

## MINUTES

Regular Meeting  
City Hall Council Chamber

September 19, 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, Joel R. Shores, Jr., Andrew L. Hopper, Sr.; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, MMC, Interim Director of Finance Elizabeth B. (Beth) Beam, CPA, Director of Human Resources Deborah C. (Deb) Jolly, Director of Utilities Brad R. Cornwell, PLS, EI, Fire Chief William P. Hunt, Director of Public Works Daniel C. (Danny) Darst, Jr., 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 Alexander called the meeting to order at 6:01 p.m. and welcomed all who were in attendance. The Mayor gave the invocation. Brownie Troop 2025 represented by Erin White, Emily White, Cierra Thompson, Faith Cerka, and Elizabeth Curtner and hosted by Central United Methodist Church led the *Pledge of Allegiance*.

**A. Approval of agenda:**

- 1) Motion to adopt the proposed agenda

**ACTION TAKEN:** Upon a motion by Mr. Hopper, second by Mr. Anthony, City Council voted unanimously to approve the agenda as presented.

**B. Special Presentations:**

- 1) Recognition of the 2011 Shelby Senior Tar Heel Leagues, Inc. All Stars as State Champions

Mayor Alexander commended the 2011 Senior Tar Heel State Champions (ages 15 through 17 years), their coaches, and their families who represented the City of Shelby in a very positive way not only by being successful on the field, but also by demonstrating sportsmanship on and off the field. The Shelby City Park Senior League All Stars played in the Senior Tar Heel League State Tournament in Morganton, North Carolina from July 14 through July 17, 2011, marking the sixth championship in this age division since 1992.

He mentioned that since joining the Tar Heel Leagues in the early 1990s, the Shelby contingents have captured 15 State titles and have finished runner-up several times.

Mr. Holtzclaw recognized Parks and Recreation staff and in particular David Fisher, Recreation Programs Manager, and Doug Hull, Athletic Program Supervisor, as the dedicated professionals who manage the City's successful youth programs.

Prior to the presentation of certificates, Mayor Alexander recognized Bryan and Tracy Fitch, the parents of the late Michael Dalton Fitch who recently and tragically lost his life in Myrtle Beach, South Carolina. After a moment of silent prayer, Mr. and Mrs. Fitch posthumously accepted their son's certificate and stood with his teammates.

The Mayor, assisted by Mr. Fisher and Mr. Hull, presented the framed certificates to the 2011 Senior Tar Heel State Champions as follows: Coach Charlie Ruff and Team members: Max Cherry, Cody Fitch, Alex Jamison, Zack Ruff, Jon Michael Spake, D. J. Trammell, and Thomas Weaver.

Absent: Head Coach Mike Trammell, Coach Bobby Price, and Team members Dillon Daves, Bradford Lail, C. J. Philbeck, and Austin Smith.

Following this presentation Tavin Littlejohn, Assistant Coach with the Shelby Civitans Club, presented a third place trophy from a recent softball tournament won by his team named D. Fitch to Mr. and Mrs. Fitch in honor of their son, Michael Dalton Fitch.

2) 2008 Drought legislation and the City of Shelby programs to address State drought requirements – Public Utilities Director Brad R. Cornwell, PLS, EI

Mr. Cornwell introduced the subject matter of his presentation by stating drought legislation was ratified by the North Carolina General Assembly and signed by Governor Easley in 2008 that included provisions to improve water use data, reduce drought vulnerability, and allow quicker response to water shortage emergencies. The law, encompassed under Session Law 2008-143, requires conditions to be met by water providers in order to be eligible for state grants or loans to expand water system infrastructure, including seven different points for local water supply systems to address.

Mr. Cornwell highlighted the points as he discussed the requirement and compliance issues of each as follows:

- A local water supply system has established a rate structure that is adequate to pay the cost of maintaining, repairing, and operating the

system, including reserves for payment of principal and interest on indebtedness incurred for maintenance or improvement of the water system during periods of normal use and periods of reduced water use due to implementation of water conservation measures. The funding agency shall apply guidelines developed by the State Water Infrastructure Commission in determining the adequacy of the water rate structure to support operation and maintenance of the system.

- Has implemented a leak detection and repair program
- Has an approved water supply plan pursuant to North Carolina General Statute 143-355
- Meters all water use except for water use that is impractical to meter, including, but not limited to use of water for firefighting and to flush waterlines
- Does not use a rate structure that gives residential water customers a lower per-unit water rate as water use increases

Mr. Cornwell presented the City's current customer thresholds for water usage in gallons as well as the residential, commercial, large industrial, and irrigation water rate structures, comparing the current rates to the proposed rates. Mr. Cornwell stated the average water usage per household is 5,000 gallons a month.

