

MINUTES

Regular Meeting
City Hall Council Chamber

March 18, 2013
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Christopher H. (Chris) Mabry, David W. White, Jeanette D. Patterson, Dennis C. Bailey, Dicky Amaya; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, NCCMC, MMC, 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, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Parks and Recreation Charlie Holtzclaw, Director of Planning Services and Interim Director of Development Services Walter (Walt) Scharer, AICP; and media representatives

Absent: Council Member Joel R. Shores, Jr.

Mayor Anthony called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. He recognized former Mayors Mike Philbeck and Ted Alexander along with former Council Member Kevin Allen.

The Mayor gave the invocation and Mrs. Patterson led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

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

B. Special Presentations:

- 1) Recognition of Ricky Brackett on the occasion of his retirement from employment with the City of Shelby: Resolution No. 10-2013

Mayor Anthony called upon Mr. Brackett who recognized his wife and his former fire service crew members, including Chief Hunt and Assistant Chief Whisnant in attendance. The Mayor formally read and presented framed Resolution No. 10-2013 to Mr. Brackett. He then presented the key to the City and a City lapel pin to Mr. Brackett in honor of and with heartfelt appreciation for more than 30 years of dedicated service to the City of Shelby

Fire & Rescue Department.

Humbled by the recognition, Mr. Brackett expressed his appreciation to many, including City officials, for supporting him over the years as well as for the overall support given to the Shelby Fire & Rescue Department.

2) Proposed Dog Park in the City of Shelby – Kyle Aldinger, M. D.

Dr. Aldinger introduced the subject matter of his presentation specifically to establish and open a dog park in the City of Shelby. He believes there is growing public momentum, which is gaining interest and support, evidenced by the 15,000 people, including his family, who own at least one dog in Cleveland County.

Dr. Aldinger stated a dog park has the potential to be a recreational asset to families and to the community due to the following:

- Fits in with Shelby's push toward fitness
- Exercised dogs make for better neighbors
- Multi-generational appeal

Next Dr. Aldinger provided an overview of the basic requirements for a dog park:

- Minimum of two acres – open, treed, mixed, or reclaimed land
- Complete fence enclosure
- Water access/availability
- Receptacles for trash and dog waste

Dr. Aldinger proposed a private/public partnership with the City of Shelby and outlined the following requests:

- Land for the dog park
- Minor landscape maintenance including mowing, edge trimming etc.
- Yard hydrant

Dr. Aldinger stated volunteers and the dog park governing board would be willing to provide:

- Donations and funding for all attendant hardscaping including fencing, benches, shelters, etc.
- Routine cleaning and policing of grounds
- Signage

- Major maintenance including tree pruning, ground cover replenishment, etc.

Dr. Aldinger concluded by requesting the identity of the City's point-of-contact with whom to initiate the development of a location and plan for the proposed dog park.

Discussion followed and included the locations of established dog parks as models in Gastonia and Charlotte, the cost of long term expenses to the City for a dog park from a budget standpoint, and the consideration but ultimate exclusion of a dog park from the City's final Parks and Recreation Master Plan.

ACTION TAKEN: Upon a motion made by Mrs. Patterson, City Council voted unanimously to direct the City Manager to report back with further information identifying possible sites, costs, and other specifics related to establishing a dog park in the City of Shelby for Council's consideration.

C. Public Comment:

Christina Alexander, the daughter of former Mayor, Ted Alexander, and Patti Alexander, spoke about being inspired to create a project, "Cases for Comfort", in August 2012 for patients at the Levine Children's Hospital in Charlotte, North Carolina. After visiting a friend at the hospital, Miss Alexander had the idea to collect white pillowcases and fabric markers to give to the children so they could decorate their own pillowcases. Since the project began, Miss Alexander has delivered 600 kits to the Levine Children's Hospital. As a member of the Shelby High School Interact Club, she also recruited club members to collect the items for the local project and 50 kits were delivered to Cleveland Regional Medical Center.

