negative impact on the adjacent and surrounding properties. In addition, the change would further disrupt the harmony of the surrounding neighborhood."

Thomas Fitch who resides at 715 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mr. Fitch stated, in his opinion, an automotive use would not be in harmony with the neighborhood.

Ana Gray who resides at 602 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Mrs. Gray stated, in her opinion, an automotive use would disrupt the harmony of the neighborhood.

Kathy Singer who resides at 704 West Marion Street in Shelby, North Carolina spoke against the proposed zoning amendment for property located at 724 West Marion Street. Miss Singer stated, in her opinion, the proposed facility would cause increased traffic issues along West Marion Street and safety hazards for the neighborhood.

Scottie Webber who resides at 1336 North Lafayette Street in Shelby, North Carolina spoke in support of his application to amend the Special Use Permit to allow the conditional use of auto repair services at 724 West Marion Street. Mr. Webber is seeking an opportunity to open a new business and remove an eyesore from West Marion Street, mentioning other businesses in the vicinity.

Mayor Anthony closed the public hearing at 6:54 p.m.

Based upon the competent evidence submitted during the hearing, Mr.

White stated the proposed conditional use amendment will not be in harmony with the area in which it is to be located and will not be in general conformity with the Shelby Comprehensive Land Use Plan.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to deny Ordinance No. 53-2015 entitled, "AN ORDINANCE AMENDING A SPECIAL USE PERMIT TO ALLOW THE CONDITIONAL USE OF AUTO REPAIR SERVICES AT 724 WEST MARION STREET", based on testimony that the proposal is not in harmony with the area and is inconsistent with the 2009 Shelby Comprehensive Land Use Plan.

D. Consent Agenda:

ACTION TAKEN: Mayor Anthony presented the consent agenda. Mr. Kittrell 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 October 5, 2015
- 2) Approval of a resolution declaring the intent of the City Council of the City of Shelby to consider the permanent closure of an unopened right-of-way at the east end of Greene Drive: Resolution No. 63-2015
- 3) Approval of a resolution stating the intent of the City of Shelby to annex contiguous property owned by the City of Shelby: Resolution No. 64-2015
- 4) Approval of a resolution stating the intent of the City of Shelby to annex non-contiguous property owned by the City of Shelby: Resolution No. 65-2015
- 5) Approval of a resolution stating the intent of the City of Shelby to annex non-contiguous property owned by the City of Shelby: Resolution No. 66-2015

END CONSENT AGENDA

E. Unfinished Business:

- 1) Consideration of an ordinance amending the Code of Ordinances, City of Shelby, North Carolina, by changing the wording of Section 10-133 of the ordinance regulating sidewalk cafes: Ordinance No. 54-2015

Mr. Howell introduced Ordinance No. 54-2015 for Council's consideration, which was drafted by Mr. Yelton. At the direction of City Council, he recommended the amendment to the existing section of the City Code applicable to sidewalk cafes. If enacted, it would specifically grant the City Manager the authority when issuing the annual sidewalk café permits to set the hours of operation, taking into consideration not only the normal operating hours of the business but also the proximity of residential dwelling units to the establishment.

Mr. Howell stated this amendment provides flexibility and allows the City to avoid a "one size fits all" provision in the ordinance while protecting the residents from issues of noise after a reasonable hour in the evening.

He noted the amendment to the City Code did not require a public hearing.

ACTION TAKEN: Upon a motion made by Mr. Kittrell, City Council voted unanimously to approve and adopt Ordinance No. 54-2015 entitled, "AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF SHELBY, NORTH CAROLINA, BY CHANGING THE WORDING OF SECTION 10-133 OF THE ORDINANCE REGULATING SIDEWALK CAFES".

2) Consideration of a budget ordinance amendment for the City of Shelby's Outfall Improvements Project: Ordinance No. 55-2015

Mr. Howell introduced Ordinance No. 55-2015 for Council's consideration, stating substantial completion of the sewer outfall infrastructure is finished. This ordinance specifically requests the appropriation from the Sewer Fund Balance (net retained earnings) in the amount of \$48,486.48 to cover an anticipated overage due to unanticipated rock excavation encountered by the contractor when laying the new outfall wastewater collector line along Hickory Creek. The only remaining facet of this project to be completed is the installation of a gabion (retention) rock wall along a steep embankment near Shelby High School, which is necessary for the long term stability of the new sewer line. Mr. Howell recommended amending the original project budget ordinance in the amount of \$50,000.00 for construction services.

