

## MINUTES

Regular Meeting  
City Hall Council Chamber

June 18, 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 Manager Rick Howell, 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 Public Works Daniel C. (Danny) Darst, Jr., Director of Parks and Recreation Charlie Holtzclaw, Director of Housing Bryan T. Howell, 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 Mr. Amaya 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 Coach Jackson Martin and the 2012 Shelby High Golden Lions Men's Tennis Team: Resolution No. 29-2012

Mayor Anthony congratulated Coach Jackson Martin of the Shelby High School Golden Lions Men's Tennis Team, who introduced the team members present: Alex Tillman, Miles Poage, Will Lutz, Ray Webb Parker, and Brandon Lewis; and absent: Dennis Beam and Joseph Hendrick.

The Mayor formally read and presented framed Resolution No. 29-2012 to Coach Martin and the Golden Lions as a tribute to their championship season and first State title since 2003.

Mr. Amaya mentioned Representative Kelly Hastings also recognized the

Golden Lions Men's Tennis Team, by proxy, on the floor of the the North Carolina House of Representatives in Raleigh, North Carolina during Town Hall Day on June 6, 2012. Several Council members were in attendance.

## **2) City of Shelby Bond Refunding Opportunity – Wells Fargo Securities**

Mr. Merritt introduced the subject matter as an informational presentation relating to the opportunities and process involved in refunding or refinancing some of the City's outstanding debt.

Mr. David Cheatwood representing Wells Fargo Securities introduced himself and prefaced his presentation by stating the current market conditions are producing a historically low interest rate environment. After discussions with Mr. Howell and Mr. Merritt, it was determined the City has an opportunity to refund several outstanding bonds to achieve a lower rate of interest, thereby, saving money over the repayment period. Specifically, under review for refunding is approximately \$17,425,000 worth of utility debt including State Revolving Fund Loans issued in 1995, Revenue Bonds issued in 2004, Revenue Bonds issued in 2005, and Revenue Bonds issued in 2008. The total net savings over the life of the bonds will be approximately \$300,000 to \$400,000, subject to market rates at the time of closing. Mr. Cheatwood anticipated the entire refinancing process will take 60 to 90 days during which several approvals from City Council and the Local Government Commission (LGC) are obtained. The potential closing date to sell the bonds will be scheduled in the fall. He congratulated the City on its excellent bond rating for its combined enterprise system, which was recently upgraded to A3 by the rating agency, Moody's Investors Service. The City's current rating by Standard and Poor's is A.

Discussion followed and included locking in at a favorable, fixed interest rate; not extending the maturities of the bonds; determining what City debt is eligible for refinancing; and the LGC's role in overseeing the financing process for all local government units.

Council received the information and took no action.

## **3) Tar Heel Leagues State Coach Pitch and Junior League State Baseball Tournaments – Charlie Holtzclaw, Director of Parks and Recreation**

Mr. Holtzclaw announced Shelby City Park will be the host venue for the Tar Heel Leagues State Coach Pitch (Ages 5-7) and Junior League (Ages 13 and 14) State Baseball Tournaments beginning on July 19 and running through July 22, 2012. These tournaments combined will have a total of 24 teams with approximately 400 players and coaches participating in more than 40 games

during the four days of events. All games will be played at the original Ballfield Complex and the new Recreation and Sports Complex.

In terms of economic development and travel tourism, Mr. Holtzclaw believes this will be one of the most significant events held in Cleveland County in many years, anticipating a very positive impact for local hotels, restaurants, and businesses. It is expected to be the largest baseball tournament ever played at Shelby City Park and the first major tournament to be held at the new Recreation and Sports Complex. Mr. Holtzclaw mentioned Recreation Programs Manager David Fisher was instrumental in obtaining this opportunity not only to showcase the new complex but all the amenities of Shelby City Park as well as the City of Shelby as a whole.

Mr. Holtzclaw extended an invitation to attend the opening ceremonies for all teams to be held on July 19, 2012 at 4:00 p.m. at the new complex.

Upon questioning, Mr. Holtzclaw responded the Parks and Recreation Department will offer extended hours for the pool, carrousel, train, and golf course at City Park during the tournaments.