Miss Alexander expressed her appreciation to all those who supported and donated to "Cases for Comfort" and requested additional donations for the ongoing project, which she hopes will continue to provide a creative outlet for hospitalized children.

D. Public Hearing:

- 1) Consideration of a resolution granting a Special Use Permit to Penco Land Company LLC for 1020 Sue Lane near County Home Road: Resolution No. 15-2013

After taking his oath, Mr. Scharer presented the staff report. Utilizing a map of the area, Mr. Scharer pointed to a site at 1020 Sue Lane near County Home Road being considered for a 56-unit multi-family development for seniors. The total area of the site is approximately 4 acres and the subject property is currently vacant.

Mr. Scharer stated a multi-family development with 25 or more units is permitted by a Special Use Permit (SUP) in the General Business (GB) zoning district. The Comprehensive Land Use Plan designates the area as a mixed use area. Mixed use area is defined as an area that concentrates a mix of higher-intensity commercial uses and high-density residential uses near major thoroughfares or intersections. Mr. Scharer added the proposal is consistent with the City's Comprehensive Land Use Plan.

Mr. Scharer reminded Council that a hearing involving this same property and developer was held in March 2012 in which the applicant, Penco Land Company, requested a Special Use Permit for a 48-unit project. He noted the only change is the requested density is now a 56-unit project.

Upon questioning, Mr. Scharer responded if Council decided to add compliance with the City's Stormwater Phase II Program as a condition, the Special Use Permit would need to be amended to include same.

Mr. Howell clarified the City's Stormwater Phase II ordinance has not been drafted at this time and is forthcoming as part of the implementation of the City's Stormwater Program. He recommended adding language to the permit that requires stormwater compliance utilizing current best management practices.

Prior to the public hearing, Mayor Anthony provided instructions as to the quasi-judicial process. A public hearing is conducted by City Council for sworn testimony concerning facts related to the Special Use Permit. City Council either approves or disapproves the Special Use Permit based on staff recommendations and sworn testimony by the public and/or the applicant.

Mayor Anthony opened the public hearing at 6:27 p.m. and sworn testimony was given as follows:

Mike Philbeck who resides at 1805 Arbor Way Drive in Shelby, North Carolina spoke in support of the Special Use Permit Application submitted by the applicant, Penco Land Company LLC. Mr. Philbeck stated the applicant has met the required findings, which have not materially changed from last year's application except for the number of additional units. He stated the

increased density is due to the competitive nature of projects considered for tax credits awarded through the North Carolina Housing Finance Agency. Mr. Philbeck noted City staff recommended approval of the Special Use Permit as proposed. With regard to compliance with stormwater regulations, Penco Land Company has a proven record as a responsible corporate citizen and will comply accordingly.

Lee Van DeCarr who resides at 3924 Brownie Place in Raleigh, North Carolina also spoke in support of the Special Use Permit Application submitted by the applicant, Penco Land Company, LLC. Mr. Van DeCarr stated Penco has family apartments in Shelby complexes at Lanier Point I (48 units) and Lanier Point II (40 units). He is employed by the developer of the proposed 56-unit, independent-living senior apartment building designed for residents ages 55 and older to be named Alexandria Place. Mr. Van DeCarr distributed the project site plans, elevations, and renderings for Council's viewing. He added the aging population of Shelby will require better, safe, high quality, affordable rental units and the Special Use Permit fulfills the goal of encouraging quality high density residential and mixed use development. He reiterated Mr. Philbeck's comments regarding compliance with stormwater regulations.

Keith Lane who resides at 325 Circleview Drive in Shelby, North Carolina represented his mother, Ann Lane, who resides at 915 Earl Road in Shelby, North Carolina and his aunt, who resides next door to his mother. Mr. Lane expressed concern about the public walking through his relatives' yards. He requested the developer consider placing a fence or barrier along the property line.

Mayor Anthony closed the public hearing at 6:35 p.m.

