

MINUTES

Regular Meeting
City Hall Council Chamber

February 17, 2014
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Eric Hendrick, David W. White, Jeanette D. Patterson, Dennis C. Bailey, 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 Utilities Brad R. Cornwell, PLS, EI, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Parks and Recreation Charlie Holtzclaw, Director of Planning and Development Services Walter (Walt) Scharer, AICP; and media representatives

Absent: Council Member Ben Kittrell

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 members of Boy Scout Troop 104 chartered through Central United Methodist Church led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

At staff's request for further review of the permit application, Mayor Anthony announced the removal of Item E-3 under the consent agenda.

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

B. Special Presentations:

- 1) Recognition of Rodney Scott Humphries on the occasion of his retirement from employment with the City of Shelby: Resolution No. 4-2014

Mayor Anthony called upon Mr. Humphries. The Mayor formally read and presented framed Resolution No. 4-2014 to Mr. Humphries. He then presented the key to the City, a City lapel pin, and a plaque to Mr. Humphries in honor of and with heartfelt appreciation for more than 30 years of

dedicated service to the City of Shelby Utilities Water and Sewer Divisions.

Humbled by the recognition, Mr. Humphries expressed his appreciation to all.

2) Uptown Shelby Association (USA) update – Audrey Whetten, Executive Director

Miss Whetten began her presentation by acknowledging the USA board members in attendance and expressing her appreciation for their support. Her quarterly update included an overview of recent, ongoing, and upcoming efforts, including events, projects, and partnership-building endeavors.

Miss Whetten stated the last quarter USA holiday-associated events included the successful Taste of the Holidays, carriage rides, tree lighting ceremony, luminaries, and the Christmas parade. USA was also involved in the Earl Scruggs Center grand opening weekend by organizing and participating in several related activities. A meet and greet with City Council was held to foster a stronger relationship between the USA organization and City leaders.

Miss Whetten reported USA is currently in the process of evaluating their entire event roster for the upcoming year, considering options on the basis of financial soundness, relevance, and benefit to the community.

Miss Whetten mentioned recent projects which included the newly printed Uptown Shelby visitor map, which was distributed in advance of the Earl Scruggs Center opening. She also mentioned the development process utilized for the updating of the USA vision and mission statements as well as an ongoing Plan of Work to guide the USA organization.

Currently, Miss Whetten anticipated making final decisions in the very near future regarding USA's event evaluation. She continues to meet and develop relationships with Uptown business and property owners, to develop a database of properties available for lease or sale in order to facilitate filling these spaces, and to send electronic updates to businesses and employees in Uptown Shelby.

Miss Whetten said Uptown Shelby has seen seven new businesses, three expansions, and two business closings since her last address to Council.

Miss Whetten continues to meet, represent USA, and attend the meetings of many of USA's partners including but not limited to the City of Shelby, Cleveland County Arts Council, Cleveland County Chamber, Destination Cleveland County, Cleveland County Business Development Center, Historic

Shelby Foundation, Raper-Roark Trust Fund Board, Leadership Cleveland County, Rotary Club of Shelby, and the Travel Industry Committee, etc.

Miss Whetten concluded her presentation with a request to Council for consideration as to reinstating \$10,000 of the City's USA funding.

Council received the information and took no action.

C. Public Comment:

- 1) Lem Rachels who resides at 2945 Poplar Circle in Shelby, North Carolina expressed his concerns regarding the deteriorating condition of the Shelby sign located along the 74 Bypass and City streets.

Mr. Rachels was referred to Mr. Howell.

D. Public Hearings:

- 1) Consideration of an ordinance to extend the corporate limits of the City of Shelby, North Carolina: Ordinance No. 4-2014

Mr. Scharer confirmed George and Rhonda Malkmus are the owners of property located at 900 South Post Road and have submitted a Petition for Satellite Annexation. Utilizing a location map, Mr. Scharer pointed to the subject property, which is the site of a former Hallelujah Acres facility and currently houses the Pinnacle Classical Academy, a public charter school.

As previously directed by Council, Mr. Scharer said the City Clerk has certified the sufficiency of the voluntary annexation petition. He concluded by stating staff recommended proceeding with the annexation of this property.

Mayor Anthony opened the public hearing at 6:17 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:18 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 4-2014 entitled, "AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SHELBY, NORTH CAROLINA".

2) Consideration of the City of Shelby's submittal of a Community Development Block Grant (CDBG) application to the North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Infrastructure (DWI)

Mr. Scharer explained the North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Infrastructure (DWI) was delegated the authority by the State legislature to administer grant monies received from the US Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program in July 2013. The NCDENR DWI has opened the 2014 round of CDBG funding assistance for water and wastewater projects that will improve the quality of life for low and moderate income persons.

