

MINUTES

Regular Meeting
City Hall Council Chamber

May 20, 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, Joel R. Shores, Jr., 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

Mayor Anthony called the meeting to order at 6:00 p.m., welcomed all who were in attendance, and recognized former Council members Kevin Allen and Andrew Hopper as well as Mayor Max Hopper of Earl, North Carolina. The Mayor gave the invocation and Mr. Bailey led the *Pledge of Allegiance*.

A. Approval of agenda:

Mayor Anthony announced the continuation of Fiscal Year 2013-2014 budget discussions as Item F-3 under Unfinished Business.

1) Motion to adopt the proposed agenda

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

B. Special Presentation:

1) Recognition of Eugene Philbeck on the occasion of his retirement from employment with the City of Shelby: Resolution No. 25-2013

Mayor Anthony called upon Mr. Philbeck, who recognized his girlfriend in attendance. The Mayor formally read and presented framed Resolution No. 25-2013 to Mr. Philbeck. He then presented the key to the City and a City lapel pin to Mr. Philbeck in honor of and with heartfelt appreciation for more than 30 years of dedicated service to the City of Shelby Electric Department.

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

C. Public Comment:

- 1) **Randy Myers** who resides at 920 Surry Drive in Shelby, North Carolina expressed his concerns regarding the proposed budget. Mr. Myers spoke in support of rewarding City employees, who care for and protect the citizens, and have not received pay increases in years, as a priority. He also supported the City's recreation program in general for the benefit of youth and seniors and specifically mentioned saving the Royster Memorial Golf Course. In his opinion, if elected officials controlled the budget numbers, the City would prosper.
- 2) **Brian Putnam** who resides at 1626 Peterson Drive in Shelby, North Carolina is a member of Royster Memorial Golf Course and spoke in support of saving it. Mr. Putnam said the bottom line can be improved and he and other members have ideas they would like to share to establish a collaborative effort with the City.
- 3) **Jay Gragg** who resides at 1003 West Sumter Street in Shelby, North Carolina, spoke as President of Uptown Shelby Association (USA), Inc. and in support of their request to enact a proposed change in the City ordinances that govern the sale and consumption of beer and wine for special events. Mr. Gragg requested Council to approve the amendment to the alcoholic beverages ordinance to permit the movement of USA's Alive After Five beer and wine garden to Washington Street between East Warren and East Marion Streets.
- 4) **Page Morgan** who resides at 1225 Brookwood Drive in Shelby, North Carolina spoke as an individual and as a member of Central United Methodist Church who regularly partners with the Arts Council and USA for numerous event opportunities. With regard to the proposal modifying the alcoholic beverage ordinance, Mrs. Morgan requested USA continue with its efforts to provide sufficient security and sanitation for Alive After Five concerts.
- 5) **Amy Hendrick Buttrick** who resides at 3560 Plainfield Drive in Shelby, North Carolina spoke in support of all swimming activities currently offered at the Shelby Aquatics Center as vital to the community's overall health and well-being. With regard to the proposed budget cuts, Mrs. Buttrick said she is against reducing the Center's operations to four days a week, Thursday through Sunday only. In her opinion, this reduction would represent a disservice to the community as a whole.

- 6) **Martina Clark, P O Box 1094, Shelby, North Carolina spoke against two items included in the proposed budget. Ms. Clark disagreed with reducing the yard waste collection schedule to four months per year from November to February since it affects senior homeowners and those citizens who did not own trucks to haul trash away. She also suggested City employee salaries be frozen until next budget year due to the current economy.**
- 7) **Julie Brame who resides at 838 West Marion Street in Shelby, North Carolina, lives in very close proximity to City Park. Along with her two daughters, Mrs. Brame spoke in support of all swimming activities, especially the swimming lessons, currently offered at the Shelby Aquatics Center. She added the Aquatics Center is family-friendly and provided an incredible experience for her and her children. Mrs. Brame requested Council reconsider this proposed budget reduction.**

D. Public Hearings:

- 1) **Consideration of an ordinance to extend the corporate limits of the City of Shelby, North Carolina: Ordinance No. 9-2013**

Mr. Scharer reminded Council the City purchased 1.181 acres of land at 958 East College Avenue in February 2013. This property is located adjacent to and abutting the Shelby-Cleveland County Regional Airport. Council then initiated the annexation process by adopting a resolution of intent in April 2013, which set this date for the public hearing.