- Has evaluated the extent to which future water needs of the water system can be met by reclaimed water
- Has implemented a consumer education program that emphasizes the importance of water conservation

Referencing the document entitled, "Programs to Address State Drought Requirements", Mr. Cornwell stated the largest focus of the document was to ensure that the City of Shelby has evaluated some scenarios for the use of reclaimed water. The City already has some programs in place for leak detection, metering the use of water, the local water supply plan, and consumer education. As with all of these programs, staff can always do better and each of them will be ongoing and will improve with time. In addition, each time the City applies for state water infrastructure grant funding, proof and documentation that the City has addressed each of these items will be required. Mr. Cornwell stated this document will be used for submission purposes to meet these steps. At the present time, the only item which the City is not in compliance with as to the drought requirements is the issue over the declining block for residential customers. Mr. Cornwell said

this practice is not allowed under the current drought legislation and thus makes the City ineligible for state infrastructure grant funding. The City of Shelby has been able to capitalize on several significant grant funding opportunities from an economic development standpoint as well as some community infrastructure projects such as the Rural Center funding for the Westside Sewer Project and the Community Development Block Grant funding for the Chestnut Street Sewer Project. If the City continues with its current water rate structure, it would be eliminating itself from being able to receive such funding in the future.

Mr. Cornwell concluded by stating the recommendation from staff is to consider transitioning away from the declining block structure for the residential users so that the City may continue to apply for and receive the state infrastructure grant funding opportunities from the Public Water Supply Section, the North Carolina Rural Center, and the North Carolina Division of Community Assistance. The guidance documents, "Programs to Address State Drought Requirements", "Drought Legislation Implementation Information Guide" from the North Carolina League of Municipalities, and the "North Carolina State Water Infrastructure Commission (SWIC) Recommended Guidance for North Carolina Utilities Attempting to Support Water Conservation in the Long-term through Rate Structure Design and Billing Practices of November 2010" from the State Water Infrastructure Commission were included in the agenda packet for educational and review purposes.

Lastly, Mr. Cornwell directed Council's attention to the document entitled, "Compliance with the Drought Bill Provisions". It is a questionnaire that must be completed and submitted with the grant applications the City may apply for in the future. Question 7 (Drought Bill Provision General Statute 143-355(b) (5)) of the form is clear as to the expectation for compliance with the provisions of the drought legislation. Currently the City can respond affirmatively to all other questions as to compliance, with Question 7 being the only exception.

Discussion followed between Council and staff. It was specifically noted that at some point in the very near future (January 1 being a good target date) Council will have to change the City's residential water rate structure to meet the drought legislation guidelines requiring that users of larger volumes not be given a lower preferential rate per thousand gallons. Additionally, the City will not qualify for any water infrastructure related grants from state agencies or non-profits funded by state dollars until the City's residential rate structure is changed to comply with the drought legislation.

Council received the information and took no action.

Mayor Alexander recognized Boy Scout Ray Webb Parker of Troop 100 hosted by Shelby Presbyterian Church and former Council Member Kevin K. Allen in attendance.

**C. Public Comment:**

- 1) Carter Bridges who resides at 348 Hunting Ridge Lane in Shelby, North Carolina spoke in support of curbside recycling. Master Bridges expressed his concern about capacity at landfills. As a student at Jefferson Elementary with a Social Studies project, he conducted an informal survey among his classmates, including his teacher, and neighbors who agreed with him that recycling is an important issue to support and promote in Shelby.
- 2) Rev. John Hayes who resides at 219 Putnam Street in Shelby, North Carolina expressed his appreciation to the City for arranging a walk through in the area surrounding Second Baptist Church on September 7, 2011. Rev. Hayes also spoke about his concerns regarding additional safety and quality of life issues in his south side neighborhood, which, in his opinion, are overall detrimental to Shelby's focus and competitiveness. He specifically mentioned Ledbetter Alley, which was closed a number of years ago, as an area which needs the City's attention.

**D. Consent Agenda:**

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

- 1) Approval of the Minutes of the Emergency Meeting of August 15, 2011
- 2) Approval of the Minutes of the Regular Meeting of August 15, 2011
- 3) Approval of a Special Event Permit Application:
  - a. Way Back Stage at The Rogers Theater, requested date: October 1, 2011

Mayor Alexander recognized Gary Kulas, Executive Director of Status Ante Quo and as the sponsor of this event, in attendance.

