

MINUTES

Regular Meeting
City Hall Council Chamber

August 15, 2011
Monday, 6:00 p.m.

Present: Mayor W. Ted Alexander presiding; Council Members Christopher H. (Chris) Mabry, O. Stanhope (Stan) Anthony, III, Jeanette D. Patterson, Dennis C. Bailey, Andrew L. Hopper, Sr.; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, MMC, Director of Finance Theodore B. (Ted) Phillips, CPA, Director of Human Resources Deborah C. (Deb) Jolly, Director of Utilities Brad R. Cornwell, PLS, EI, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Planning Services Walter (Walt) Scharer, AICP; and media representatives

Absent: Council Member Joel R. Shores, Jr.

Mayor Alexander called the meeting to order at 6:00 p.m., welcomed all who were in attendance, and recognized former Council Member Kevin K. Allen. The Mayor gave the invocation and Mr. Anthony led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

ACTION TAKEN: Upon a motion by Mrs. Patterson, second by Mr. Bailey, City Council voted unanimously to approve the agenda as presented.

B. Special Presentation:

- 1) Recognition of the Mayor's Outstanding Volunteer Service Recipients for August 2011: Bill Horn and Doug Sharp for the Cleveland County Potato Project

Mayor Alexander deemed to recognize and honor volunteers, Bill Horn and Doug Sharp, for their work with the Cleveland County Potato Project (CCPP). Since Fall 2009, it has been the goal of the CCPP, a non-profit charitable organization, to produce white and sweet potatoes to be given to people in need of food. Local agencies are given these potatoes at no cost to distribute to their clients.

The Mayor presented certificates to Mr. Horn and to Mr. Sharp on behalf of the City of Shelby.

After both gentlemen expressed their appreciation for the awards, Mr. Sharp made a request for volunteers by stating, "Think potatoes".

C. Public Comment: None

D. Public Hearing:

- 1) Consideration of an ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 42-2011

Request to rezone properties located at 1401 Metcalf Road and 345, 351, 355, and 359 Magness Road from the Residential 20 (R20) District to the Residential 10 (R10) District

Cleveland County Parcel Identification No. 72347 or Tax Map S88, Block 1, Lot 49

Utilizing a map of the area, Mr. Scharer pointed to a parcel, approximately 32 acres in size, which is located west of the intersection of Metcalf Road and Ross Grove Road. He stated there are three, separate, and distinct parts to the subject property: One at the intersection of Metcalf Road and Magness Road, one at the intersection of Magness Road and Moonshadow Lane, and one near the end of Magness Road. The two pieces on Magness Road past Moonshadow Lane were at one time future phases of the Grey Fox Forest Subdivision. The applicant, Grey Fox Forest Home Owners Association, has petitioned the City to rezone this property from low density residential (R20) to medium density residential (R10). Mr. Scharer described land uses in the area as primarily vacant land and single-family residential.

Mr. Scharer stated the R20 Residential District is primarily intended to accommodate very low density single-family, detached dwellings, modular homes, two-family dwellings, and manufactured homes on individual lots in areas that generally do not have access to public water supplies and are dependent upon septic tanks for sewage disposal. Maximum densities within the R20 District are approximately two dwelling units per gross acre for single-family dwellings. Manufactured home parks are permitted within the R20 District by conditional use permit.

The R10 Residential District is primarily intended to accommodate low density single-family, detached dwellings and modular homes at a maximum density of approximately four dwellings per gross acre. Public water and

sewer service are generally available in areas zoned as R10.

Mr. Scharer added although much of Grey Fox Forest is zoned R20, it was developed as a cluster subdivision according to the zoning rules at that time, which is the reason all the lots in Grey Fox Forest are less than 20,000 square feet in area.

The Comprehensive Land Use Plan currently has this area depicted as a low density residential area. The low density residential classification is for single-family, detached residential land uses which are approximately two units or less per acre. The corresponding City of Shelby zoning classifications for low density residential areas are Rural Residential (RR) and R20.

Additionally, Mr. Scharer stated the property is located in the Watershed Protection area and will be subject to WSIV overlay district regulations. Maximum built upon area in non-single family residential development shall be allowed at a maximum 24 percent. However, a developer may appeal to City Council for a 10 percent/70 percent development option permit to develop 70 percent of the area with impervious surface.

