

## MINUTES

Regular Meeting  
City Hall Council Chamber

September 15, 2014  
Monday, 6:00 p.m.

**Present:** Mayor Pro tempore Dicky Amaya, presiding; Council Members Eric Hendrick, David W. White, Jeanette D. Patterson, Dennis C. Bailey; 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, Fire Chief William P. Hunt, MPA, EFO, Director of Planning and Development Services Walter (Walt) Scharer, AICP; and media representatives, Greg Tillman and Reporter Joyce Orlando of The Shelby Star

**Absent:** Mayor O. Stanhope Anthony III and Council Member Ben Kittrell

Mayor Pro tempore Amaya called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. Mr. Amaya gave the invocation and Mrs. Parduski led the *Pledge of Allegiance*.

Mr. Amaya instructed Council the voting for tonight's meeting would be by a show of hands.

**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 a resolution of intent to submit applications for wastewater projects to the Community Development Block Grant Program: Resolution No. 46-2014

Mr. Scharer introduced Resolution No. 46-2014 for Council's consideration. He stated the North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Infrastructure (DWI) has opened the

2014 round of Community Development Block Grant (CDBG) funding assistance for water and wastewater projects that will improve the quality of life for low and moderate income persons.

Mr. Scharer further stated a public hearing notifying the public the City intends to submit a grant application for CDBG funds for a wastewater project is required. Specifically, the City intends to submit an application for a wastewater project in the Cameron-Lily neighborhood and an application for a wastewater project in the Washington Heights neighborhood.

Mr. Scharer recommended Council's approval of the proposed resolution of intent to submit these applications.

Mr. Amaya opened the public hearing at 6:04 p.m. and invited comments from the public.

The public offered no comments and Mr. Amaya closed the public hearing at 6:05 p.m.

**ACTION TAKEN:** Upon a motion made by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 46-2014 entitled, "A RESOLUTION OF INTENT TO SUBMIT APPLICATIONS FOR WASTEWATER PROJECTS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM".

2) Consideration of a resolution granting a Special Use Permit for a solar energy system farm at 201 Beaver Dam Church Road: Resolution No. 47-2014

Prior to the public hearing, Mr. Amaya 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 201 Beaver Dam Church Road with US 74 Bypass located to the north of the site. He stated the property is currently zoned Residential 20 (R20) District. Zoning districts in the surrounding area include General Business 2 (GB2), Light Industrial (LI), Residential 20 (R20), and Residential 10 (R10). There is a single-family subdivision, Pebble Creek, adjacent and to the east of the proposed site.

**Mr. Scharer stated Ayrshire Holdings, LLC has submitted a Special Use Permit application for a 115 acre Level III Solar Energy System (SES) on an approximate 156 acre piece of property on Beaver Dam Church Road. The proposed Special Use Permit meets all the City's requirements for a Level III SES as found in the Unified Development Ordinance (UDO).**

**Utilizing the revised project site plan, Mr. Scharer explained Council may attach to the permit such reasonable requirements in addition to those specified in the UDO as will ensure that the development in its proposed location:**

- **Will not endanger the public health or safety**
- **Will not injure the value of adjoining or abutting property**
- **Will be in harmony with the area in which it is located**
- **Will be in conformity with the Comprehensive Land Use Plan or any other plans officially adopted by Council**

**Mr. Scharer stated the Comprehensive Land Use Plan designates this property as a Conservation Development Area. Conservation Development refers to a type of development in which the number of lots permitted by a given zoning classification is allowed, but the development is encouraged to preserve an amount of open space in exchange for building a higher density in a smaller area. The open space could be natural area, a greenway, or similar types of open space.**

**Mr. Scharer reiterated this proposed SUP meets all the requirements for a Level III SES as found in the UDO. However, staff recommended the following additional conditions, which were agreed to by the applicant, to protect existing developments and to remain consistent with the 2009 Comprehensive Land Use Plan:**

- **A landscape buffer in accordance with Unified Development Ordinance Article 14-10.3 on the northern property line**
- **Maintain the existing natural vegetation, as shown on the site plan as proposed open space area that borders Beaver Dam Creek near Boiling Springs Tributary 11, in accordance with sound forestry practices and the Comprehensive Forestry Plan covering the property on file with the Cleveland County Tax Office**
- **Dedication of a recreation easement for a future greenway on the existing sewer easement on the property**

- Limit the time period in which the driveway across from Crest Middle School shall be used to no usage during peak school traffic hours. Deliveries and construction use must refrain from using this driveway during peak school traffic hours.