- 4) Approval of a resolution honoring Sylvester Haynes on the occasion of his retirement from employment: Resolution No. 52-2011

- 5) Adoption of an ordinance authorizing demolition of a dwelling located at 600 Legrand Street: Ordinance No. 44-2011
- 6) Adoption of FY 2011-2012 Budget Ordinance Amendment No. 2: Ordinance No. 45-2011
  - a. US Department of Housing and Urban Development (HUD) Capital Fund Program
  - b. Carolina Tread Trail Corridor Design Grant

#### END CONSENT AGENDA

#### E. Unfinished Business:

- 1) Consideration of a resolution adopting and approving a contract with Republic Services of North Carolina, LLC (GDS) for the provision of curbside recycling services to the City of Shelby: Resolution No. 53-2011

Mr. Howell reminded Council that requests for proposals were solicited and received in June 2011. At that point, Mr. Howell was authorized to proceed with negotiations with Republic Services (GDS) for a contract that would provide every other week curbside collection of comingled recyclables in Shelby.

After several weeks of discussion and negotiation, the parties have finally agreed on the specific terms for a multi-year agreement. Mr. Howell presented the proposed contract for Council's review and consideration. The final unit price per residential unit is \$2.45 per month to be paid to the contractor on a monthly basis. The primary difference in the original agreement and the one currently under consideration is that the City will now purchase and own the roll-out 90 gallon containers. This recommendation is made due to the fact that the City can leverage up to \$75,000 in grant funding for the containers and provide a lower overall monthly cost to our customers. It will, however, be necessary for the City to add an additional 55 cents to the monthly unit charge to finance the approximately 7,100 cans to be purchased. The total recommended monthly cost per residential unit is \$3.00.

Mr. Howell reiterated that in order for this program to work financially each resident receiving City garbage collection will be billed for recycling service and it will be of utmost importance for the City to work diligently to educate and convince a high percentage of the City's customers of the value of participating in the recycling program. A high rate of participation will divert significant tonnage from the County landfill, reduce tipping fees paid by the City to the County, save County taxpayers money for future landfill

development costs as well as help the environment. It is also possible that eventually the County may be able to close or at the very least reduce the hours of operation of the manned drop off facility at 307 Market Street so that City residents could see a reduction in the annual \$15 recycling fee they pay currently.

Mr. Howell recommended approval of the resolution as well as the proposed contract between the City of Shelby and Republic Services of North Carolina, LLC doing business as GDS-Cleveland.

Discussion followed and included these points:

- Does the possibility exist for closing the Cleveland County/City of Shelby Recycling Center on Market Street coupled with the elimination of the Cleveland County \$15.00 Solid Waste User Fee charged to residents within the City limits on their property tax bills? However, the annual fee covers the cost of running the nine recycling centers located around the County, including Shelby, and for recycling opportunities including electronics, motor oil, yard waste, tires, and batteries.
- Currently, landfill credits include a \$33 per ton savings in tipping fees on the City's waste bill and a 2-ton credit on non-recyclable trash for every 1-ton recycled. However, the Cleveland County Solid Waste Management Plan will be reviewed at the end of this year and the credit initiative could be discontinued.
- With regard to any improperly prepared designated recyclables, unacceptable waste, or contaminants in the recycling container, the contractor, with reasonable discretion, may decline to collect any recyclable materials not set out in accordance with the contract. Council may consider an assessment of penalties in the future.
- The hours of collection are between 7:00 a.m. and 7:00 p.m., Monday through Thursday.
- Mr. Hopper suggested Carter Bridges may possibly wish to be considered as the young ambassador for the City of Shelby's Recycling Program.
- The target date to initiate this program is January 1, 2012, but could be sooner if mutually agreed upon by both parties.

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 53-2011

entitled, “A RESOLUTION ADOPTING AND APPROVING A CONTRACT WITH REPUBLIC SERVICES OF NORTH CAROLINA, LLC (GDS) FOR THE PROVISION OF CURBSIDE RECYCLING SERVICES TO THE CITY OF SHELBY”.

Mayor Alexander declared a recess at 7:28 p.m. and reconvened the meeting at 7:32 p.m.