Mr. Scharer noted currently there is a vacant single-family dwelling on the property which will be demolished.

Mr. Howell added all costs associated with this property transaction were provided with grant funding by the North Carolina Department of Transportation-Division of Aviation for the Shelby-Cleveland County Regional Airport Land Acquisition and Easements Project.

Mayor Anthony opened the public hearing at 6:24 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:25 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 9-2013 entitled, "AN

ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SHELBY, NORTH CAROLINA”.

- 2) Consideration of an ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 10-2013

Utilizing a map of the area, Mr. Scharer pointed to the subject property at 1143 Airport Road near Carter Road which is in close proximity to North Post Road. The area proposed for rezoning is approximately 7.5 acres. The applicant is requesting the property be rezoned from the Light Industrial (LI) District to the General Industrial (GI) District.

Mr. Scharer stated the Comprehensive Land Use Plan designates the area surrounding the subject property as low density residential and open space. The proposed zoning classification (GI) is inconsistent with the Comprehensive Land Use Plan. Staff did not recommend this proposed zoning amendment.

Mr. Scharer further stated the Planning and Zoning Board heard the matter and recommended the proposed zoning amendment to GI.

Mayor Anthony opened the public hearing at 6:26 p.m. and invited comments from the public:

Mark Thompson whose office is located at 1963 Randolph Road in Shelby, North Carolina spoke in support of the applicant, S & J Enterprise LLC, and the proposed GI zoning, noting its compatibility with neighboring business properties.

Mayor Anthony closed the public hearing at 6:30 p.m.

Mr. Amaya suggested the best compromise may be the option of conditional use zoning.

ACTION TAKEN: Upon a motion made by Mr. White to approve and adopt Ordinance No. 10-2013 entitled, “AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA”, City Council voted 3 to 3 in a tie. (FOR: White, Patterson, and Shores; AGAINST: Mabry, Bailey, and Amaya). The motion was defeated.

Further discussion followed as to clarification of the Comprehensive Land Use Plan zoning designations and the requirements for conditional use permit approval.

**3) Consideration of a resolution granting a Special Use Permit to the Pinnacle Classical Academy for 900 South Post Road:
Resolution No. 29-2013**

After taking his oath, Mr. Scharer presented the staff report. Utilizing a map of the area, he pointed to a site at 900 South Post Road for an elementary/secondary school for the Pinnacle Classical Academy. The total area of the site is approximately 19 acres. Elementary schools and secondary schools are permitted by a Special Use Permit in all zoning districts. The proposal is consistent with the Comprehensive Land Use Plan. The issuance of this Special Use Permit will create a non-conforming parking facility. Mr. Scharer recommended approval of this proposed Special Use Permit, noting the non-conforming parking will be of a temporary nature.

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 6:39 p.m.

Mayor Anthony closed the public hearing at 6:40 p.m.

Having heard all of the evidence presented at the public hearing, Council found and determined that the application of Pinnacle Classical Academy is complete, and the following conclusions were made:

- Pinnacle Classical Academy submitted the required application and site plan for a Special Use Permit.
- The Unified Development Ordinance allows Elementary/Secondary Schools pursuant to a Special Use Permit in all zoning districts.
- 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. Parking facilities and existing drives will become non-conforming by approving this Special Use Permit.
- The use will not materially endanger the public health or safety if located where proposed and developed according to 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 Shelby Comprehensive Land Use Plan.

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Resolution No. 29-2013 entitled, “A RESOLUTION GRANTING A SPECIAL USE PERMIT TO THE PINNACLE CLASSICAL ACADEMY FOR 900 SOUTH POST ROAD”.

