

MINUTES

Regular Meeting
City Hall Council Chamber

May 19, 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, Ben Kittrell; City Manager Rick Howell, City Clerk Bernadette A. Parduski, NCCMC, MMC, City Attorney Robert W. (Bob) Yelton, Director of Finance Justin S. Merritt, MPA, Assistant Director of Finance Elizabeth B. (Beth) Beam, CPA, Director of Utilities Brad R. Cornwell, PLS, EI, Assistant Director of Utilities David W. Hux, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, EFO, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Planning and Development Services Walter (Walt) Scharer, AICP; and media representatives

Mayor Anthony called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. The Mayor recognized former Mayor Ted Alexander in attendance.

Mayor Anthony gave the invocation and a boy scout representing Troop 101 led the *Pledge of Allegiance*.

A. Approval of agenda:

1) Motion to adopt the proposed agenda

Mayor Anthony announced the addition of Item E-8 under the Consent Agenda as follows:

- Approval of a resolution recognizing and congratulating Shelby High School basketball star, Robert Gabriel (Gabe) DeVoe, III: Resolution No. 30-2014

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

B. Special Presentation:

- 1) Recognition of Justin S. Merritt, Finance Director, and the City of Shelby's Finance Department as recipients of the Certificate of Achievement for Excellence in Financial Reporting for the Fiscal Year ended June 30, 2013

Acknowledging a long legacy, Mayor Anthony was pleased to announce that the Government Finance Officers Association of the United States and Canada (GFOA) awarded the Certificate of Achievement for Excellence in Financial Reporting to the City of Shelby for its Comprehensive Annual Financial Report (CAFR) yet again. It is a testament to the commitment of past and present management and finance directors as to full public disclosure and communication of the financial condition of the City of Shelby.

Mayor Anthony recognized and congratulated Mr. Merritt as he accepted the Certificate of Achievement on behalf of the City.

C. Public Comment: None

D. Public Hearings:

1) Consideration of a proposed ordinance to amend the Unified Development Ordinance of the City of Shelby: Ordinance No. 27-2014

Mr. Scharer stated a joint committee made up of members of the Planning and Zoning Board and Keep Shelby Beautiful Commission have been reviewing the current sign regulation found in the City's Unified Development Ordinance (UDO). Upon review of the signs permitted in the Central Business (CB) Zoning District, it was found that sidewalk signs in the Uptown Area are, in fact, not permitted at all. The committee agreed these signs are generally accepted and initiated a rigorous review process to develop a set of regulations that would permit sidewalk signs, while at the same time maintain the character and quality of the sidewalks in Uptown Shelby and the functionality for pedestrians.

Mr. Scharer further stated the proposed UDO amendment would permit sidewalk signs with conditions, which included one sign per business during business hours, size requirements, and sidewalk sign location parameters.

Mayor Anthony opened the public hearing at 6:07 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:08 p.m.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 27-2014 entitled, "A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF SHELBY".

2) Consideration of a resolution granting a Special Use Permit for a solar energy system farm at 1268 Earl Road: Resolution No. 22-2014

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 and utilizing a zoning map of the area, Mr. Scharer pointed to the subject property located at 1268 Earl Road. Hutchison Farm, LLC has submitted a Special Use Permit application for a Level III Solar Energy System (SES) on an approximate 102 acre piece of property on Earl Road. The property is currently zoned Residential 20 (R20) District and the site is currently used as agricultural land. Mr. Scharer stated the R20 District permits Level III SES with a Special Use Permit approved by City Council.

Utilizing the proposed project site plan, Mr. Scharer stated the SES will cover approximately 32 acres of the parcel and will be oriented toward Earl Road. The proposed Special Use Permit meets all the City's new requirements for a Level III SES as found in the UDO. Mr. Scharer added staff certified the application is correct and the applicant exercised due diligence in its submittal.

Upon questioning, Mr. Scharer responded the Comprehensive Land Use Plan designates this property as a Residential Medium Density Area.

Council discussion followed and included the Residential 20 zoning district uses and the required buffers and setbacks for this project.

Mr. Amaya arrived at 6:15 p.m.

Mayor Anthony opened the public hearing at 6:15 p.m. and sworn testimony was given as follows:

David Dyer who resides at 1504 Cambridge Drive in Shelby, North Carolina spoke against the Special Use Permit application. Mr. Dyer explained generally speaking that he is not opposed to solar farms being built. His problem regarding this specific solar farm is with the installation of the solar panels changing the view of the mountain range from his residence and

reducing the value of his property. Mr. Dyer proposed his alternatives to the site plan by either excavating or using the natural swell in the land to lower the solar panels thus allowing his mountain view to remain unchanged and alleviating his concerns.

