

## MINUTES

Regular Meeting  
City Hall Council Chamber

August 6, 2012  
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 Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, MMC, Director of Finance Justin S. Merritt, MPA, Director of Utilities Brad R. Cornwell, PLS, EI, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, Director of Parks and Recreation Charlie Holtzclaw, Director of Development Services Brian L. Pruett, Director of Planning 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 gave the invocation and Mrs. Patterson led the *Pledge of Allegiance*.

### A. Approval of agenda:

#### 1) Motion to adopt the proposed agenda

Due to Mr. Howell's absence for illness, Mr. Bailey requested the closed session to conduct the City Manager's annual performance evaluation be removed.

**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 Larry D. Corry, Ron Harrill, and Richard Hooker, Jr. and the Community Math Academy on its fifth anniversary: Resolution No. 39-2012

Mayor Anthony called upon and recognized Larry Corry, Ron Harrill, and Richard Hooker, who represent a dedicated group of volunteers and educators involved in the Community Math Academy. These three gentlemen were very instrumental in the start-up and development of the academy. The program has grown each year and now includes two Shelby campuses, Mount Calvary Baptist Church and Shiloh Baptist Church. Tropic McCluney, principal at the Math Academy's Mount Calvary site, and Haywood Homsley,

parent involvement coordinator, were also in attendance. Mayor Anthony spoke highly of his recent visit to the Mount Calvary site, witnessing firsthand all the good work of the academy.

The Mayor formally read and presented Resolution No. 39-2012 to Mr. Corry, Mr. Harrill, and Mr. Hooker. He commended and congratulated the Community Math Academy on its fifth anniversary.

Both Mr. Corry and Mr. Harrill shared specifics about the program's inception and operation including their involvement in the Closing the Achievement Gap initiative, which provided the foundation for the Community Math Academy.

### C. Public Hearings:

- 1) Consideration of a resolution confirming the City of Shelby's intent to offer an economic development incentive grant: Resolution No. 43-2012

Mayor Anthony opened the public hearing at 6:14 p.m. and invited comments from the public.

Mr. Yelton stated this public hearing was scheduled in accordance with North Carolina General Statutes by Council to consider the award of an industrial development incentive grant to Cleveland Yutaka Corporation, a longstanding, existing industry. The incentives are being offered for an anticipated net new valued investment of approximately \$5 million and the creation of eight (8) new full-time permanent employment positions over the next twelve (12) months, which is to take place at 2081 West Dixon Boulevard in Shelby. If approved, the agreement would provide an incentive grant valued at 40 percent of the previous year's taxes paid for over a three (3) year period. The final grant will be based on the actual net new investment less applicable depreciation. After that time, 100 percent would be retained by the taxing entities, the City of Shelby and Cleveland County.

Mr. Yelton added Cleveland Yutaka Corporation must be current in the payment of all ad valorem taxes as well as with all fees and utility bills imposed by Cleveland County and the City of Shelby.

Mr. Yelton concluded by stating the proposed Incentive Agreement is in keeping with the City's policy, the past practice of matching the percentage of incentive grant offered by Cleveland County, and the referenced statute. He recommended approval of the resolution as well as the proposed agreement between the City of Shelby and Cleveland Yutaka Corporation as presented.

Mayor Anthony closed the public hearing at 6:17 p.m.

**ACTION TAKEN:** Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Resolution No. 43-2012 entitled, “A RESOLUTION CONFIRMING THE CITY OF SHELBY’S INTENT TO OFFER AN ECONOMIC DEVELOPMENT INCENTIVE GRANT”.

2) Consideration of an ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 37-2012

Mr. Amaya stated he had a conflict of interest on this issue because he is the owner of the properties with a financial interest in the proposed zoning amendment.

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to recuse Mr. Amaya as requested.

Mayor Anthony opened the public hearing at 6:19 p.m. and invited comments from the public.

Utilizing a map of the area, Mr. Scharer pointed to the subject properties which are located between Schenck Street and Dekalb Street on the south side of Hudson Street. The area proposed for rezoning is approximately 1.5 acres.

Mr. Scharer stated the Comprehensive Land Use Plan designates this property as Mixed Use in a Minor Activity Center. Minor activity centers include mostly neighborhood retail. A mixed use area is intended to concentrate a mix of commercial and residential uses. Both the existing, Residential Office (RO), and the proposed zoning, Neighborhood Business (NB) classifications are consistent with the Comprehensive Land Use Plan.

Mr. Scharer concluded with the staff’s recommendation in favor of this proposed zoning map amendment. The Planning and Zoning Board also recommended the zoning amendment.

Mr. Amaya who resides at 610 Schenck Street in Shelby, North Carolina spoke in favor of his rezoning application. Mr. Amaya stated he is the owner of the subject properties and it is his desire in the future to have a neighborhood business in the area.

Mr. Amaya left the meeting after making his declaration and was called back after the vote on the motion was taken.

Mayor Anthony closed the public hearing at 6:21 p.m.