4) Consideration of a resolution granting a Special Use Permit to the Shelby Rescue Squad for 827 West Marion Street: Resolution No. 30-2013

After taking his oath, Mr. Scharer presented the staff report. Utilizing a map of the area, Mr. Scharer pointed to a site at 827 West Marion Street and an additional structure for the Shelby Rescue Squad. The Rescue Squad purchased property at 108 Bowman Street, behind its existing facility in order to develop the new structure. The total area of the site is approximately 2.05 acres. Mr. Scharer stated an emergency medical service is permitted by a Special Use Permit in all zoning districts. The Comprehensive Land Use Plan designates the area as residential. The proposal is consistent with the Comprehensive Land Use Plan.

Mr. Scharer further stated, as a condition of the permit, a screening fence in accordance with the City’s Unified Development Ordinance is required along the property line shared with Stonehenge Townhouse Property Owners Association as shown on the site plan.

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 6:43 p.m.

Mayor Anthony closed the public hearing at 6:44 p.m.

Having heard all of the evidence presented at the public hearing, Council

found and determined that the application of Shelby Rescue Squad, Inc. is complete, and the following conclusions were made:

- Shelby Rescue Squad, Inc. submitted the required application and site plan for Special Use Permit.
- The Unified Development Ordinance allows Emergency Medical Service pursuant to a Special Use Permit.
- The applicant proposes the development of new living quarters and apparatus bays.
- 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 rezoning and 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 City of Shelby Comprehensive Land Use Plan.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Resolution No. 30-2013 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO THE SHELBY RESCUE SQUAD FOR 827 WEST MARION STREET".

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 May 6, 2013

- 2) Approval of a resolution accepting a State Revolving Loan for construction of the First Broad Wastewater Treatment Plant Improvements: Resolution No. 31-2013

END CONSENT AGENDA

F. Unfinished Business:

- 1) Consideration of an ordinance establishing a capital project and budgets for the City of Shelby's Police Department Roof Replacement Project: Ordinance No. 11-2013

Mr. Merritt introduced Ordinance No. 11-2013 for Council's consideration. If approved, the ordinance would establish a working budget for this project. The costs are estimated at this time. Both Mr. Howell and Mr. Merritt stated the project will have specifications and alternates developed and subsequently be bid on a competitive basis. Staff is working to keep costs reasonable under the circumstances. However, the protection of the assets within the Police Department building is extremely important and it could prove costly if they were negatively impacted by eventual roofing failures.

Mr. Merritt further stated these funds are being drawn from General Fund reserve. If there was another means of funding this construction project in the short term, the staff recommendation would be to avoid withdrawing these funds from fund balance, essentially the City's savings account.

ACTION TAKEN: Upon a motion made by Mr. Mabry, City Council voted unanimously to approve and adopt Ordinance No. 11-2013 entitled, "AN ORDINANCE ESTABLISHING A CAPITAL PROJECT AND BUDGETS FOR THE CITY OF SHELBY'S POLICE DEPARTMENT ROOF REPLACEMENT PROJECT".

- 2) Consideration of a resolution awarding the construction contract for the City of Shelby/Cleveland County Job Ready Shell Building No. 2 Project: Resolution No. 32-2013

Mr. Howell introduced Resolution No. 32-2013 for Council's consideration. If approved, the resolution would award the contract for construction of the Job Ready Shell Building No. 2 to Matthews Construction Company, Inc. of Charlotte, North Carolina as recommended by WHN Architects.

Mr. Howell noted Cleveland County and the City of Shelby have successfully cooperated on the development of the Foothills Commerce Center and the Job Ready Shell Building No. 1 for economic development purchases, having attracted an industrial client which will create more than 300 jobs and \$27

million of new investment over the next several years. The County and the City have both approved an interlocal agreement to provide equal funding of \$1.5 million for the development of this project. Mr. Howell added the City's portion includes proceeds from the sale of first shell building.