Eleanor Hendrick who resides at 1302 Cambridge Drive in Shelby, North Carolina spoke against the Special Use Permit application. Mrs. Hendrick stated she agreed with Mr. Dyer. She expressed her concerns with regard to the solar farm site, specifically about the fence line and the construction entrance way.

Ethel Whisnant who resides at 1300 Gilbert Street in Shelby, North Carolina spoke against the Special Use Permit application. Mrs. Whisnant agreed with Mr. Dyer's and Mrs. Hendrick's comments. She expressed her concerns with regard to the solar farm site, specifically about obstructing her mountain view, the increased traffic during installation and construction, and its effect on the roads.

Brian C. Bednar is the President of Birdseye Renewable Energy with offices located at 1125 East Morehead Street, Suite 206, Charlotte, North Carolina. First, Mr. Bednar provided, presented, and summarized research relating to the impact of solar facilities on local property values, concluding there is limited evidence of the impact of energy development on property values. However, he added no significant, enduring, negative property value effects have been found. As the developer of the site, Mr. Bednar stated, although the civil engineer's design has not been finalized, the intent is to cut the landscape to lower the project by four feet and minimize the height issue. He added Mr. Hutchinson intends to preserve the remaining property as pasture land. Mr. Bednar further stated the proposed construction entrance and permanent site access will be off Earl Road. The project also includes grassy areas, a buffer, and a security fence.

Mr. White concluded from their testimony that Mr. Bednar and Mr. Dyer are in the process of finalizing a compromise.

Marvin Hutchison who resides 307 Putnam Street in Waco, North Carolina spoke in support of his Special Use Permit application. Mr. Hutchinson stated the property has been in his family for more than 60 years as agricultural use. He recently purchased an additional 10 acres adjoining his parcel, confirming his desire not to de-value the land and with the intention to continue raising cattle well into the future. Mr. Hutchison mentioned visiting the Belwood Solar Farm recently and speaking to several of the neighbors who had no negative comments about the solar farm.

Mayor Anthony closed the public hearing at 6:31 p.m.

Mayor Anthony reminded Council in considering whether to approve an application for a Special Use Permit, it shall proceed according to the following format:

- 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.

Staff certified the following:

- The requested permit is within the jurisdiction of the City of Shelby according to the Table of Permissible Uses (Table 9-3-1).
- The application is complete.
- 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 information submitted at the hearing, which if completed as proposed, the development:

- 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 land development plan or other plans officially adopted by the City Council.

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 Hutchinson Farm, LLC is complete; and, the following conclusions were made:

- The owner of the property, Hutchinson Farm, LLC, submitted the required application and site plan for a Special Use Permit.
- According to Article 9-3-1, solar energy systems are permitted in the Residential 20 (R-20) Zoning District with a Special Use Permit.
- The subject parcel lies within the Extraterritorial Jurisdiction of the City of Shelby fronting at 1268 Earl Road in the Residential 20 (R-20) Zoning District.
- Land uses in the surrounding area are primarily residential and agricultural uses.
- The Comprehensive Land Use Plan designates this area as a Residential Medium Density Area and Residential High Density Area.
- The petitioner has declared that the intended use of the property is for solar energy system farm.
- 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 Resolution No. 22-2014 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT FOR A SOLAR ENERGY SYSTEM FARM AT 1268 EARL 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 Regular Meeting of May 5, 2014
- 2) Approval of Special Event Permit Application:
 - a. Shelby Presbyterian Youth Mission Trip Fundraiser, requested date: May 25, 2014
- 3) Approval of a resolution honoring Michael Coleman (Mike) Church on the occasion of his retirement from employment with the City of Shelby: Resolution No. 23-2014
- 4) Approval of a resolution accepting and entering into an agreement with ElectriCities of North Carolina, Inc. and Asplundh Tree Expert Company for line clearance trimming of the City's Electric Distribution System: Resolution No. 24-2014
- 5) Approval of a resolution accepting and entering into an agreement with the North Carolina Department of Transportation to accept grant funding for the Shelby-Cleveland County Regional Airport Project No. 36237.16.12.1: Resolution No. 25-2014
- 6) Approval of a resolution accepting and entering into an agreement with the North Carolina Department of Transportation to accept grant funding for the Shelby-Cleveland County Regional Airport Project No. 36237.16.13.1: Resolution No. 26-2014
- 7) Approval of a resolution accepting the acquisition of real property from Carol W. Wright and wife, Susan Wright; Alan S. Wright and wife, Myra Wright; and Paul A. Wright and wife, Nicole Wright, to the City of Shelby for property abutting the Shelby-Cleveland County Regional Airport: Resolution No. 27-2014
- 8) Approval of a resolution recognizing and congratulating Shelby High School basketball star, Robert Gabriel (Gabe) DeVoe, III: Resolution No. 30-2014