Having heard all of the evidence and arguments presented at the public hearing, Council found and determined that the application of Penco Land Company LLC is complete, and the following conclusions were made:

- The owner of the property Penco Land Company, LLC submitted the required application and site plan for a Special Use Permit.
- According to Article 9-3-1, multi-family dwellings of more than 25 units are permitted in the GB Zoning District with a Special Use Permit issued by City Council.
- The subject parcel lies within the City of Shelby fronting at 1020 Sue Lane in the General Business (GB) District.

- Land use in the surrounding area is a mixture of commercial, institutional, and residential uses.
- The Comprehensive Land Use Plan designates this area as a Mixed Use Area.
- The petitioner has declared that the intended use of the property is for a 56-unit apartment complex with customary accessory uses.
- Other than what is shown on the site plan, no other changes to the site are planned.
- 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 Shelby Land Use Development Plan.

Upon questioning, Mr. Scharer responded that the City requires a buffer, which may include a fence, between the single family uses on Earl Road and this multi-family use.

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Resolution No. 15-2013 entitled, “A RESOLUTION GRANTING A SPECIAL USE PERMIT TO PENCO LAND COMPANY LLC FOR A MULTI-FAMILY HOUSING DEVELOPMENT PROJECT AT 1020 SUE LANE NEAR COUNTY HOME ROAD”, as amended, to add compliance with the City’s Stormwater Program and the inclusion of an opaque fence in the buffer adjoining all single family dwellings as conditions of the Special Use Permit.

E. Consent Agenda:

ACTION TAKEN: Mayor Anthony presented the consent agenda. Mrs.

Patterson 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 March 4, 2013
- 2) City of Shelby's KSM Castings NC Inc. Utility Extension Projects:
 - a. Approval of a resolution authorizing the submission of an Industrial Development Fund (IDF) application to the North Carolina Department of Commerce for the KSM Castings NC Inc. Utility Extension Project: Resolution No. 16-2013
 - b. Adoption of an ordinance establishing a capital project ordinance and budgets for the City of Shelby's KSM Castings NC Inc. Utility Extension Projects: Ordinance No. 3-2013

END CONSENT AGENDA

F. Unfinished Business:

- 1) Consideration of appointments to City advisory boards and commissions:
 - a. Alcoholic Beverage Control Board

Mrs. Parduski reported the terms of two incumbents, Carl Dockery and Page Morgan, conclude April 2013. The incumbents wish to continue their service.

The passing of longtime chair, Phil Hege, has created a vacancy for an unexpired term which concludes April 2015.

Applications on file in the Clerk's Office include:

- Darryl Stephen Ager
- Durwin J. Briscoe
- Andrew L. Hopper, Sr.
- Michael R. Royster
- David M. Schweppe
- Talmadge C. Strickland IV

Mr. Amaya nominated the incumbents, Mr. Dockery and Mrs. Morgan, for reappointment to new terms and Mr. Schweppe for appointment to the unexpired term.

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

F. New Business:

- 1) Consideration of a resolution supporting the de-annexation of certain real property: Resolution No. 17-2013

Mr. Howell introduced Resolution No. 17-2013 for Council's consideration. If approved, the resolution would request the local legislative delegation to the North Carolina General Assembly to sponsor a local bill that would de-annex approximately 56 acres on Joe's Lake Road from the City limits. Mr. Howell reminded Council this property was voluntarily annexed by Hallelujah Communities LLC in 2007 for the purpose of a higher density residential development. Hallelujah Communities LLC is in the process of transferring ownership to Cleveland County which will in turn transfer ownership to Pinnacle Classical Academy.

Mr. Howell stated it is the intent of Pinnacle Classical Academy to construct a public charter school on this site within the next two to three years. In order to secure financing, the Pinnacle Classical Academy has turned to the U S Department of Agriculture (USDA) Rural Development Program. According to the USDA guidelines, eligible community facilities such as a school must meet this requirement: "For essential community facilities, the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants, according to the latest decennial census of the United States". Because the official census population of the City of Shelby exceeded 20,000 for the most recent decennial census, the USDA cannot make a loan to Pinnacle Classical Academy as long as this property is within the City limits.