Mr. Scharer concluded by stating the site is currently classified as Conservation Development and the aforementioned conditions will help to maintain the Conservation Development principles found in the Comprehensive Land Use Plan. Although a Level 3 SES is an intense land use, it does minimize land impacts and maintains the existing contours by not grading the site. There are no clear criteria for a site to be classified as Conservation Development Area. Therefore, it is incumbent upon City Council to interpret and decide if this proposed use is consistent with the Comprehensive Land Use Plan.

Mr. Amaya opened the public hearing at 6:14 p.m. and sworn testimony was given as follows:

Brian C. Bednar is the President of Birdseye Renewable Energy with offices located at 1125 East Morehead Street, Suite 206, Charlotte, North Carolina. As the developer of the site, Mr. Bednar addressed the public's most common concerns related to solar energy systems. He provided, presented, and summarized research relating to the impact of solar facilities on health and safety, electric and magnetic fields, and local property values. With regard to health and safety issues, Mr. Bednar explained the photovoltaic technology is the same as what is found in the common solar-powered calculator. With regard to electric and magnetic fields, Mr. Bednar stated the average daily background exposure to magnetic fields is estimated to be around one milligauss (mG), the unit used to measure magnetic field strength. With regard to property values, Mr. Bednar indicated there is limited evidence of the impact of energy development on property values. He commented no significant, enduring, or negative property value effects have been found.

With regard to reflectivity and potential visual impacts from solar projects especially near airports, Mr. Bednar received and submitted as evidence a letter from the Federal Aviation Administration which conducted an aeronautical study of the proposed structure and determined there was no hazard to air navigation.

Mr. Bednar added, as stated previously, the proposed Special Use Permit meets all the requirements for a Level III Solar Energy System (SES) found in the City's UDO. He described other land uses in the area as agricultural, woods and buffering, residential, and institutional. Additional buffering will

be voluntarily added to accommodate the neighboring properties, Crest Middle School and Beaver Dam Baptist Church. Mr. Bednar confirmed the site will not be graded and upon decommissioning of the project, the land will revert back to agricultural use per the terms of his lease with the landlord.

However, he acknowledged the Shelby Comprehensive Land Use Plan contains no specific language about SESs. Mr. Bednar noted several Land Use Plan goals can be tied to his proposed project, which he discussed as follows:

- Low environmental impact
- Connectivity and green space
- Low intensity development
- Low infrastructure impact
- Economic diversity within Cleveland County

Next Mr. Bednar provided a presentation of various views of the Pebble Creek neighborhood from the solar project along with views of the solar project from the Pebble Creek neighborhood, noting all photographs were facing in the direction of the proposed solar project.

Mr. Bednar concluded by stating the location is good for the proposed project and was developed with the spirit of the Shelby Comprehensive Land Use Plan in mind.

Dennis Stitzel who resides at 916 Old Boiling Springs Road in Shelby, North Carolina spoke against the proposed Special Use Permit for a solar energy system and as the developer of the Pebble Creek subdivision which was voluntarily annexed into the City. Mr. Stitzel stated there is little to no conclusive data or research as to the long-term effects from a solar plant installation of this size relating to health and safety issues, electric and magnetic fields, glare, wildlife, and property values. He expressed his personal concerns over these issues and also the concerns on behalf of the residents and schools in close proximity to this area. Mr. Stitzel stated as a real estate agent, realtor, and developer, he would not personally purchase property and attempt to sell homes adjacent to a solar plant thus if the solar plant would have been in place, he would never have considered the site for a residential development. Mr. Stitzel stated the proposed project is not in harmony with the surrounding properties. The subject property is currently zoned Residential 20 (R20) and in Mr. Stitzel's opinion should be zoned Residential 10 (R10). The applicant has requested to install a massive, industrial-grade solar plant on the parcel that is currently residential in nature. The project would encompass approximately 115 acres with approximately 75,000 panels. Mr. Stitzel stated in the fall and winter months

there are no means to screen or block the view of the panels and they will be visible to the Pebble Creek residents. Mr. Stitzel stated R20 is primarily intended to accommodate low to moderate density single-family, detached dwellings. This parcel should remain in harmony with the surrounding area of single family homes and not be issued a Special Use Permit allowing a light or general industrial application without a change of zoning. When City sewer services were extended to the Pebble Creek development, Mr. Stitzel entered into a developer's agreement with the City allowing access to the sewer easement for future residential growth. Mr. Stitzel stated in keeping with the long-term goals and visions of the Shelby Comprehensive Land Use Plan for residential growth, this property with its proximity to schools and utility infrastructure, will be a prime location for residential development to accommodate a growing workforce generated by the Foothills Commerce Center. Mr. Stitzel summarized the 2009 Shelby Comprehensive Land Use Plan, based on market analysis findings, the major initiatives the City of Shelby should focus on during the next 10 to 15 years:

- Housing units with traditional designs in neighborhoods with improved connectivity to activity centers
- Mixed-use retail and office in strategic locations, enabling combined trips and reduced congestion
- Industrial land and buildings for jobs that pay higher wages and reflect labor force skills

Mr. Stitzel concluded by stating the solar project does not fit the aforementioned initiatives. The subject project with all utility infrastructures in place would normally be zoned R10, the same as the Pebble Creek subdivision. A solar farm is not allowed in R10. The proposed location of the solar plant is a wrong fit for the community and will not benefit the residents and businesses of Shelby. Mr. Stitzel requested the Special Use Permit be denied.

Richard Clark who resides at 2605 Willow Brooke Drive in Shelby, North Carolina spoke against the proposed Special Use Permit for a solar energy system. Mr. Clark stated a Conservation Development area as defined by the Shelby Comprehensive Land Use Plan does not include a solar farm use as a type of open space. He added the R20 Residential District is defined as a low-density residential classification and does not include a solar farm as an intended use. Mr. Clark further stated studies on electric and magnetic fields have reported potential health effects on individuals hypersensitive to exposure. The impact of long-term exposure on healthy individuals and children includes causing Attention Deficit Hyperactivity Disorder (ADHD).

Bill Wright who resides at 2612 Flagstone Court in Shelby, North Carolina spoke against the proposed Special Use Permit for a solar energy system. Mr. Wright reviewed the Shelby Comprehensive Land Use Plan and stated the fundamental sentiment is development is welcome in Shelby with a desire for quality development that meets the City's standards. There is a need to be developer-friendly with reasonable restrictions on development. Mr. Wright stated the Pebble Creek subdivision incorporates the guidelines and intent of the Land Use Plan. If the solar farm is constructed, it will cause significant, detrimental results for Pebble Creek homeowners in the forms of less desirable residential use for prospective buyers and probable reduction in residential property values, which could result in a lower tax base. Mr. Wright suggested the solar farm location should be closer to the industrial developing areas near Washburn Switch Road or Artee Road along the new US 74 Bypass corridor.

Joseph Newton Craver II who resides at 700 West Sumter Street in Shelby, North Carolina spoke in support of the proposed Special Use Permit and as one of the owners of the property located at and around the intersection of Beaver Dam Church Road and Crest Road. Mr. Craver has entered into a lease agreement with Birdseye Renewable Energy for the proposed construction of a solar energy system on the site. He stated the construction and operation of a solar farm is consistent with the Shelby Comprehensive Land Use Plan given that solar farms are a permitted use in R20 and is allowed in the City's UDO. The proposed project will benefit Mr. Craver and his sister, as the landowners, with 20 to 30 years of stability, along with a surety bond to remove the installation which would then revert the land to agricultural use. The proposed project will not adversely affect the immediate neighbors, Crest Middle School and Beaver Dam Baptist Church, or the surrounding community given that the proposed project will provide the requisite conditions as to vegetative screening, is passive, will generate no noise, no emissions, no runoff, and virtually no traffic after construction. The proposed project will benefit the immediate neighbors and the surrounding community with stability in the area by providing a source of clean energy, and may possibly attract a green-minded industry for economic development purposes.

Field Champion who resides at 2616 Pebble Creek Drive in Shelby, North Carolina spoke against the proposed Special Use Permit for a solar energy system. Mr. Champion is the owner of Champion Studios located near the Foothills Commerce Center. As a new resident of Pebble Creek, he would not have purchased his home if a solar farm existed and was in close proximity to the property. Mr. Champion stated the proposed site for the solar farm is the wrong location and suggested it should be constructed near the industrial development taking place at or near the Foothills Commerce

Center. He added there should be an emphasis to preserve the first exit off the new 74 Bypass at Washburn Switch Road. Mr. Champion also stated residential housing such as the Pebble Creek subdivision should be given more consideration to attract industries to the area.

Upon questioning with regard to the Notice of Public Hearing, Mr. Howell clarified a citizen's right to a fair hearing requires all evidence to be presented to Council members at a public hearing, as opposed to privately where it is not under oath and subject to cross-examination. As a result, no undisclosed communications with members of a board sitting in a quasi-judicial capacity are allowed.

Mr. Amaya closed the public hearing at 7:22 p.m.