There was a brief discussion about the lack of lighting at the new ballfields.

C. Public Comment: None

D. Public Hearings:

- 1) Consideration of an ordinance amending the Unified Development Ordinance and zoning map of the City of Shelby, North Carolina and granting a Special Use Permit for 1425 Metcalf Road: Ordinance No. 30-2012

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(s). Special use permit approval requires the Council to make certain written findings of fact relative to the proposal reviewed by the Mayor.

Mayor Anthony opened the public hearing at 6:26 p.m. and sworn testimony was given as follows:

Utilizing a map of the area, Mr. Scharer pointed to the subject property located at 1425 Metcalf Road. The area proposed for rezoning is

approximately 1.5 acres in size and within the Extraterritorial Jurisdiction, zoned as R20 Residential District. The proposed zoning district is Limited Industrial-Conditional Use with the proposed special use as outdoor storage for fiber.

Mr. Scharer stated the Comprehensive Land Use Plan currently has this area depicted as a Low Density Residential Area. The corresponding City of Shelby zoning classifications for low density residential area are Rural Development and the R20 Residential District.

Mr. Scharer further stated the proposed zoning map amendment is inconsistent with the Comprehensive Land Use Plan. Staff did not recommend this proposed zoning map amendment. However, if Council chooses to approve this amendment, staff recommended that any external storage of machinery, parts inventory, or equipment should not be visible from any street or neighboring property as a condition. Additionally, the Planning and Zoning Board did not recommend this proposed zoning amendment.

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

Having heard all of the evidence and arguments presented at the public hearing, Council found and determined that the application of Barry R. Revels and Shelby B. Revels is complete, and the following conclusions were made:

- The use will not be in harmony with the area in which it is to be located.
- The use will not be in general conformity with the Comprehensive Land Use Plan adopted by Council.

**ACTION TAKEN:** Upon a motion made by Mr. Bailey, City Council voted unanimously to deny Ordinance No. 30-2012 entitled, "AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AND ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA AND GRANTING A SPECIAL USE PERMIT FOR 1425 METCALF ROAD".

2) Consideration of a proposed ordinance to amend the Unified Development Ordinance of the City of Shelby: Ordinance No. 31-2012

Mr. Scharer reminded Council of their 2012 retreat discussions in which they identified residential appearance issues and nuisances as a priority goal for them and staff to emphasize and address in the current year. Based on this goal, the Planning and Zoning Board reviewed the current home occupation regulation in the spring. The home occupation study revealed that parking on

residential properties is the actual issue that is creating a perceived and real nuisance discussion. Staff then drafted a set of regulations that addressed parking in the front yard areas of residential lots.

Mr. Scharer stated the Unified Development Ordinance currently permits residential parking in all residential districts for as many vehicles that will fit on a residential zoning lot. Parking may be located anywhere on the lot with no driveway or parking pad.

Mr. Scharer explained the proposed amendment requires any vehicles parked in the front yard or side yard adjoining a street must be parked on an approved parking area. Approved parking areas are to be an all-weather surface made of gravel, asphalt, or concrete. No more than 25 percent of a front yard may be used for parking. For this amendment, boats, trailers, and campers are not permitted to be parked in a front yard.

Mr. Scharer further stated there are exceptions to the amendment which apply to special events, emergency vehicles, and lots that have residential structures within 20 feet of a road.

Mr. Scharer concluded by stating the Planning and Zoning Board recommended this zoning amendment.

Mr. Shores spoke against the amendment, stating he, himself, would be in violation of the proposed ordinance as would many of his neighbors in Westwood Heights and Britton Village as well as in many other areas of the City. He further expressed his concerns about the parking amendment as an example of the heavy hand of government hurting good people who want to live ordinary lives as opposed to the protection of property values. Mr. Shores preferred the ordinance to be written applying only to junked vehicles.

Upon questioning, staff responded that most enforcement matters are complaint-based; however, code enforcement officers have an obligation to enforce the City's code regarding violations when they are routinely seen and evident.

Mayor Anthony contended that residential parking issues are a problem and the City's regulations need to be more restrictive.