Mr. Scharer stated the purpose of this public hearing is to receive citizen input as to the needs of low and moderate income residents and neighborhoods within the City. Based on the needs identified, the City may be eligible to apply for CDBG funds to address those needs. Mr. Scharer further stated should the City choose to apply for any CDBG funds, a second public hearing will be held directly concerning that specific project and application.

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.

Council took no action at this time.

3) Consideration of a proposed ordinance to amend the Unified Development Ordinance of the City of Shelby: Ordinance No. 5-2014

Mr. Scharer stated the City of Shelby currently does not have development standards for solar energy systems (SES) and has simply permitted the use as a utility-related use within an Industrial Zoning District. As he recalled in the fall of 2013, City Council denied a proposed zoning map amendment to the Limited Industrial Zoning District with a conditional use for an SES. The proposal failed due to the site proposal being inconsistent with the Comprehensive Land Use Plan.

Due to the volume of inquiries regarding SESs, staff felt it was necessary to create a set of development standards for SESs appropriate for Shelby. Mr. Scharer explained a working group consisting of representatives of the solar

industry, environmental officials, county and municipal planners, and other State officials have developed a model SES ordinance that can be adapted and applied to communities in North Carolina. City staff analyzed this model ordinance and proposed several possibilities to the Planning and Zoning Board. The proposed text amendment to create a set of development standards has been reviewed by the Planning and Zoning Board over the course of several months. The template ordinance addresses some of the most common considerations that arise in the permitting of solar energy facilities and some of the important topics covered in the ordinance include:

- Parcel Line Setbacks
- Height Limitations
- Aviation Notification
- Visibility
- Decommissioning

Mr. Scharer elaborated on the SES assignments to zoning districts and the development standards which now include higher setback thresholds, in addition to a 100 foot setback for SES equipment to any inhabitable residential dwelling unit.

Mr. Bailey raised several issues with regard to the 100 foot setback from a residential dwelling and the required decommissioning plan, which he suggested were punitive toward solar systems. He preferred the ordinance mirror current Light Industrial standards which are less restrictive than the proposal. Mr. Bailey concluded the text amendment required further study, reiterating his concerns about the restrictiveness of the development standards and the decommissioning plan as well as the ambiguity of the aviation notification and the evaluation of the solar glare aviation hazard.

Mr. Hendrick agreed with Mr. Bailey about the setbacks within the Industrial Districts.

Mr. Amaya requested clarification of the required Federal Aviation Administration's (FAA) notification if a solar project is within five nautical miles of an airport. He also suggested a compromise with regard to the 100 foot setback requirement in order for Council to approve the ordinance.

Mrs. Patterson also agreed with Mr. Bailey.

Acknowledging Mr. White's suggestion to table the matter, Mayor Anthony advised Council to provide specific instructions to Mr. Howell to further clarify provisions within the amendment pertaining to setbacks from single family residential dwellings and the decommissioning of SESs. He added any

delay in the adoption process could impact potential projects considering development in the City.

Mayor Anthony opened the public hearing at 6:38 p.m. and invited comments from the public:

Brian C. Bednar is the President of Birdseye Renewable Energy with offices located at 1125 East Morehead Street, Suite 206, Charlotte, North Carolina. As a developer of solar projects regionally and around the State of North Carolina, Mr. Bednar reviewed the proposed ordinance and stated on the whole it was well thought-out. In general, he offered his support of the proposal. Mr. Bednar added the Light Industrial District development standards also make sense; however, the goal for his projects is to be harmonious with the surrounding neighborhoods. He responded to questions about the Solar Glare Hazard Analysis and a decommissioning plan which are considered fairly common industry standards.

Mike Philbeck who resides at 1805 Arbor Way in Shelby, North Carolina has reviewed the proposed ordinance and as a commercial real estate agent requested Council's favorable consideration for two pending projects submitted to the City's Planning and Development Services Department this date under the vested rights doctrine. (Clerk's note: A vested right is the right to complete a development under rules that applied at the time the development was approved rather than under newly adopted rules.)

Mr. Scharer responded in the affirmative that Mr. Philbeck's projects qualify for vested rights under the North Carolina General Statutes and the City's current Unified Development Ordinance unless substantial changes are made to the projects.

Mayor Anthony recognized Mr. Philbeck as a former Mayor.

Mayor Anthony closed the public hearing at 6:53 p.m.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to table consideration of a textual amendment to the Unified Development Ordinance, Article 2 – Interpretations and Definitions, Section 2.4; Article 9 – Zoning Districts and Zoning Provisions, Table 9-3-1; Article 10 – Environmental and Special Purpose Regulations, Section 10-9.1; and Article 11 – Development Standards to Individual Uses, Section 11-1.67.1 until April 7, 2014.