Mr. Amaya reminded Council in considering whether to approve an application for a Special Use Permit, it shall proceed according to the following format as read into the record by Mr. Bailey.

Prior to reading the Findings of Fact, Mr. Bailey, in the spirit of full disclosure, stated Council Member Ben Kittrell and City Manager Rick Howell both reside in the Pebble Creek subdivision. However, this disclosure will not be considered or influence Council's discussion or decision in this matter.

Mr. Bailey continued as follows:

- The property is within the zoning jurisdiction of the City of Shelby.

Staff certified the requested permit is within the jurisdiction of the City of Shelby. Council agreed.

- The application is complete.

Staff certified the application is complete. Council agreed.

- The proposed use complies with all of the requirements of the zoning ordinance.

Staff certified, if completed as proposed in the application, the proposed development will comply with all of the requirements of the UDO. Council agreed.

- The use will not materially endanger the public health or safety.

Council discussed and determined solar farms create no harmful



gases or hazardous materials, and present no known health or safety issues.

- The use will not substantially injure the value of adjoining or abutting property.

Council discussed and determined there is limited research available regarding utility-scale ground-mounted solar PV and property values.

- The use will be in harmony with the area in which it is to be located.

Council discussed and determined it was difficult to define harmony with existing nearby uses and if the applicant was seeking to establish a non-conforming use.

- The use will be in general conformity with the Land Development Plan or other plans officially adopted by the City Council.  
Council discussed and determined the proposed use is to some extent inconsistent with the Shelby Comprehensive Land Use Plan.

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 Ayrshire Holdings, LLC is complete; and, the following conclusions were made:

- The owner of the property, Ayrshire Holdings, 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 at 201 Beaver Dam Church Road in the Residential 20 (R-20) Zoning District.
- Land uses in the surrounding area are primarily agricultural, residential, and educational uses.
- The Comprehensive Land Use Plan designates this area as a Conservation Development Area.
- The petitioner has declared that the intended use of the property is for a 115 acre Level 3 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 proposed solar energy farm use will substantially injure the value of adjoining or abutting property.
- The proposed solar energy farm will not be in harmony with the area in which it is to be located.
- The proposed solar energy farm will not be in general conformity with the Shelby Comprehensive Land Use Plan.

**ACTION TAKEN:** Upon a motion made by Mr. Hendrick to approve, City Council voted 4 (White, Patterson, Bailey, and Amaya) to 1 (Hendrick) to deny Resolution No. 47-2014 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT FOR A SOLAR ENERGY SYSTEM FARM AT 201 BEAVER DAM CHURCH ROAD". The application for a Special Use Permit failed based on the following specific reasons that the proposed solar energy system farm will substantially injure the value of adjoining or abutting property, 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.

Mr. Amaya declared a recess at 7:45 p.m. and reconvened the meeting at 7:48 p.m.

**D. Consent Agenda:**

**ACTION TAKEN:** Mr. Amaya presented the consent agenda. Mr. White 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 August 18, 2014
- 2) Approval of Special Event Permit Application:

- a. **Central United Methodist Church Fall Festival, requested date: October 26, 2014**
- 3) **Approval of a resolution honoring David Bradley on the occasion of his retirement from employment with the City of Shelby: Resolution No. 48-2014**
- 4) **Approval of a resolution authorizing the execution of a Traffic-Review and Inspection Agreement between the North Carolina Department of Transportation (NCDOT) and the City of Shelby: Resolution No. 49-2014**
- 5) **Approval of a resolution authorizing the Mayor and City Clerk to execute a Subordination Agreement: Resolution No. 50-2014**

#### **END CONSENT AGENDA**

#### **E. Unfinished Business:**

- 1) **Consideration of a resolution authorizing selection of McGill Associates P. A. based on qualifications for the Brushy Creek Outfall Sewer Project: Resolution No. 51-2014**

**Mr. Howell introduced Resolution No. 51-2014 for Council's consideration. He reminded Council the previously established Brushy Creek Outfall Project will be designed to provide gravity sanitary sewer service to the area referenced as the Washburn Switch Business Park and the surrounding area. The Cleveland County Commissioners have also agreed to share and contribute up to \$250,000 toward the design and permitting phase. The Request for Qualifications (RFQ) was issued in July 2014 and the process was held in accordance with North Carolina General Statutes, which are the guidelines that prescribe selection of architectural, engineering, and surveying services. At this time, staff recommended McGill Associates, PA be selected as the most qualified with negotiations to take place for an agreement and engineering fee to design the outfall project.**

**Mr. Howell reiterated that public sewer service is the most essential public service when it comes to attracting industry and driving economic development.**

**ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Resolution No. 51-2014 entitled, "A RESOLUTION AUTHORIZING SELECTION OF MCGILL ASSOCIATES P. A. BASED ON QUALIFICATIONS FOR THE BRUSHY CREEK OUTFALL SEWER PROJECT".**

- 2) Consideration of a resolution authorizing and awarding a contract for the purchase of a 2015 Pierce Velocity PUC Heavy Duty 75 foot Ladder (Quint) Fire Apparatus utilizing the competitive bidding group purchasing method: Resolution No. 52-2014

Mr. Howell introduced Resolution No. 52-2014 for Council's consideration. He stated Council previously approved a capital expenditure for the purchase of a quint type fire apparatus for the Fire & Rescue Department to be included in the Fiscal Year 2014-2015 budget cycle. The project provides for the retirement of an obsolete fire engine from the department's fleet of apparatus, and the reassignment of an existing fifteen-year old quint type fire apparatus to continue service in a reserve capacity.

Mr. Howell said the project is consistent with fleet replacement schedule contained in the City of Shelby Capital Improvement Plan (CIP) which provides for the retirement of fire apparatus after twenty (20) years of service. The vehicle scheduled for retirement is more than ten (10) years past its effective service life. During the research and development process, it was determined that the interests of the City would be best served by using the services of the Houston-Galveston Area Council (HGAC) group purchase organization (GPO). The HGAC-GPO assists local governments in reducing costs through its nationwide government to government procurement service. The GPO offers established competitively priced contracts that have been awarded through a public procurement process compliant with state statutes. In the final analysis of the specifications, it was found that the apparatus offered by Pierce Manufacturing along with the dealer support services through Atlantic Emergency Solutions most effectively meet the needs of the Fire & Rescue Department.

Mr. Howell recommended utilizing the group purchase method to procure a Pierce Velocity (HD PUC 75 foot Ladder) Quint Fire Apparatus from Atlantic Emergency Solutions.

**ACTION TAKEN:** Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Resolution No. 52-2014 entitled, "A RESOLUTION AUTHORIZING AND AWARDED A CONTRACT FOR THE PURCHASE OF A 2015 PIERCE VELOCITY PUC HEAVY DUTY 75 FOOT LADDER (QUINT) FIRE APPARATUS UTILIZING THE COMPETITIVE BIDDING GROUP PURCHASING METHOD".

F. New Business: None

H. City Manager's Report:

- 1) **Mr. Howell updated Council on the Washburn Switch Interchange Small Area Plan, which is the first of five small area plans for interchanges along the new US 74 Bypass. He provided an overview of how this plan and as each interchange study area planning process are developed including research and data gathering and analysis; community participation through committee and public input meetings; development of goals, recommendations, and envisioning; development of a draft plan; and finalization and adoption of plan by City Council. Mr. Howell informed Council a public hearing will be held for the consideration of adopting and approving the Washburn Switch Interchange Small Area Plan in October 2014.**
- 2) **With regard to the Wastewater Treatment Plant Renovation Project, Mr. Howell said the construction work has begun. As this is approximately an 18-month process, regular updates will include photographs and progress reports in the coming months. Mr. Howell offered to schedule escorted tours of the construction site to City Council.**

**I. Council Announcements and Remarks:**

- 1) **Mr. Bailey reported on his attendance at the Gaston-Cleveland-Lincoln Metropolitan Planning Organization (MPO) meeting of August 28, 2014, discussing project planning and implementation of the widening of Interstate 85 Project from Belmont, North Carolina to US 321 in Gastonia, North Carolina ranking higher than the Garden Parkway Project (Gaston East-West Connector). The MPO Board continues to assess project rankings and point assignments, noting a 15 percent input toward the NC Department of Transportation Strategic Mobility Formula.**
- 2) **Mr. Amaya made the following announcements:**
  - **The 2014 City of Shelby Employee Picnic will be held on September 24, 2014 beginning at 11:00 a.m. at Shelby City Park**
  - **The Keep Shelby Beautiful Commission and the Uptown Shelby Association have scheduled an Uptown Shelby Litter Sweep on October 11, 2014 from 9:00 a.m. to 11:00 a.m.**

**J. Adjournment:**

- 1) **Motion to adjourn**

**ACTION TAKEN: Upon a motion made by Mr. White, City Council voted**

unanimously to adjourn the meeting at 8:09 p.m.

Respectfully submitted,

Bernadette A. Parduski, NCCMC, MMC  
City Clerk

Dicky Amaya  
Mayor Pro tempore

Minutes of September 15, 2014