END CONSENT AGENDA

F. Unfinished Business:**1) City of Shelby's First Broad River Wastewater Treatment Plant Improvements Project:**

Mr. Howell introduced Ordinance No. 28-2014 and Resolution No. 28-2014 related to the First Broad River Wastewater Treatment Plant Improvements Project for Council's consideration. He reminded Council of their 2012 retreat and at subsequent meetings, staff discussed the need for the Wastewater Treatment Plant upgrades to meet new and more stringent treatment limits that will become effective for the City of Shelby on August 1, 2016. Council approved the preliminary scope of the project via Budget Ordinance No. 71-2012 and authorized the City to seek financing of the project via the Clean Water State Revolving Fund (CWSRF) pursuant to Resolution No. 50-2012. The proposed project was eligible to receive a CWSRF loan in the amount of \$8,383,000 at 0 percent interest.

Mr. Howell stated staff is requesting to amend the existing capital project budget ordinance and award the construction contract to proceed with moving the project forward and meeting the August 1, 2016 deadline.

Upon questioning about the City's cash flow, Mr. Howell anticipated that due to higher construction costs, it is likely a sewer rate increase between 4 and 5 percent effective on July 1, 2015 will be necessary in order for the City to meet its first loan payment due in May 2016.

As background information, Mr. Cornwell stated the City of Shelby's First Broad River Wastewater Treatment Plant was originally constructed in 1963. Since that time, there have been no increases in plant capacity, currently at 6 million gallons per day (MGD), with some upgrades and renovations completed in the early to mid-1990s. The City of Shelby received its updated National Pollutant Discharge Elimination System (NPDES) permit in June 2010 with increased treatment levels that are required to be met beginning August 2016. City staff has been working towards the Wastewater Treatment Plant upgrades project and the milestones as prescribed by the North Carolina Division of Water Infrastructure (DWI) for nearly two years. Mr. Cornwell reiterated the City's ability to operate and treat the wastewaters at the Treatment Plant is vital to the community and the City's continued success in growth and economic development. In addition, the requirements and treatment limits are mandated by State and US Environmental Protection Agency guidelines.

Mr. Cornwell stated at the conclusion of the bid opening, three responsive bidders submitted bids. The apparent low bidder is State Utility Contractors, Inc. in the amount of \$8,463,000. The City's consulting engineer, HDR Engineering, Inc. of the Carolinas, has tabulated all the bid numbers and confirmed that State Utility Contractors, Inc. is the apparent low-bidder and recommends award of the construction contract to State Utility Contractors, Inc.

Mr. Cornwell explained the process of the DWI timeline is seemingly backwards from most construction contracts. The process involves submitting a scope and an anticipated educated guess at project costs. Once the funding is received, then the preliminary engineering report is developed and approved and cost estimates are updated. After the preliminary engineering report is approved, then design begins with further clarification of expected project costs. Staff entered into the design phase and the modeling of the Wastewater Treatment Plant revealed several issues with flow variability and characteristics with original design flaws. The consulting engineer reported there were several issues with piping and treatment characteristics that were not originally anticipated. Arrangements have been made with DWI for the additional funding and it is time to update applications and proceed with construction, which is the intent and layout of the DWI process. DWI has committed to providing the additional funding in excess of the original amount stated at 0 percent. Therefore, this project will be a tentative resolution of award contingent on several factors. First and foremost, due to the amount of the loan, the City must seek approval from the Local Government Commission. Once this is secured, the DWI will review the bids and contract documents and provide an Authority to Award. This step has been outlined in the funding letters and is milestone set for June 2, 2014. The step is outlined in this matter to have a final project accounting set up and in place prior to proceeding to construction. It is also in place so the DWI can make certain projects are completely accounted for. Once the Authority to Award is received from DWI, the construction contracts can be executed and construction can proceed. The anticipated construction time frame for this project is approximately 18 months.