- 4) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 6-2014

Utilizing a zoning map, Mr. Scharer pointed to the subject property located at 2310 Hoey Church Road, which also has street frontage on Ware Road. The area proposed for rezoning is approximately 3.9 acres. Mr. Scharer stated the Comprehensive Land Use Plan currently has this area depicted as a commercial corridor revitalization area. Mr. Scharer added land uses in the area include single family dwellings, mobile homes, commercial, and institutional uses.

Mr. Scharer concluded by stating the proposed zoning map amendment from the R20 Residential District to the General Business District is consistent with the Comprehensive Land Use Plan. The Planning and Zoning Board also recommended this proposed zoning amendment.

Mayor Anthony opened the public hearing at 6:52 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:53 p.m.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 6-2014 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

- 5) Consideration of a resolution granting a Special Use Permit to the Cleveland County Health Department for 130 South Post Road: Ordinance No. 7-2014

Prior to the public hearing, Mayor Anthony provided instructions as to the quasi-judicial process. To find facts, Council conducts a formal evidentiary hearing. Due process mandates that all parties must present factual evidence under sworn testimony. Each finding must be supported by competent, material, and substantial evidence, not unsupported allegations or lay opinions. Council must make findings of fact and then apply the existing laws and policies to those facts to arrive at a decision.

After taking his oath, Mr. Scharer, utilizing a zoning map of the area, pointed to a 41.38 acre site located at 130 South Post Road behind the current Cleveland County office building that houses the Department of Social Services. The proposed development site is currently vacant and zoned as Residential 10 (R10) and General Business 2 (GB2). The property owner/applicant, Cleveland County, has proposed the construction and development of a new site for the Cleveland County Health Department. Mr.

Scharer stated the Comprehensive Land Use Plan currently has this area depicted as an Institutional Area. Institutional land uses include schools, city and county government facilities, churches, colleges, and similar non-commercial uses. The Residential-Office (RO) zoning district is the most appropriate zoning district for institutional uses. This proposed zoning amendment with the conditional use of government office/health facility is also consistent with the Comprehensive Land Use Plan.

Utilizing the proposed site plan, Mr. Scharer added the Planning and Zoning Board recommended approval for this proposed zoning amendment with the following conditions as recommended by staff:

- In accordance with the 2007 City of Shelby Comprehensive Pedestrian Plan, the developer shall provide a recreation easement for a future greenway.
- A stormwater retention system, using current best management practices, must be installed on the property.
- Alternative 1 from Table 14-10.3 increased by a factor of 1.5 be used for the land use buffer planting requirements.

Mayor Anthony opened the public hearing at 7:01 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 7:02 p.m.

Having heard all of the evidence and arguments presented at the public hearing, Council discussed the findings of fact relative to the proposal and determined the application of Cleveland County is complete; and, the following conclusions were made:

- The owner of the property, Cleveland County Health Department, submitted the required application and site plan for special use permit.
- According to Article 9-3-1, government offices are permitted in the RO Zoning District.
- The subject parcel lies within the City of Shelby fronting at 130 South Post Road in the Residential 10 (R10) and General Business 2 (GB2) Districts.
- Land Use in the surrounding area is a mixture of commercial,

institutional, and residential uses.

- The Comprehensive Land Use Plan designates this area as institutional.
- The petitioner has declared that the intended use of the property is for health department and government offices.
- Other than what is shown on the site plan, no other changes to the site are planned.
- To the best of staff's knowledge, no non-conformities currently exist on the property and none will be created by the requested special use permit.
- The use will not materially endanger the public health or safety if located where proposed and developed according to the plan.
- The use will not substantially injure the value of adjoining or abutting property.
- The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Comprehensive Land Use Plan.

ACTION TAKEN: Upon a motion made by Mrs. Patterson, City Council voted unanimously to approve and adopt Ordinance No. 7-2014 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO THE CLEVELAND COUNTY HEALTH DEPARTMENT FOR 130 SOUTH POST ROAD".

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 Special Meeting of February 1, 2014
- 2) Approval of the Minutes of the Regular Meeting of February 3, 2014
- 3) REMOVED

Approval of Special Event Permit Application:

- a. Foothills Farmers Market, requested dates of operation: April 5 through November 29, 2014
- 4) Approval of a resolution approving the contract for the performance of the City of Shelby's annual audit and preparation of financial statements for the Fiscal Year ended June 30, 2014: Resolution No. 6-2014
- 5) Adoption of an ordinance amending a capital project ordinance and budgets for the City of Shelby's Foothills Farmers Market Shade Pavilion Project: Ordinance No. 8-2014
- 6) Approval of a resolution approving a financing agreement authorized by North Carolina General Statute 160A-20: Resolution No. 7-2014

END CONSENT AGENDA

F. Unfinished Business:

- 1) Consideration of appointments to City advisory boards and commissions:
 - a. Shelby-Cleveland County Regional Airport Advisory Board

Mrs. Parduski reported the terms of three incumbents, Tom Crider, Dr. Robert Jones, and Dennis Sessom, conclude February 2014. Mr. Sessom wishes to continue his service. Dr. Jones has decided to step down from the board and Mr. Crider is in the process of relocating. Therefore, two vacancies have been created.