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 37-2012 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

**D. 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 July 16, 2012
- 2) Approval of a Special Event Permit Application:
  - a. Pray and Play for Ethan, requested date: August 20, 2012
- 3) Adoption of an ordinance authorizing demolition of a dwelling located at 515 Gardner Street: Ordinance No. 38-2012
- 4) Approval of a resolution authorizing disbursement of travel and tourism funding for Fiscal Year 2012-2013: Resolution No. 44-2012
- 5) Approval of a resolution for acceptance, maintenance, and ownership of the water and sewer infrastructure for Kensington Gardens (Camden Court): Resolution No. 45-2012
- 6) Approval of a resolution accepting and approving a Pole Use Agreement between the City of Shelby, North Carolina and tw telecom of north carolina l.p.: Resolution No. 46-2012

**END CONSENT AGENDA**

**E. Unfinished Business:**

- 1) Discussion re: North Carolina League of Municipalities' (NCLM) Municipal Advocacy Goals for 2013-2014

Mayor Anthony led the discussion continued from their previous meeting regarding legislative goals to be communicated to the NCLM for consideration as advocacy goals for the League's membership as follows:

- **Marketplace Equity Act (Mabry) – Amend the act to provide states and localities with a mechanism to require the collection of sales and use taxes on internet and mail-order sales.**
- **Powell Bill Funds (Mayor and Amaya) – Develop a long-term, holistic solution to municipal transportation infrastructure needs i.e. include funding for sidewalks, walking trails, etc.**
- **Local Option Sales Tax Revenues – Population Distribution (Bailey) – Advocate for adding the total population of the county to the population of each municipality, then distribute the tax to each unit on a per capita basis.**
- **Concrete law regarding videogaming machines (Shores and Yelton) – General Assembly must answer the fundamental question as to whether an internet sweepstakes operation is a lawful, taxable business or is illegal gambling.**

**At the conclusion of the discussion, Mayor Anthony suggested Council vote on the proposed goals and any additions at the next meeting of August 20, 2012.**

- 2) **Consideration of an ordinance updating the City of Shelby Code of Ordinances Chapter 40: Streets, Sidewalks, and Other Public Places to add Article II. Right-of-Way Encroachment Permit Required/Construction Standards: Ordinance No. 39-2012**

**Mr. Cornwell reminded Council of the recent approval of Resolution No. 26-2012 which provided a format for issuing a Right-of-Way Encroachment Agreement for entities wishing to encroach within the City owned right-of-ways and easements. Subsequent to the approval, Council also requested some ordinance updates that ensured guidelines and enforcement provisions related to standards and enforcement for non-compliance with the Right-of-Way Encroachment Agreement process.**

**Mr. Cornwell explained Chapter 40 of the City’s Code of Ordinances addresses many general items and conditions that affect Shelby’s streets, sidewalks, and other public places. As such, staff reviewed information related to encroachment agreements and found that the construction standards and expectations of obtaining a right-of-way encroachment agreement would fit best in a new section within this chapter of the ordinances. Article II outlines a right-of-way encroachment permit is required and also gives certain standards for construction within the City’s**

right-of-ways. In particular, it was noted in the ordinance the expected construction standards regarding above and below ground installations. It was also outlined the expected property repairs to private property and the City infrastructure as well as reservation of the City's street/right-of-way rights for future construction and development.

Mr. Cornwell stated Mr. Scharer and Mr. Yelton have reviewed Article II. Staff recommended approval of the subject ordinance update to Chapter 40 to incorporate right-of-way encroachment agreements and the expectations and enforcement provisions for allowing outside parties to encroach within or upon City maintained rights-of-way for streets and utilities.

Mr. Cornwell concluded by stating the ordinance is the legally protective measure which requires the applicant conducting the work to follow a process set forth by the City and to conduct work in an appropriate manner so as to protect public assets and allow for accountability.

**ACTION TAKEN:** Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 39-2012 entitled, "AN ORDINANCE UPDATING THE CITY OF SHELBY CODE OF ORDINANCES CHAPTER 40: STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES TO ADD ARTICLE II. RIGHT-OF-WAY ENCROACHMENT PERMIT REQUIRED/CONSTRUCTION STANDARDS".

F. New Business: None

G. City Manager's Report: None

H. Council Announcements and Remarks:

- 1) Mr. Bailey expressed his appreciation for the support he received concerning his mother's health.
- 2) Mr. White passed on a question from an interested party regarding the status of the street sign for Wayne Caudill Drive to be located on the campus of Shelby High School. Mr. Scharer responded and will follow up on the matter.
- 3) Mr. Amaya announced he was going to be a grandfather again as his grandchild is expected sometime next week.
- 4) Referencing the approval of the special event for Ethan Martin as well as his photograph contained in the agenda packet, Mrs. Patterson said the 12 year old, who is currently undergoing cancer treatment, also just had

surgery for appendicitis.

- 5) Mr. Mabry reminded all to participate and attend the events associated with the American Legion World Series.
- 6) Mr. Shores reminded all the American Legion World Series kickoff events include the MercyMe concert on August 12, 2012 and the Montgomery Gentry concert on August 16, 2012.
- 7) Mayor Anthony made the following announcements:
  - The Annual Congressional Luncheon, hosted by the Cleveland County Chamber and sponsored by the King Law Offices, will be held on August 9, 2012 at 12:00 noon, Neal Senior Center. US Congressman Patrick McHenry will be in attendance.
  - The Mayor recently received a letter from NC Senator Warren Daniel informing him the General Assembly enacted Senate Bill 236 adopting The Shelby Livermush Festival as the official fall livermush festival of the State of North Carolina.
  - The Carolina Community Developers and the North Carolina Housing Finance Agency extended an invitation to Council to attend an Open House for Kensington Gardens on August 10, 2012 at 11:00 a.m. at 220 Camden Court, Shelby, North Carolina.

**I. Closed Session: REMOVED**

- 1) To conduct the annual performance evaluation of the City Manager pursuant to North Carolina General Statute 143-318.11 (a) (6)

**J. Adjournment:**

- 1) Motion to adjourn

**ACTION TAKEN:** Upon a motion made by Mr. Shores, City Council voted unanimously to adjourn the meeting at 6:45 p.m.

Respectfully submitted,

Bernadette A. Parduski, MMC  
City Clerk

**O. Stanhope Anthony III  
Mayor**

**Minutes of August 6, 2012**