Mr. Cornwell requested an update of the capital project budget ordinance to reflect the following:

- The construction line item will include only the costs associated with the actual construction of the project and will provide enough amounts for contingency and any unexpected items that may be encountered.
- The engineering line item includes the costs associated with the preliminary engineering report, design engineering, surveying, bidding

costs, permitting costs, advertisement costs, loan administration costs, and construction administration and construction inspection costs.

- The financial line item is to account for the required 2 percent closing costs associated with the DWI program.

Mr. Cornwell recommended the award of the construction contract in the amount of \$8,463,000 to State Utility Contractors, Inc.

Discussion included how discharges affect the receiving stream and the First Broad River Basin as a whole and how this project does not add additional capacity to the plant, which will still treat up to 6 MGD.

- a. Consideration of a budget ordinance amendment for the City of Shelby's First Broad Wastewater Treatment Plant Improvements Project: Ordinance No. 28-2014

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 28-2014 entitled, "A BUDGET ORDINANCE AMENDMENT FOR THE CITY OF SHELBY'S FIRST BROAD WASTEWATER TREATMENT PLANT IMPROVEMENTS PROJECT".

- b. Consideration of a resolution of tentative award for the First Broad River Wastewater Treatment Plant Improvements Project to State Utility Contractors, Inc.: Resolution No. 28-2014

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 28-2014 entitled, "A RESOLUTION OF TENTATIVE AWARD FOR THE FIRST BROAD RIVER WASTEWATER TREATMENT PLANT IMPROVEMENTS PROJECT TO STATE UTILITY CONTRACTORS, INC.".

G. New Business:

- 1) Consideration of a resolution supporting the extension of North Carolina's Historic Preservation Tax Credit Programs: Resolution No. 29-2014

Ms. Whetten, Executive Director of Uptown Shelby Association, referenced her recent Council presentation on the findings of a recent economic impact study of Main Street Programs in North Carolina, which experienced its success due to the availability of the North Carolina Historic Preservation Tax Credits (HPTC) Programs. She reminded Council about the number of projects within the City of Shelby and the Uptown Shelby District which

benefitted from over \$8 million of investment utilizing the HPTC programs. Ms. Whetten cited two properties, El Nido (completed) and the Bankers House (in discussions), as recent examples of renovation projects.

Ms. Whetten concluded by stating Governor McCrory has included the tax credits in his 2014-2015 recommended budget proposal. She formally requested Council's support for the continuation of North Carolina's Historic Preservation Tax Credit Programs.

Upon questioning, former Mayor Alexander responded a rehabilitation project must meet the Secretary of Interior standards to qualify as a "certified rehabilitation" for the purposes state tax credits.

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Resolution No. 29-2014 entitled, "A RESOLUTION SUPPORTING THE EXTENSION OF NORTH CAROLINA'S HISTORIC PRESERVATION TAX CREDIT PROGRAMS".

H. City Manager's Report: None

I. Council Announcements and Remarks:

Mayor Anthony made the following announcements and reminders:

- North Shelby School's graduation ceremony is May 30, 2014 at 10:00 a.m.
- Community Math Academy Gala Celebration is May 31, 2014 from 6:00 p.m. to 8:00 p.m. at Shiloh Baptist Church
- North Carolina League of Municipalities Town Hall Day is June 4, 2014 in Raleigh, North Carolina
- United Way of Cleveland County Annual Meeting and Awards Ceremony is June 5, 2014 at Noon, Aldersgate United Methodist Church

J. Closed Session

- 1) To approve the Minutes and General Account of the Closed Session of March 17, 2014
- 2) To approve the Minutes and General Account of the Closed Session of April 7, 2014

- 3) To discuss matters relating to the location or expansion of an industry pursuant to North Carolina General Statute 143-318.11(a) (4)

ACTION TAKEN: Mr. Amaya made a motion to enter into a closed session to discuss matters relating to the location or expansion of an industry pursuant to the appropriate North Carolina General Statute as cited. Council consulted with Mr. Yelton who advised the topics met the statutory requirements for a closed session. The motion passed unanimously. The Mayor invited all Council members present, Mr. Howell, Mr. Yelton, and Mrs. Parduski to attend.

Council moved into the closed session at 7:20 p.m.

Council returned to the regular session at 7:50 p.m.

K. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. Hendrick, City Council voted unanimously to adjourn the meeting at 7:51p.m.

Respectfully submitted,

Bernadette A. Parduski, NCCMC, MMC
City Clerk

O. Stanhope Anthony III
Mayor

Minutes of May 19, 2014