

MINUTES

Regular Meeting
City Hall Council Chamber

October 18, 2010
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, Director of Finance Theodore B. (Ted) Phillips, CPA, Director of Human Resources Deborah (Deb) Jolly, Director of Utilities Brad R. Cornwell, PLS, EI, Fire Chief William P. Hunt, Director of Public Works Daniel C. (Danny) Darst, 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 6:00 p.m. and welcomed all who were in attendance. The Mayor gave the invocation and Boy Scout Ryan Phillips of Troop 104, the son of Finance Director Ted Phillips, 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 Mrs. Patterson, City Council voted unanimously to approve the agenda as presented.

B. Special Presentations:

- 1) Recognition of Thomas Randolph McSwain on the occasion of his retirement from employment with the City of Shelby: Resolution No. 71-2010

Mayor Alexander called upon Mr. McSwain, who recognized members of his immediate and extended family, including fellow firefighters. The Mayor formally read and presented framed Resolution No. 71-2010 to Mr. McSwain. He also presented the key to the City and a City lapel pin to Mr. McSwain in honor of and with heartfelt appreciation for more than 28 years of his dedicated service to the City of Shelby.

2) Airport Obstruction and Obstruction Removal Project – Bobby L. Walston, PE, Airport Development Engineer, North Carolina Department of Transportation, Division of Aviation

Mr. Cornwell introduced Mr. Walston as the Airport Development Engineer with the North Carolina Department of Transportation, Division of Aviation, who is a key resource for City staff regarding airport matters on a regular and ongoing basis. Mr. Cornwell also mentioned that he and Civil Engineer Ben Yarboro were present, along with Mr. Walston, to discuss and respond to any questions that may arise during this presentation.

Next Mr. Walston introduced Division staff in attendance with him as Jennifer Fuller, the Project Manager assigned to the Shelby-Cleveland County Regional Airport by the State, and Jimmy Capps, their pilot who performs airport inspections. Mr. Walston stated the Division is responsible for all aviation functions regarding State system planning, airport and aviation system development, and provides funding to communities for constructing and improving airports throughout the State. North Carolina has 72 publicly owned airports and 63, such as the Shelby-Cleveland County Regional Airport, are considered general aviation in operation.

Mr. Walston referred to the North Carolina General Aviation Airport Development Plan, revised in October 2006, and stated the Division of Aviation sets forth the mandatory items for publicly owned and operated airports eligibility for funding under this Plan as follows:

- An approved current Airport Layout Plan (ALP)**
- An Airport Height Ordinance to meet Federal Aviation Regulation (FAR) Part 77**
- Published current Minimum Operating Standards and Rules and Regulations**
- Runway Approach Surfaces must be clear for the primary runway**
- Fully operational 24 hour public telephone and at least one fully charged fire extinguisher available and easily accessible 24 hours a day for use around the main apron area**

Mr. Walston noted clear runway approach surfaces were the focus of his presentation. One of the recurring maintenance activities for all airports is the removal and prevention of obstructions that are identified through ground and flight surveys. The goal for the obstruction removal project is to comply

with Federal Aviation Administration regulations and promote safe approaches and departures at the Shelby-Cleveland County Regional Airport. Mr. Walston further stated obstruction at an airport can jeopardize airport status and both state and federal funding.

Utilizing preliminary drawings of Runway 5 (runway end closest to Boiling Springs, North Carolina) Obstructions and Runway 23 (runway end closest to Sam Lattimore Road, Shelby, North Carolina) Obstructions prepared by the City's airport consultant, W. K. Dickson & Co., Inc., as well as aerial views and photographs, Mr. Walston identified the current and near future obstructions utilizing a 20:1 approach slope at the Shelby-Cleveland County Regional Airport. He explained that, at a minimum, a clear visual approach surface 20:1 as defined in Federal Aviation Administration Advisory Circular 150/5300-13, Appendix 2, contains the standards on siting thresholds to meet approach obstacle clearance requirements and departure obstacle clearance requirements. The slope of the surface 20:1, extends outward 20 feet and upward 1 foot, and is measured at a 5 degree angle.

Discussion followed and the issues related to obstruction identification and removals were summarized as follows:

- The Division of Aviation encourages fee simple property acquisitions and obstruction easement acquisitions to protect the approaches and provide safe flights and access into and out of the Shelby-Cleveland County Regional Airport.
- The Division of Aviation will participate (funding available at 90 percent from state and/or federal grants with a 10 percent match) with Approach Obstruction Projects for threshold siting surfaces for the first 3,000 feet from the runway end.

C. Public Comment:

- 1) Steve Roderick who resides at 701 Cedar Hill Drive in Shelby, North Carolina spoke on behalf of the Keep Shelby Beautiful (KSB) Commission to announce and invite all to the kickoff of Cleveland County Electronics Recycling Day on Saturday, November 13, 2010, at Cleveland Mall from 9:00 a.m. to 2:00 p.m. KSB members will join the Cleveland County Health Department and E-Cycle Secure personnel in collecting IT equipment and consumer electronics for recycling. Mr. Roderick stressed the importance of recycling electronics to preserve landfill space and ensure proper disposal of hazardous materials. Following the kickoff, the Cleveland County Recycling Centers will accept electronics for disposal. Mr. Roderick also mentioned November 15 is America Recycles Day and is

the only nationally recognized day dedicated to the promotion of recycling programs in the United States through Keep America Beautiful, Inc. He also provided a recycling information packet to the Mayor and Council.