**G. New Business:**

- 1) **Consideration of the appointment of a City Council representative to the Shelby Carolina Thread Trail Corridor Design Review Committee**

Mr. Scharer stated as part of the Corridor Planning Process, City staff and the Carolina Thread Trail staff have assembled a small Corridor Design Review Team to help guide the planning process. The Design Review Team will meet with the Thread Trail consultant several times during the course of the development of this plan.

Mr. Mabry volunteered as the City Council representative for the Shelby Carolina Thread Trail Corridor Design Review Committee.

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Hopper, City Council voted unanimously to appoint Mr. Mabry as their representative to the Shelby Carolina Thread Trail Corridor Design Review Committee.

- 2) **Consideration of a resolution adopting a Memorandum of Understanding between the County of Cleveland and the City of Shelby, North Carolina for a Special Medical Needs Shelter: Resolution No. 54-2011**

Mr. Howell provided background information regarding the Memorandum of Understanding (MOU) with Cleveland County. Several months ago, Joe Lord, Cleveland County Emergency Medical Services (EMS) Director, approached City staff about the possibility of developing a MOU that would allow Cleveland County and possibly other outside agencies to use a portion of the City Park Community Center as a Special Medical Needs (SMN) Shelter during times of disaster or crisis. In the past, the one limiting factor to using the City Park facility as a shelter has been the lack of backup power. A backup generator has been a stated desire of City staff for some time; however, it routinely was low on the priority list when compared to other capital priorities. As part of the MOU, Mr. Lord has secured grant funding that would allow the installation of electrical generator switchgear to accommodate a mobile backup generator during times of need. There would not be a need for a generator at other times and there would be no need to expend significant capital for a fixed generator by either party. There would



be no cost to the City.

Mr. Howell summarized the understanding as follows:

- Cleveland County will furnish funding and installation of the transfer switch meeting City of Shelby specifications.
- The County will be responsible for oversight of the SMN shelter when activated with some limitations on facility use overseen by City staff.
- Cleveland County public safety entities have priority and no fee is to be charged unless the County is reimbursed by state or federal sources.
- Regional public safety entities from outside the County may use the facility for an SMN shelter on a fee basis and with scheduling through the City.
- SMN shelter operational rules and regulations are to be established by the County with the advice and consent of the City Manager.
- Cleveland County will rely on grants and other funding sources to offset shelter operations and the County will not ask the City for financial support.

Mr. Howell concluded by stating the matter was discussed with all parties and he believes this MOU to be in the best interest of the City. It obviously meets a local and regional need for the location of a SMN shelter during times of disaster at a very economical cost to the taxpayers. It is a common sense approach and one that is likely to benefit Shelby's citizens during a time of crisis. Lastly, the Cleveland County Commissioners have previously approved the MOU in August 2011. Therefore, it was Mr. Howell's recommendation to adopt Resolution No. 54-2011, approving the MOU as presented.

**ACTION TAKEN:** Upon a motion by Mr. Mabry, second by Mr. Bailey, City Council voted unanimously to approve and adopt Resolution No. 54-2011 entitled, "A RESOLUTION ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF CLEVELAND AND THE CITY OF SHELBY, NORTH CAROLINA FOR A SPECIAL MEDICAL NEEDS SHELTER".

- 3) Consideration of a resolution authorizing the purchase of natural gas from Tennergy Corporation; approving the execution and delivery of a Natural Gas Supply Agreement and other documents relating to said purchase;

approving certain documents relating to the issuance of bonds by Tennergy Corporation to procure gas supplies and approving certain contracts and agreements relating thereto; and consenting to the assignment of certain obligations under the Natural Gas Supply Agreement in connection with the issuance of said bonds by Tennergy: Resolution No. 55-2011

Mayor Alexander recognized Scott Heath of Heath and Associates, Inc. in attendance.

Mr. Howell introduced for Council's consideration the Natural Gas Supply Agreement between the City of Shelby and Tennergy Corporation. The opportunity which was presented by the Heaths, the City's long-term natural gas consultants, represents significant potential for savings to the City and its natural gas customers on short and long-term natural gas purchases.

Mr. Howell stated the agreement provides for the purchase of up to 35 percent of annual volumes of natural gas used by the City from Tennergy Corporation at a minimum stated discount of \$0.15 per dekatherm (dt) for a thirty year period. Based upon current volumes used by the City, this would provide an annual savings to customers of approximately \$72,000. Mr. Howell detailed that the discount offered is made possible strictly because of the tax exempt municipal bond financing being pursued by Tennergy in addition to the collective buying power of those participating entities. A number of other A- rated North Carolina cities including Lexington and Monroe are also participating in this agreement. The purchase agreement has been reviewed by the law firm that has collectively represented the interest of natural gas cities in North Carolina. Mr. Jim Byrd with Miller, Balis & O'Neal, the attorney who has represented the City's natural gas interests for many years, has indicated that the agreement is acceptable in its current form. The City of Shelby is not taking on additional debt to purchase this natural gas.