Mr. Howell stated six responsive bids were received on May 2, 2013 from qualified contractors interested in constructing the facilities associated with this project and the apparent low bidder was Matthews Construction in the amount of \$2,774,325 based upon the base bid including additional alternatives. It was also noted the original budgetary estimate for the entire Job Ready Shell Building Project was \$3 million, including the building construction, architectural and engineering design, administration and inspections, material testing and contingencies. The recommended bid put the project within the established project budget.

ACTION TAKEN: Upon a motion made by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 32-2013 entitled, "A RESOLUTION AWARDED THE CONSTRUCTION CONTRACT FOR THE CITY OF SHELBY/CLEVELAND COUNTY JOB READY SHELL BUILDING NO. 2 PROJECT".

3) Continuation of Preliminary Budget Discussion for Fiscal Year 2013-2014

Mayor Anthony provided a recap of budget discussions to date. He stated initially Mr. Howell briefed Council on upcoming budget issues and was given direction to develop three alternative budget options. Mr. Howell presented an overview of the potential budgetary changes based upon three different sets (Options A, B, and C) of assumptions regarding revenue and expenditures for the General Fund for the upcoming fiscal year on May 17, 2013.

Discussion followed:

David White – Mr. White does not wish to reduce any services in parks and recreation. He is willing to support and pay a property tax increase to avoid reducing any City services.

Dicky Amaya – Mr. Amaya also does not wish to reduce any services in parks and recreation. He is in favor of the proposed vehicle license tax on vehicles registered within the City.

Joel Shores – Mr. Shores suggested decreasing the City's fund balance from 25 percent to 20 percent. He also suggested an additional transfer from the Natural Gas Fund. These additional transfers would allow the City to keep all

services intact and give City employees a pay increase.

Dennis Bailey – Mr. Bailey offered a combination approach. He preferred reducing the General Fund balance, transferring more from the Natural Gas Fund, and increasing parks and recreation fees substantially for non-City residents. He also noted the importance of raising salaries for City employees and making sure the pay scales are competitive enough.

Mr. Howell responded each budget option presented to date includes an appropriation from fund balance and taking that money from it year to year is unsustainable. He said these funds are essentially a savings account and assist daily with cash flow, funding of emergency situations as well as to cover deficits when budgeted revenues fall short of estimates. He urged Council to pay close attention to ensure fund balance is maintained at a steady level given the challenges and demands faced by the City. Mr. Howell stated he is willing to review the numbers but it gives him pause for concern.

Mr. Howell added that none of his possible options for cuts were a value judgment on any of the services. They are all important services for the City. It is extremely difficult to make recommendations to reduce anything.

Chris Mabry – Mr. Mabry stated fund balances are very important to the City's long-term success. The fair thing to do is to balance everything and minimize the pain.

Jeanette Patterson – Mrs. Patterson stated she will not vote for any property tax or utility increase.

Discussion concluded with the formulation of Option D:

- **Restore parks and recreation proposed service reductions**
- **No revenue increases except for increased parks and recreation fees for non-City residents**
- **Balance budget with a combination of increased appropriation of fund balance and an increased transfer from the Natural Gas Fund**

By consensus, Council set May 29, 2013 at 9:00 a.m. in Council Chamber to hold a special meeting related to General Fund additional budget options for Fiscal Year 2013-2014.

F. New Business:

1) Consideration of an ordinance of the City of Shelby, amending Section 30-5 of Article I of Chapter 30: Ordinance No. 12-2013

Mr. Howell introduced Ordinance No. 12-2013 which was drafted as an amendment to the existing City Code that prohibits the sale and/or consumption of alcoholic beverages on City owned property by Mr. Yelton at Council's direction. As background, Mr. Howell noted USA's recent request to permit the movement of their Alive After Five beer and wine garden service area to Washington Street between East Warren and East Marion Streets, as this block is most frequently used for events and festivals.