Mayor Alexander announced that the City's Solid Waste Division has scheduled its Fall Bulky Item Pick-up for this week, October 18 through 22, 2010.

D. Public Hearings:

- 1) Consideration of a resolution adopting the City of Shelby Water Shortage Response Plan as submitted to the North Carolina Division of Water Quality: Resolution No. 75-2010

Mr. Howell introduced the City of Shelby Water Shortage Response Plan (WSRP), which has been approved by the North Carolina Division of Water Resources, and is submitted to the public for comment and to Council for review and adoption at this time. Mr. Howell explained in order to meet the requirements of the 2008 drought preparedness and management law and to apply for certain State funding, the City must implement several programs and measures including an updated Water Supply Plan and Water Shortage Response Plan. Both plans must be submitted to the North Carolina Division of Water Resources and the WSRP must have the legal authority to be implemented and enforced. Mr. Howell recommended Council's approval of the WSRP via Resolution No. 75-2010.

Next Mr. Cornwell provided background information on the drafting process related to the City's updated Water Shortage Response Plan. The Division of Water Quality provides a Plan template to follow which involves several items. It must detail staff authorization as well as local notification for implementing water shortage responses. Secondly, it must detail the different levels of response. Mr. Cornwell pointed out the differences between the new WSRP and the previous City ordinance of 2002 adding an "Emergency Water Conservation Plan". Now the Division of Water Quality recommends five levels of response to water shortages. Mr. Cornwell said this is actually beneficial to the City since previously only three levels of response were included: voluntary, mandatory, and emergency. By using five levels of response, the City has much more flexibility and time to respond to changing issues with the water supply. These five levels of response as outlined are much more realistic and also give targets for measurement by the consumer. It should be easier for the consumer to understand what is expected of the different response levels and also gives them a target to gauge their own usage to see if they are reducing consumption during those needed times and response levels. Another new caveat to the updated WSRP is the use of

triggers for determining when to proceed to the next response levels. These triggers are different for each water purveyor across the State. In Shelby, staff made these determinations based simply on triggers that are defined in the City's operating permits and required releases downstream. It is perfectly acceptable for the City to set these triggers based on our run-of-the-river intake parameters as well as demand, treatment capacity, and withdrawal limits. Staff also looked at the frequency that the City may be required to go from step to step along the WSRP based on historical flow data from the past ten years. Mr. Cornwell also noted that the City's secondary water source, the Broad River Intake, was approved as part of the City's operational triggers and could be activated at Stage 3 if required. Lastly, the Plan summarizes fines and penalties for non-compliance with the WSRP, the public notification process, and how the City will monitor and plan its effectiveness in the future.

Discussion followed and the key points discussed with Council were:

- How the triggers determine entry into the corresponding water restriction stages
- Under the various stages of voluntary and mandatory reductions, the fines are prescriptive in nature while a drought surcharge, if necessary, may apply as directed by Council
- Enforcement of the WSRP would not likely require the City to hire additional personnel

Mayor Alexander opened the public hearing at 7:10 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 7:11 p.m.

ACTION TAKEN: Upon a motion by Mrs. Patterson, second by Mr. Anthony, City Council voted unanimously to approve and adopt Resolution No. 75-2010 entitled, "A RESOLUTION ADOPTING THE CITY OF SHELBY WATER SHORTAGE RESPONSE PLAN AS SUBMITTED TO THE NORTH CAROLINA DIVISION OF WATER QUALITY".

- 2) Consideration of a proposed ordinance to amend the Unified Development Ordinance (UDO) of the City of Shelby – Article 9-10 Planned Unit Development (PUD) District: Ordinance No. 29-2010

Mr. Scharer reminded Council that a Planned Unit Development or PUD is

currently permitted as a conditional use in the City's Unified Development Ordinance (UDO). Conditional use permits are approved by the Zoning Board of Adjustment and are primarily intended for residential purposes. A PUD in Shelby requires a minimum site area of ten (10) acres.

Mr. Scharer stated that staff has been studying a new PUD zoning district since a PUD was approved in 2008 after Council denied a zoning amendment application for a similar use on the same site.

Mr. Scharer explained a Planned Unit Development (PUD) is intended to encourage the master planning of development and to coordinate such development so as to manage its impacts on the provision of City services and infrastructure; encourage creativity and innovation in the design of developments, including the layout of land uses and open space that promote high standards in design and construction, and further the purposes of the Comprehensive Land Use Plan; provide for more efficient use of land including the reduction of land area disturbed for utility lines and motor vehicle access; permit special consideration of property with outstanding natural or topographical features such as rock outcroppings, areas of special flood hazard, slopes, major tree groupings, significant vegetation, or important view corridors and scenic vistas; facilitate use of the most appropriate construction techniques in the development of land; and, to provide for any individual land use not otherwise specified elsewhere in the UDO.