Mr. Cornwell explained that while the agreement is for a total of thirty years, the gas supplies would be purchased in 3 to 5 year increments, or sooner, if significant savings present themselves. Based on current market conditions, some of the anticipated savings are between \$0.60/dt to \$0.70/dt. Additionally, the agreement provides that the City does not have to purchase the natural gas from Tennergy if they cannot provide for a minimum discount of \$0.15/dt. The City would then be free to purchase natural gas as it does now on the spot market.

Mr. Heath reiterated that this project has been a work in progress for years, once in 1999 and again in 2007, but due to factors including Internal Revenue Service (IRS) regulations, legislation, and the financial market, did not come

to fruition. He stated that currently the end result comes down to a gas supply agreement with a guaranteed 15 cent discount, which is essentially risk-free to the City. Mr. Heath advised that the agreed 35 percent purchase volume is a good base load for the City at this time.

**ACTION TAKEN:** Upon a motion by Mr. Bailey, second by Mr. Hopper, City Council voted unanimously to approve and adopt Resolution No. 55-2011 entitled, "A RESOLUTION AUTHORIZING THE PURCHASE OF NATURAL GAS FROM TENNERGY CORPORATION; APPROVING THE EXECUTION AND DELIVERY OF A NATURAL GAS SUPPLY AGREEMENT AND OTHER DOCUMENTS RELATING TO SAID PURCHASE; APPROVING CERTAIN DOCUMENTS RELATING TO THE ISSUANCE OF BONDS BY TENNERGY CORPORATION TO PROCURE GAS SUPPLIES AND APPROVING CERTAIN CONTRACTS AND AGREEMENTS RELATING THERETO; AND CONSENTING TO THE ASSIGNMENT OF CERTAIN OBLIGATIONS UNDER THE NATURAL GAS SUPPLY AGREEMENT IN CONNECTION WITH THE ISSUANCE OF SAID BONDS BY TENNERGY".

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

- 1) Mr. Howell gave a brief report on a promising economic development venture entitled, "Project Breeze". An announcement is pending and the City's incentive grant will follow.
- 2) Mr. Howell will distribute a draft voluntary annexation policy for any property owner outside the City limits wishing to connect or extend to the City's sewer system for Council's review.
- 3) Mr. Howell reported that the Foothills Commerce Center and Job Ready Shell Building projects are nearly complete. A dedication ceremony is being planned for October 14, 2011 at 10 a.m.
- 4) Mr. Howell said he met with the Cleveland County Water District's manager to discuss the City's concerns, informing Council that negotiations are ongoing with respect to downstream water releases and buffering as they relate to the proposed reservoir in northern Cleveland County.

#### I. Council Announcements and Remarks:

- 1) Mr. Anthony inquired as to the Finance Director's vacancy and about the City's monthly financial reports. Mr. Howell introduced Interim Finance Director Beth Beam and responded that no firm timetable has been established as to the replacement of the Finance Director to date; however, the process will include advertising the position through various

outlets and an assessment center.

- 2) As Council liaison to the Shelby-Cleveland County Regional Airport Advisory Board, Mr. Mabry advertised the Fly-in and Open House at Woodson Field on October 15, 2011 from 10:00 a.m. to 3:00 p.m.
- 3) Mayor Alexander announced that the City employee picnic is scheduled for September 22, 2011 beginning at 11:00 a.m. at Shelby City Park. The Mayor encouraged Council members to attend.

The Mayor mentioned the passing of Harold Edward Smith, Sr. on September 16, 2011. His funeral will be held on September 20, 2011 at First Baptist Church. Mr. Smith worked for the Shelby Police Department for 33 years and retired at the rank of captain. Mr. Hopper and Mr. Anthony shared their fond memories and reminisced about Captain Smith's career as Mayor and Council expressed their condolences to the Smith family.

**J. Adjournment:**

- 1) Motion to adjourn

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Hopper, City Council voted unanimously to adjourn the meeting at 8:01 p.m.

Respectfully submitted,

Bernadette A. Parduski, MMC  
City Clerk

W. Ted Alexander  
Mayor

Minutes of September 19, A. D. 2011