Mr. Howell recommended Council's approval of the resolution to request local legislation that will accomplish the needed de-annexation. Representative Tim Moore has been apprised of the situation and will sponsor the bill. The bill includes certain conditions as to property taxes, the City's powers of extraterritorial jurisdiction, and if the property is not developed for the purpose of operating a public school within the timeframe.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 17-2013 entitled, "A RESOLUTION SUPPORTING THE DE-ANNEXATION OF CERTAIN REAL PROPERTY".

G. City Manager's Report:

- 1) **Mr. Howell informed Council the Police Department building must have a new roof on the flat section. Cost estimates are currently being developed. This has been a deferred maintenance item and must be done in the coming fiscal year as a budget appropriation from reserves. The repair is essential due to protecting the City's significant investment in technological and communications equipment housed within the building.**
- 2) **As a follow-up to the animal waste discussion, Mr. Howell previously provided Council with several sample ordinances from various cities for review. After further investigation, he stated that while the provisions existed, most cities indicated enforcement is minor with regard to this type of nuisance. Rather each indicated they enforce it much like they do other nuisances, littering, and general offense violations within their codes. Each city used either a criminal misdemeanor penalty or a civil citation policy with fines ranging from \$50 to \$500. The majority indicated reasonable signage and public education was essential. Discussion followed and concluded with Council's consensus directing Mr. Howell to draft an animal waste ordinance to include regulations addressing both public and private properties for their consideration.**
- 3) **Mr. Howell reminded the Mayor and Council members that Shelby will be hosting one of the ElectriCities of North Carolina regional meetings on April 4, 2013 at 6:00 p.m. at the Don Gibson Theatre.**

H. Council Announcements and Remarks:

- 1) **Mayor Anthony reminded Council members to attend the banquet honoring all Parks and Recreation volunteers on March 25, 2013 at 6:00 p.m. in the City Park gym.**

Mayor Anthony announced Spring Bulky Item Collection in the City begins April 15, 2013 and items will be collected on the same day as trash is collected during this week.
- 2) **Mrs. Patterson confirmed the Washington Heights neighborhood walk through is set for March 21, 2013 at 4:00 p.m. with the starting point being Carver Street and Eaves Road.**
- 3) **Mr. White initiated a discussion regarding the City's tree replacement policy, suggesting it may be time to review and update the guidelines. Mr. Howell stated the Urban Forest Management Plan, which was adopted**

several years ago, does not allow for a diversity of tree species but rather replacement to maintain the existing species, citing the Uptown Shelby live oaks. Further discussion followed. Mr. Howell will provide copies of the City's current policies to Council for further examination.

- 4) Mr. Bailey reported as a General Government Legislative Action Committee member with the North Carolina League of Municipalities, he was in Raleigh, North Carolina on March 6, 2013 to participate in one-on-one meetings with legislators to continue to voice the concerns of municipalities and to have a presence at the General Assembly.

As a follow-up item, Mr. Howell mentioned the significance of tracking new proposed legislation in which all extraterritorial jurisdiction (ETJ) authority would be eliminated statewide. He explained the importance of ETJ as a longstanding planning tool in North Carolina that frequently includes county involvement and helps ensure that municipal residents living near corporate limits are protected from problematic development outside the corporate limits.

- 5) Mr. Mabry requested an update about the Great American Cleanup which began March 1 and runs through May 31 every year. Mr. Scharer responded that events are in the planning stages and will be publicized very shortly.

I. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to adjourn the meeting at 7:18 p.m.

Respectfully submitted,

Bernadette A. Parduski, NCCMC, MMC
City Clerk

O. Stanhope Anthony III
Mayor