Discussion ensued relating to numerous concerns and situations.

Mr. Bailey suggested limiting the numbers of vehicles allowed to park on front lawns to no more than two.

Mayor Anthony opened the public hearing at 6:44 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:45 p.m.

By consensus, Council referred the matter back to staff for additional study and a less restrictive ordinance.

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to table Ordinance No. 31-2012 entitled, "A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF SHELBY".

**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 June 4, 2012
- 2) Approval of Special Event Permit Applications:
  - a. Central Methodist Worship/Cookout, requested date: July 1, 2012
  - b. Mount Calvary Baptist Church "Community Explosion", requested date: July 14, 2012
  - c. Carolina Brotherhood Cycling, requested date: July 26, 2012
  - d. Cleveland Regional Medical Center Walk for Hope, requested date: September 15, 2012
- 3) Approval of a resolution adopting and approving a contract amendment with Republic Services of North Carolina, LLC (GDS) for the provision of curbside recycling services to agreed upon commercial and institutional customers of the City of Shelby: Resolution No. 36-2012
- 4) Approval of the Notice of Cancellation in the Regular Meeting Schedule of Shelby City Council

**END CONSENT AGENDA****F. Unfinished Business:****1) Consideration of appointments to City advisory boards and commissions:****a. Parks and Recreation Advisory Board**

Mrs. Parduski reported the terms of four incumbents, Bee Strain, Bill Young, Jim Taylor, and Shanda Hoskins, conclude July 2012. Mr. Strain, Mr. Young, and Ms. Hoskins wish to continue their service. Mr. Taylor is not seeking reappointment.

There are two applications on file in the Clerk's Office: Michael Shawn Collins and Joan Spencer.

Mr. Shores nominated Mr. Strain, Mr. Young, and Ms. Hoskins for reappointment and Mr. Collins for appointment.

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

**2) Proposed Fiscal Year 2012-2013 Annual Operating Budget for the City of Shelby:****a. Consideration of the Fiscal Year 2012-2013 Budget Ordinance No. 32-2012**

Mayor Anthony reviewed the budget process from the numerous budget sessions held to date to final adoption, noting transparency was key in keeping the public informed of the decisions to be made this fiscal year. The Mayor acknowledged and expressed appreciation to Mr. Howell and City staff for their diligence in preparing this difficult, challenging, and balanced budget as the local economy continues to struggle.

Upon questioning, Mr. Howell clarified that the budget ordinance sets the City's level of spending while the supplement budget ordinance sets the City's fee schedule, rates, and level of staffing.

Mr. Shores commented the City is financially secure (evidenced by the recent Moody's rating upgrade) based on financially good decisions as Council did not raise taxes and there were no staff reductions included in this budget. Overall, he was pleased with Mr. Howell's presentation of the budget.

**Mr. Bailey** took exception to both citizen and editorial comments about the City imposing an electric rate increase for the 2012-2013 budget, explaining the rate increase is due to the increase in wholesale power cost charged directly to the City and passed on to its customers.

**Mr. Amaya** and **Mr. White** concurred about the City passing on its rate increases (electric) and deductions (natural gas) to customers.

**Mrs. Patterson** added citizens had several opportunities to speak about the budget during public comment or at the public hearing.

**Mr. Mabry** expressed his concern about the lack of ability to monetarily reward City employees, adding the hope of working toward that for the future. He noted improved communications with employees and mentioned previous incentives as Council's expression of appreciation. Council has invested in equipment and software which hopefully resulted in a better working environment for City employees. As the economy improves, Council will search for opportunities to compensate employees while continuing to work toward what is best for all citizens.

**ACTION TAKEN:** Upon a motion made by **Mr. Shores**, City Council voted unanimously to approve and adopt Ordinance No. 32-2012 entitled, "CITY OF SHELBY FISCAL YEAR 2012-2013 BUDGET ORDINANCE".

**b. Consideration of the Fiscal Year 2012-2013 Supplemental Budget Ordinance No. 33-2012**

**ACTION TAKEN:** Upon a motion made by **Mr. Shores**, City Council voted unanimously to approve and adopt Ordinance No. 33-2012 entitled, "CITY OF SHELBY FISCAL YEAR 2012-2013 SUPPLEMENTAL BUDGET ORDINANCE".