Mayor Alexander opened the public hearing at 6:15 p.m. and invited comments from the public.

The Mayor read the letter dated August 15, 2011 from Deepak Gupta of 1338 Moonshadow Lane, Shelby, North Carolina in support of the proposed zoning map amendment.

The following individuals spoke in support of the proposed zoning map amendment:

- Ute S. Lahaie, 1303 Moonshadow Lane, Shelby, North Carolina
- Anne Eskridge, 1306 Turtle Crossing, Shelby, North Carolina
- Melissa Martin, 1300 Moonshadow Lane, Shelby, North Carolina
- Greg Pering, 1315 Moonshadow Lane, Shelby, North Carolina
- Bob Cabaniss, 371 Magness Road, Shelby, North Carolina
- Scot Lahaie, 1303 Moonshadow Lane, Shelby, North Carolina
- Gene Spangler, 1324 Moonshadow Lane, Shelby, North Carolina

- Carol Condrey, 1352 Harvest Moon Way, Shelby, North Carolina
- Susan Lowndes, 1342 Harvest Moon Way, Shelby, North Carolina
- Sandra Tedford, 1340 Harvest Moon Way, Shelby, North Carolina
- Julia Roos, 1321 Moonshadow Lane, Shelby, North Carolina
- Chris Allen, 1308 Moonshadow Lane, Shelby, North Carolina
- Natolyn Brown, 1326 Moonshadow Lane, Shelby, North Carolina
- Kathy Woody, 1344 Harvest Moon Way, Shelby, North Carolina

The following comments and concerns of the above listed individuals have been summarized as follows:

- Said parcel is a segmented parcel that extends from Metcalf Road to the back of the Grey Fox Forest neighborhood in three, separate, and distinct pieces of land. If the zoning remains R20, it would allow for multi-unit sites which would dramatically increase the population, traffic, and noise in the area.
- Although what has been presented to the Grey Fox Forest Property Owners Association are 16 to 18 town homes, the homeowners are not sure this does not mean 32 duplex town homes. If the developer continued to build on the other pieces of property, it would increase traffic exponentially and cause safety issues.
- Multi-family or mobile home zoning is not suitable for the homeowners in Grey Fox Forest as this type of housing will have a major, negative impact to property values. Association members living close to any future homes of this type would feel the first impact and the “spill over” effect would be a detriment to all homeowners in the association.
- The neighborhood was sold as single-family, detached and although the covenants and restrictions refer to the possibility of town homes, the association does not approve. The association requested the zoning change to R10 in order to keep the intent of the neighborhood intact and avoid a negative effect on property values.

The following individual spoke in opposition to the proposed zoning map amendment:

- **Todd Cerwin, 211 Deerpark Road, Shelby, North Carolina, spoke against the proposed zoning map amendment as legal representative for the owner/developer, (Travis) Mangum & (Steve) Mull, LLC. Mr. Cerwin stated Mangum & Mull did not request this zoning amendment, the R20 zoning has been in existence since 1997, and it is consistent with the City’s Comprehensive Land Use Plan. The proposed change to the R10 classification is also inconsistent with the zoning of properties to the north, west, and south, including the Grey Fox Forest Subdivision.**

Mayor Alexander closed the public hearing at 6:51 p.m.

There was discussion in which Council expressed mixed views and considered various options. Mr. Howell emphasized to Council in deciding whether to adopt a proposed amendment that the central issue is whether the proposed amendment advances the public health, safety, or welfare. All other issues are irrelevant. City Council should consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification. He reiterated that City Council should consider the impact of the proposed change on the public at large.

Mr. Scharer reviewed the differences of permitted uses between R20 and R10, specifying permitted uses by right (Z), permitted uses by additional development standards (D), permitted uses by conditional use (C), and permitted uses by special use (S):

Use Type	Zoning Districts	
	R20	R10
RESIDENTIAL USES		
Bed and breakfast or tourist home	D	
Existing detached garage apartment	C	C
Family care home	Z	Z
Modular home	Z	Z
Multifamily dwelling (including condominium)		
Planned unit development		C
Single-family detached dwelling	Z	Z
Temporary shelter	C	
Townhouse dwelling		
Two-family dwelling (duplex)	Z	