There are two applications on file in the Clerk's Office:

- Jim Robinson
- Dr. Stephen Jones

Mr. White nominated Jim Robinson and Dr. Stephen Jones for appointment to new terms.

Mr. Amaya nominated Dennis Sessom for reappointment.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to close the nominations and accept the nominees by acclamation.

- b. Housing and Redevelopment Advisory Board

Mrs. Parduski reported the terms of three incumbents, Keith Hawkins, Sharon Leigh, and Andrew Hopper, conclude March 2014. All three incumbents wish to continue their service.

There are no applications on file.

Mrs. Patterson nominated Keith Hawkins, Sharon Leigh, and Andrew Hopper for reappointment.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to close the nominations and accept the nominees by acclamation.

G. New Business:

- 1) Consideration of an ordinance establishing a capital project ordinance and budgets for the City of Shelby's Brushy Creek Sewer Outfall Project: Ordinance No. 9-2014

Mr. Howell introduced Ordinance No. 9-2014 for Council's consideration. If approved, this ordinance would authorize the expenditure of funds for the engineering and permitting process of the Brushy Creek Sewer Outfall Project. He made reference to a location map depicting approximate locations of the project and the service area. The concept for development is similar to the City's efforts on the Westside Sewer Project and Foothills Commerce Center which has seen growth, development, and job creation. Mr. Howell stated approval of the ordinance is the first step toward securing funding sources for the project, estimated to cost about \$6.6 million. This project is essential from an economic development standpoint as it would provide sewer collection services to a large undeveloped area in the Washburn Switch corridor that already has adequate water, electric, and natural gas. Mr. Howell reiterated that public sewer service is most essential public service when it comes to attracting industry and driving economic development.

Lastly, Mr. Howell expressed his appreciation to Cleveland County Manager Jeff Richardson and the Cleveland County Commissioners for their support and assistance in providing infrastructure funding for the Brushy Creek Sewer Project.

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Ordinance No. 9-2014 entitled, "AN ORDINANCE ESTABLISHING A CAPITAL PROJECT ORDINANCE AND

BUDGETS FOR THE CITY OF SHELBY'S BRUSHY CREEK SEWER OUTFALL PROJECT".

H. City Manager's Report:

- 1) Mr. Howell updated Council on the status of the Transportation System Infrastructure Engineering Analysis Report, noting completion of the document was expected by April 1, 2014 with a formal Council presentation to follow. Once completed, this report will provide a priority and ranking system for all City owned streets, culverts, and pedestrian facilities as well as cost estimates. The report will ultimately be used to make a recommendation to Council on funding options to move forward with construction, maintenance, and repair of these facilities.**
- 2) Mr. Howell informed Council that bids were received by the City on the Foothills Farmers Market Shade Pavilion Project on February 11, 2014. The bids are to be verified and certified by the project architect for review and consideration by Council at the meeting of March 3, 2014.**
- 3) Mr. Howell mentioned Public Works Director, Danny Darst, will provide an annual update on the progress of the Curbside Rollout Recycling Program through 2013 at the meeting of March 3, 2014.**

I. Council Announcements and Remarks:

- 1) Mayor Anthony expressed his appreciation to City staff for their prompt snow removal efforts and cleanup after the snowstorm of February 12, 2014.**

The Mayor prompted a discussion to reschedule the Council's annual retreat which was originally scheduled for February 14, 2014. By consensus, Council agreed to hold their retreat on Friday, March 7, 2014, at 8:00 a.m. at the Shelby-Cleveland County Regional Airport.

The Mayor also reminded Council members of their attendance at the Essentials of Municipal Government on February 19 and 20, 2014 in Hickory, North Carolina.

- 2) Both Mr. White and Mr. Bailey expressed their appreciation to City staff for all their work after the snowstorm, echoing the Mayor's comments.**

Upon questioning, Mr. Howell and Mr. Darst updated Council as to the post-snowstorm solid waste and recycling revised collection schedules.

J. Adjournment:

1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to adjourn the meeting at 7:24 p.m.

Respectfully submitted,

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

**O. Stanhope Anthony III
Mayor**

Minutes of February 17, 2014