ACTION TAKEN: Upon a motion made by Mrs. Patterson, City Council voted unanimously to approve and adopt Ordinance No. 55-2015 entitled, "A BUDGET ORDINANCE AMENDMENT FOR THE CITY OF SHELBY'S OUTFALL IMPROVEMENTS PROJECT".

F. New Business: None

G. City Manager's Report:

- 1) **Mr. Howell reported Mr. Merritt has developed and reviewed proposals from financial institutions for the City's banking services. He anticipated staff's recommendation will be presented to Council in November 2015.**
- 2) **With regard to the Hanna Property Site Plan, Mr. Howell reported the City conducted a Request for Qualifications process seeking a park design firm for the construction of a multi-purpose recreation complex. He anticipated staff will present a recommendation and proposed funding plan for the design of that facility in November 2015.**
- 3) **Mr. Howell mentioned the property closing of the Shell Building No. 2 at the Foothills Commerce Center was extended to on or before October 30, 2015.**
- 4) **Mr. Howell shared his preliminary comments regarding the Court Square Infrastructure Improvement Project by referencing the City's Water and Sewer Asset Management Plan. He stated the Central Uptown area water distribution system and wastewater collection system both require significant upgrades due to the lines being aged and undersized. Mr. Howell added serious, thoughtful consideration should be given to replacing this aging infrastructure in the Uptown area.**
- 5) **Mr. Howell informed Council of changes to the statutory requirements for leasing government property. Previously, a Notice of Intent to approve a lease with a term of between one and 10 years had to be published at least 10 days prior to the board meeting at which the resolution approving the lease was to be considered. The change which became law in September 2015 is now in effect, changing the 10-day notice period to 30 days. Mr. Howell stated a Notice of Intent with regard to the lease agreement between the City of Shelby and Destination Cleveland County for the Don Gibson Theatre has been published and will be considered by Council on November 16, 2015.**
- 6) **Mr. Howell updated Council about designing a Smart Grid network to fit the City of Shelby's needs and requirements. City staff is moving ahead with the process in conjunction with ElectriCities of North Carolina staff to develop a suitable solution.**
- 7) **With regard to ElectriCities, Mr. Howell provided additional information and news as follows:**

- The City entered into an agreement with Retail Strategies of Birmingham, Alabama through ElectriCities for a Retail Research Analysis, including a presentation of a Strategic Retail Recruitment Plan to Council.
- Roy Jones has been named the new Chief Executive Officer of ElectriCities effective November 1, 2015, replacing outgoing CEO Graham Edwards.
- Mr. Howell was requested to continue as Secretary-Treasurer for the North Carolina Municipal Power Agency 1 (NCMPA1).

H. Council Announcements and Remarks:

1) Mayor Anthony made the following announcements:

- The Shelby-Cleveland County Regional Airport will host its Fly-in and Open House on October 24, 2015 at Woodson Field.
- The 2015 North Carolina Official Liver Mush Festival held on October 16-17, 2015 was a great event. The Mayor proudly commended all those who were involved in the successful event planning.
- The Mayor congratulated Mr. Bailey on his election to the North Carolina League of Municipalities Board of Directors, representing League District 11.
- Performance evaluations of the City Manager and the City Clerk are due and will be conducted in November 2015.
- The Mayor is planning to schedule a social event with the local legislative delegation with details to follow shortly.

2) Mr. Kittrell echoed Mayor Anthony's comments about the Liver Mush festival. He also inquired about two new projects in the works, a hotel on County Home Road property and Hobby Lobby in Marketplace Center located on East Dixon Boulevard.

Mr. Howell responded Hobby Lobby recently announced their plans for opening a new store location in Shelby while the unnamed hotel has not made a public announcement at this time.

Mayor Anthony commented about landscaping the parking lot at Marketplace Center. Mr. Scharer responded there may be an opportunity to work with the developer of the site to accomplish those improvements.

3) Mr. Bailey participated in the Annual Benefit Golf Tournament sponsored by Friends of the Parks held on October 17, 2015, announcing his team won.

Mr. Bailey announced he is the 2016 President-Elect of the Cleveland County Association of Realtors, with a platform to positively promote the City of Shelby among local realtors.

- 4) Mr. White reminded all to vote in the 2015 Municipal Elections either by early voting or on Election Day, November 3, 2015.**

I. Adjournment:

- 1) Motion to adjourn**

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to adjourn the meeting at 7:26 p.m.

Respectfully submitted,

**Bernadette A. Parduski, NCCMC, MMC
City Clerk**

**O. Stanhope Anthony III
Mayor**

Minutes of October 19, 2015