ACCESSORY USES AND STRUCTURES

Accessory dwelling unit	D	D
Accessory uses and structures (customary)	Z	Z
Caretaker dwelling	D	D
Communication tower under 60 feet in height	D	
Emergency shelter	Z	Z
Home occupation	D	D
Satellite dish antenna	D	D
Swimming pool	D	D

RECREATIONAL USES

Athletic fields	D	D
Civic, social and fraternal associations	D	
Country club with golf course	D	D
Dance school, music instruction		
Golf course	D	D
Physical fitness center		
Private club or recreation facility, other	D	D
Public park or recreational facility, other	Z	D
Sports and recreation club, indoor		
Swim and tennis club	D	D

EDUCATIONAL AND INSTITUTIONAL USES

Cemetery, columbarium or mausoleum	D	
Cemetery, columbarium or mausoleum on same property as church	Z	Z
Church or other place of worship	D	D
College, university, technical institute		
Day care center, adult and child, 5 or less clients	Z	Z
Day care center, adult and child, 6 or more clients	D	
Elementary or secondary school	S	S
Fire station/emergency medical service	S	S
Government office		
Hospital		
Library	D	D
Nursing and convalescent home	D	
Orphanage	D	
Police station	Z	Z

It became clear from the discussion that Council was interested in a compromise or mediation among the parties.

By consensus, Council took no action regarding Ordinance No. 42-2011.

ACTION TAKEN: Upon a motion by Mr. Mabry, second by Mr. Bailey, City Council voted unanimously to refer the rezoning application of the Grey Fox Forest Property Owners Association to the Planning and Zoning Board for further study and set a report back date of October 3, 2011.

E. Consent Agenda:

ACTION TAKEN: Mayor Alexander presented the consent agenda. Mr. Bailey made a motion to approve the consent agenda and each item as presented. After a second from Mr. Hopper, the consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Regular Meeting of August 1, 2011
- 2) Approval of a Special Event Permit Application:
 - a. Journey with God Ministries Block Party, requested date: September 3, 2011
- 3) Adoption of an ordinance establishing a capital project and budgets for the City of Shelby's Safe Routes to Schools Forest Hill Drive Sidewalk Grant Project: Ordinance No. 43-2011
- 4) Approval of a resolution authorizing submission of a municipal agreement between the City of Shelby and the North Carolina Department of Transportation (NCDOT) for the Municipal Bridge Inspection Program: Resolution No. 48-2011
- 5) Approval of a Notice of Cancellation of the Regular Meeting of September 5, 2011 in observance of the Labor Day holiday

END CONSENT AGENDA

F. Unfinished Business:

- 1) Consideration of a resolution awarding the contract for construction of the Apron Pavement Rehabilitation Project at the Shelby-Cleveland County Regional Airport: Resolution No. 49-2011

Mr. Howell introduced Resolution No. 49-2011 for Council's consideration. He stated all items have been completed in accordance with budget ordinances and grant acceptance for the funding provided by the North Carolina Department of Transportation Division of Aviation. If approved, this resolution would award the contract for removal and replacement of the

entire aircraft parking apron as well as the expansion of the terminal parking area. Mr. Howell recommended awarding the bid to APAC-Atlantic, Inc., Asheville Division in the amount of \$646,280.13.

Upon questioning, Mr. Cornwell explained in May 2009 the City contracted with its airport consultant, W. K. Dickson & Company, Inc., to design the apron rehabilitation project and the terminal parking area project at the Shelby-Cleveland County Regional Airport. After completion of the design phase, City staff and W. K. Dickson worked closely with the North Carolina Division of Aviation in anticipation of receiving grant funding for the construction of these projects. In December 2010 the City was notified of the award of a construction grant for the apron pavement rehabilitation and terminal parking area projects. After the public bid opening in April 2011, the low bid amount with the addition of the construction services fees provided by W. K. Dickson exceeded the City's initial \$500,000 grant so additional funding was requested. In May 2011 the Division of Aviation awarded an additional \$175,000 grant which will cover all of the costs associated with this project. Council previously appropriated the corresponding 10 percent match for this project as well. Mr. Cornwell concluded by stating staff anticipates the entire project to be completed in time for the Fly-In and Open House at the Shelby-Cleveland County Regional Airport on October 15, 2011.