**3) Cleveland Mall Lift Station Replacement Project:**

**Mr. Howell** introduced Resolution No. 37-2012 and Resolution No.38-2012 for Council's consideration. He reminded Council the engineering and design costs for the Cleveland Mall Lift Station Replacement Project were previously approved and funded through a reserve appropriation in December 2011. Originally constructed in the 1980s as a private pump station for the Cleveland Mall area, **Mr. Howell** said the existing City-maintained mall area lift station has reached the end of its useful life and cannot accommodate any new flow. He noted the approval of these proposed resolutions does not commit the City to moving forward with the project. It merely allows for the



development of a financing package for Council's further consideration at a later date.

Mr. Cornwell stated that the replacement project designed as the Cleveland Mall Lift Station is nearly complete and anticipated to bid in the very near future. It is time for the City to consider possible funding sources for this project given the City's inability to fund this project from sewer fund balance. One of the avenues for funding is through the North Carolina Department of Environment and Natural Resources (NCDENR) Clean Water Funding Programs, specifically the Revolving Loan Fund. This funding source has set aside funding for emergency repairs. The project should likely qualify for this funding given the fact that the City has had three force main breaks with reportable spills within the past six months as well as the complete emergency re-build of the pumps last fall. This funding mechanism is capable of providing up to \$3 million per project provided the NCDENR Regional Office will certify to the fact that they consider this project an emergency. The funding source comes with an interest rate of 2 percent.

Mr. Howell explained the reimbursement resolution would allow the City to reimburse itself for any costs already incurred directly related to the Cleveland Mall Lift Station Replacement Project from any debt proceeds authorized by Council and received by the City. The second resolution, if approved, would authorize the filing of an application with the North Carolina Revolving Emergency Loan Fund for a loan not to exceed \$1 million. The terms and conditions of this loan program allow for up to a 20-year payback with a fixed interest rate of 2 percent. Mr. Howell estimated the annual payment to repay the loan would be approximately \$55,000 and a 1.5 percent rate increase would be necessary to generate the revenue necessary to meet this future debt service payment. An amended project budget ordinance and sewer rate schedule would then remain to be authorized by Council.

- a. Consideration of a reimbursement resolution with regard to a loan from the North Carolina Revolving Emergency Loan Fund to complete the Cleveland Mall Lift Station Replacement Project: Resolution No. 37-2012

**ACTION TAKEN:** Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 37-2012 entitled, "A REIMBURSEMENT RESOLUTION WITH REGARD TO A LOAN FROM THE NORTH CAROLINA REVOLVING EMERGENCY LOAN FUND TO COMPLETE THE CLEVELAND MALL LIFT STATION REPLACEMENT PROJECT".

- b. Consideration of a resolution authorizing the filing of an application with the North Carolina Revolving Emergency Loan Fund to complete

**the Cleveland Mall Lift Station Replacement Project: Resolution No. 38-2012**

**ACTION TAKEN:** Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 38-2012 entitled, “A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE NORTH CAROLINA REVOLVING EMERGENCY LOAN FUND TO COMPLETE THE CLEVELAND MALL LIFT STATION REPLACEMENT PROJECT”.

**F. New Business:**

- 1) Consideration of an ordinance to update the City of Shelby Code of Ordinances Chapter 44: Article III Water Service Division 3. Backflow Prevention and Cross-Connection Control: Ordinance No. 34-2012

Mr. Cornwell stated pursuant to regulations stemming from the Federal Safe Water Drinking Act, the North Carolina Department of Environment and Natural Resources, the North Carolina Administrative Code, and the State of North Carolina Plumbing Code, the City of Shelby is required to establish and operate a backflow/cross-connection control program. In the exercise of this responsibility, the City must implement, administer, and maintain an ongoing backflow prevention and cross connection control program to protect its public water system from the hazards originating on the premises of its customers and the temporary connections that may impair or alter the water of the public system.