If approved, the ordinance would amend the current code to allow for the sale and consumption of alcoholic beverages on Washington Street only at times when there are activities which have received a Special Event Permit approved by Council. It would also allow the sale and consumption of alcoholic beverages with the City owned parking lot on West Marion Street only at times when there are activities which have received a Special Event Permit approved by Council. Mr. Howell reminded Council this site will be the future home of the new Farmers Market pavilion and there has been a desire stated by the market to allow local wineries to participate as vendors. It would further clarify the allowance of the sale and consumption of alcoholic beverages on the property occupied by the Don Gibson Theatre, which was previously allowed under the terms of the lease agreement with Destination Cleveland County but not included as amendment to the code.

Mayor Anthony mentioned the concerns of Central United Methodist Church relating to security and sanitation at special events previously heard under Public Comment. Mr. Howell responded security and sanitation plans are required by the applicant/permittee as part of the Special Event Permit Application process. Mr. Bailey added USA has their events covered by responsible volunteers with assigned clean-up duties as well as by Mr. Nichols, USA Executive Director, himself.

Upon questioning, Mr. Howell reiterated these requests seem reasonable especially given that Special Event Permits approved by Council would be required if the sale and consumption of alcoholic beverages are to be allowed.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted 5 to 1 (Patterson) to approve and adopt Ordinance No. 12-2013 entitled, "AN ORDINANCE OF THE CITY OF SHELBY, AMENDING SECTION 30-5 OF ARTICLE I OF CHAPTER 30".

2) Consideration of an ordinance of the City of Shelby, adding Section 4-46 to Article II of Chapter 4: Ordinance No. 13-2013

Mr. Howell presented Ordinance No. 13-2013 for Council's consideration. If approved, the ordinance would prohibit any dog owner from allowing his/her pet from depositing its waste on any public or private property unless the owner removes and disposes of the waste material in accordance with the new law. Failure to do so would subject the owner to the provisions of the general penalty section of the City Code with a fine not to exceed \$500.00. Mr. Howell stated it would be enforced much the same way as the current littering ordinance.

Upon questioning, Mr. Howell responded if approved by Council, the City would post signs in appropriate locations making owners aware of the requirements and publicize it accordingly to inform and educate the general public.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 13-2013 entitled, "AN ORDINANCE OF THE CITY OF SHELBY, ADDING SECTION 4-46 TO ARTICLE II OF CHAPTER 4".

G. City Manager's Report: None

H. Council Announcements and Remarks:

- 1) Mayor Anthony congratulated the Shelby High School Golden Lions for winning their second straight North Carolina High School Athletic Association (NCHSAA) 2A dual team boys tennis state championship on May 18, 2013, which included a Shelby Police Department escort back to town.**

The Mayor announced and encouraged Council members to attend the North Carolina League of Municipalities District Days for Districts 10, 11, and 12 in Raleigh, North Carolina on June 4, 2013.

- 2) Mr. Bailey expressed his appreciation to the The Star namely reporter, Molly Phipps, for writing her article about the City of Shelby's budget. Mr. Bailey then directed his comments to the general public. He stated the City's budget is a very complex process which takes hours upon hours of review and study in order to gain an understanding. He underscored the fact that Council members and City staff share a concern about the citizens and keeping the City financially healthy. Mr. Bailey said City employees have taken the brunt of the situation. They have continued to**

do an outstanding job while not receiving increases in pay and absorbing approximately a 20 percent increase in insurance responsibility for their health care. Mr. Bailey encouraged citizens to attend the City's budget sessions and ask questions to be informed of the importance and impact of the issues. Council receives a minimal monthly stipend for their services and does not wish to receive an increased amount. Mr. Bailey concluded by stating Council's main objective is to manage the City's assets and again complimented City employees for their responsiveness to the citizens of Shelby.

Mayor Anthony concurred with Mr. Bailey and added his appreciation to Council members for their frank discussions and transparency during this budget process.

I. Adjournment:

1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. Shores, City Council voted unanimously to adjourn the meeting at 7:45 p.m.

Respectfully submitted,

Bernadette A. Parduski, NCCMC, MMC
City Clerk

O. Stanhope Anthony III
Mayor

Minutes of May 20, 2013