ACTION TAKEN: Upon a motion by Mr. Bailey, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 49-2011 entitled, "A RESOLUTION AWARDED THE CONTRACT FOR CONSTRUCTION OF THE APRON PAVEMENT REHABILITATION PROJECT AT THE SHELBY-CLEVELAND COUNTY REGIONAL AIRPORT".

2) Consideration of a resolution authorizing creation of the "Pleasant City Pennies" Voluntary Contribution Program: Resolution No. 50-2011

Mr. Howell introduced the proposed "Pleasant City Pennies" Voluntary Contribution Program for Council's discussion and consideration. He reminded Council that one of their adopted goals for Fiscal Year 2011-2012 was the development of a voluntary contribution program that would allow the City's utility customers to choose to "round up" the amount of their utility bill each month with the proceeds to be used toward community development purposes. Mr. Howell highlighted some of the guidelines of the utility bill round up program referred to as "Pleasant City Pennies" as follows:

- The funds must go directly to benefit an eligible North Carolina non-profit 501(c) 3 corporation in good standing with the US Internal Revenue Service.

- The non-profit must use allocated funds for purposes that serve to encourage investment and redevelopment in the neighborhoods identified by the Neighborhood Improvement Program.
- A letter from the Board Chair or Executive Director of the non-profit must be submitted to the City Manager requesting allocation of these funds and stating the specific purpose and amount needed.
- The City Manager shall review each request and make a decision to either approve or deny funding based upon its individual merits, conformance with the spirit and intent of the program, and availability of funds. The City Finance Director shall allocate funds only upon written authorization of the City Manager.

Council discussed the importance of the specific purpose of the program and clearly defining the uses which is namely to increase emphasis on neighborhood revitalization projects. The potential effect of the Pleasant City Pennies Program on the existing Neighbor Helping Neighbor Program was also mentioned.

ACTION TAKEN: Upon a motion by Mr. Hopper, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 50-2011 entitled, "A RESOLUTION AUTHORIZING CREATION OF THE "PLEASANT CITY PENNIES" VOLUNTARY CONTRIBUTION PROGRAM", as amended, to cite specific examples of non-profit community organizations that are seeking to improve and invest in Shelby's older neighborhoods in the promotional flyer.

G. New Business: None

H. City Manager's Report:

- 1) Mr. Howell provided a brief update regarding the Job Ready Shell Building at the Foothills Commerce Center and anticipates the project to be completed near the Labor Day holiday, September 5, 2011.
- 2) Mr. Howell stated that contract negotiations are continuing with Republic Services of North Carolina, LLC (GDS) for the City's new recycling program.
- 3) As a follow-up to the Cleveland County Water District discussion held August 1, 2011, Mr. Howell mentioned he is attempting to schedule a meeting with the District Manager and the District Attorney in the very near future.

- 4) Mr. Howell provided Council with the City's Monthly Financial Summary for Fiscal Year ending at June 30, 2011 and briefly reviewed the report, stating the City has met its revenues and projected expenses. He added that final field work by the City's auditors will take place in October 2011.

I. Council Announcements and Remarks:

- 1) Mrs. Patterson congratulated Ted Phillips on his new position as Chief Financial Officer for Huntsville Utilities in Alabama.
- 2) Mr. Mabry expressed his appreciation to Ted Phillips for his ten years of service to the City of Shelby as Finance Director.
- 3) Mr. Anthony expressed his appreciation to all those who worked for the American Legion World Series (ALWS) baseball games, especially City staff. He anticipates the tournament will continue to build in the coming years and be a great event associated with Shelby.
- 4) Mayor Alexander echoed Mr. Anthony's sentiments about the ALWS and Shelby.

The Mayor mentioned a letter dated August 4, 2011 from Destination Cleveland County acknowledging with gratitude the City's recent tourism grant.

The Mayor reminded Council of the school prayer walk to be held on August 21, 2011 at 5:00 p.m. at a school of your choice.

Mayor Alexander reiterated his comments from the August 1, 2011 meeting to Ted Phillips, again extending best wishes to him and his family on their new endeavor in Huntsville, Alabama.

J. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion by Mr. Bailey, second by Mr. Anthony, City Council voted unanimously to adjourn the meeting at 7:49 p.m.

Respectfully submitted,

**Bernadette A. Parduski, MMC
City Clerk**

**W. Ted Alexander
Mayor**

Minutes of August 15, A. D. 2011