As a water purveyor, Mr. Cornwell stated the City’s backflow ordinance should identify the following:

- Objectives of the backflow program
- Responsibilities
- Degrees of hazard at the service connection
- Facilities requiring protection/minimal requirements
- Installation and testing requirements
- Enforcements and violations

Mr. Cornwell informed Council the City’s current Code of Ordinances simply states that backflow prevention is required; however, it does not include any details for backflow prevention devices and procedures for the City’s customers. City staff reviewed backflow ordinances from several municipalities throughout the state and region. From these reviews, an ordinance has been developed to create a structure for the determination of backflow device needed, installation and testing requirements, and enforcement protocol in an effort to protect the public from potential hazards

that could impact the public system originating on the premises of the City's customers.

Mr. Cornwell recommended formalizing the backflow prevention and cross-connection control ordinance as proposed and provided with the intent of meeting state and federal regulations.

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 34-2012 entitled, "AN ORDINANCE TO UPDATE THE CITY OF SHELBY CODE OF ORDINANCES CHAPTER 44: ARTICLE III WATER SERVICE DIVISION 3. BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL".

#### G. City Manager's Report:

##### 1) Monthly Financial Summary – May 2012

Mr. Howell provided a brief review of the City's Monthly Financial Summary of the Fiscal Year to date at May 31, 2012, noting the following:

- **Current Property Tax Collections** – The collection percentage is on par as with past years, slightly exceeding the budgeted numbers. However, the property tax base continues to decline.
- **Sales Tax Collections** – These figures have slightly exceeded the budgeted numbers, showing some slight growth during the current fiscal year. Mr. Howell reiterated his concern given the current distribution formula that divides sales tax receipts between Cleveland County and the municipalities based upon the overall tax levy. Significant capital investment in areas within Cleveland County, but outside the municipal limits, will further reduce Shelby's share of these taxes in the coming year.
- **Utility Franchise Tax** – The current numbers are on budget.

Overall, the General Fund had a decent year considering and including the level of conservative, tighter budgeting with regard to revenues. Costs were held in check and expenditures were kept in line. Mr. Howell added the General Fund debt service represents a very low burden of debt ratio.

- **Water Revenue Budget** – Revenues are on budget.
- **Sewer Revenue Budget** – Revenues have been tracking approximately 2 percent behind the anticipated budget numbers.

- **Electric Margin Budget** – There will be an operating loss which is weather-related due to the previous warm winter.
- **Gas Margin Budget** – There will be an operating loss which is weather-related due to the previous warm winter.

With regard to the operating losses, Mr. Howell stated the City has been conservative and kept adequate reserves which are important in absorbing these losses. He further stated the rating agencies recognize the City's willingness to raise their rates as necessary to maintain the financial condition of its utility systems. Mr. Howell added staff utilizes budget amendments more frequently for projects rather than for operating expenses with regard to the transfer of appropriations.

#### H. Council Announcements and Remarks:

- 1) **Mr. Shores** initiated a brief discussion regarding Clearwater Paper Company's intake of the City's available water per day.
- 2) **Mr. White** requested clarification on the recently adopted ordinance in which the storage of certain nuisance items is prohibited. **Mr. Scharer** explained the nuisance items, if stored on a residential property, must be stored within a completely enclosed building. The ordinance also prohibits upholstered furniture designed for indoor use from being used on front porches.

The Minimum Housing Code and due process with regard to commercial buildings was briefly discussed.

- 3) **Mayor Anthony** mentioned that he along with **Mr. Howell**, **Mr. Amaya**, and **Mr. Bailey** attended Town Hall Day in Raleigh, North Carolina on June 6, 2012.

The Mayor requested Council to review the North Carolina League of Municipalities recent invitation for their input regarding legislative policy proposals. Mayor Anthony explained these proposals are an integral part of the process of determining the League's Municipal Goals for 2013-2014. The Mayor suggested Council discuss the matter at the next meeting of July 16, 2012.

#### I. Adjournment:

- 1) **Motion to adjourn**

**ACTION TAKEN:** Upon a motion made by Mr. Shores, City Council voted unanimously to adjourn the meeting at 7:42 p.m.

Respectfully submitted,

Bernadette A. Parduski, MMC  
City Clerk

O. Stanhope Anthony III  
Mayor

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