Mr. Scharer pointed out that this proposed amendment allows a PUD district on sites of two (2) acres or more and permits residential and commercial uses as spelled out in a PUD master plan for that particular district. A PUD would require a zoning map amendment that Council approves by legislative action. Council would also approve the PUD master plan as well.

Mr. Scharer added that one of the goals of the Comprehensive Land Use Plan (2009) is to promote and enhance the City by encouraging quality residential and mixed use development. A specific implementation strategy for this goal is to modify the zoning ordinance to allow for a mix of uses at and near activity centers. Such a district is also supported by the Neighborhood Action Plan (2006) and the Center City Master Plan (2007). Several specific policies and actions within the Strategic Growth Plan (2005) support the PUD zoning district as well.

Mr. Scharer concluded by stating both staff and the Planning and Zoning Board recommended this zoning text amendment as presented.

Mayor Alexander recognized Marlene Peeler, Chair of the Planning and Zoning Board, in attendance.

Discussion followed and included favorable comments by Council about the new PUD district being more flexible, proactive, and developer friendly.

Mayor Alexander opened the public hearing at 7:17 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 7:18 p.m.

ACTION TAKEN: Upon a motion by Mr. Mabry, second by Mr. Bailey, City Council voted unanimously to approve and adopt Ordinance No. 29-2010 entitled, "A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE (UDO) OF THE CITY OF SHELBY – ARTICLE 9-10 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT".

- 3) Consideration of a proposed ordinance to amend the Unified Development Ordinance (UDO) of the City of Shelby – Article 10-9 Alternative Energy: Ordinance No. 30-2010

Mr. Scharer provided Council with background information leading to this textual amendment to the UDO for alternative energy regulations. Several months ago, staff was approached by a property owner about placing a micro-hydro power plant on property here in the City of Shelby. Not having any regulations or even mention of such a use in the UDO prompted staff to begin studying alternative energy generation as possible uses within the City's UDO.

Mr. Scharer said alternative energy sources such as wind, solar, and hydro are currently under consideration. This proposed ordinance deals with micro-hydro power generation of less than 100 kW per month. The proposed amendment sites the current landscaping requirements and any regulations of state and federal government.

Mr. Scharer concluded by stating both staff and the Planning and Zoning Board recommended this zoning text amendment as presented.

There was a brief discussion regarding environmental issues and the appropriate permitting required of the applicant.

Mayor Alexander opened the public hearing at 7:28 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 7:29 p.m.

ACTION TAKEN: Upon a motion by Mr. Bailey, second by Mr. Shores, City Council voted unanimously to approve and adopt Ordinance No. 30-2010 entitled, “A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE (UDO) OF THE CITY OF SHELBY – ARTICLE 10-9 ALTERNATIVE ENERGY”.

- 4) Consideration of a proposed ordinance to amend the Unified Development Ordinance (UDO) of the City of Shelby – Article 9, Table 9-4-1 Table of Density and Dimensional Requirements for Residential District and Residential-Office Districts: Ordinance No. 31-2010

Mr. Scharer provided Council with background information leading to this textual amendment to the UDO for residential dimensional requirements. In an effort to give flexibility to the setback requirements in the UDO, the Planning and Zoning Board reviewed the setback and dimensional requirements in the City’s residential zoning districts. The Planning and Zoning Board chose to propose changes to the minimum lot widths of the residential lots and recommended changes to the residential setback requirements.

Mr. Scharer explained the proposed setback changes and lot width changes promote infill development in the City’s older subdivisions with flexible building locations on substandard lots of record and traditional housing placement.

Mr. Scharer added this proposed zoning amendment is consistent with the Strategic Growth Plan, the City’s Comprehensive Land Use Plan (2009), and the Neighborhood Action Plan (2006).

Mr. Scharer concluded by stating both staff and the Planning and Zoning Board recommended this zoning text amendment as presented.

Upon questioning, Mr. Scharer responded that the proposed ordinance is consistent with the UDOs of other communities.

Mayor Alexander opened the public hearing at 7:31 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 7:32 p.m.

ACTION TAKEN: Upon a motion by Mr. Hopper, second by Mr. Bailey, City Council voted unanimously to approve and adopt Ordinance No. 31-2010 entitled, "A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE (UDO) OF THE CITY OF SHELBY – ARTICLE 9, TABLE 9-4-1 TABLE OF DENSITY AND DIMENSIONAL REQUIREMENTS FOR RESIDENTIAL DISTRICT AND RESIDENTIAL-OFFICE DISTRICTS".

E. 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. Anthony, the consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Regular Meeting of October 4, 2010
- 2) Adoption of an ordinance authorizing demolition of a dwelling located at 511 Ligon Street: Ordinance No. 32-2010
- 3) Approval of a resolution awarding the contract for the purchase of a wheel loader: Resolution No. 76-2010
- 4) Approval of a resolution authorizing disbursement of travel and tourism funding for Fiscal Year 2010-2011: Resolution No. 77-2010

END CONSENT AGENDA

F. Unfinished Business:

- 1) Consideration of appointments to City Advisory Boards and Commissions:

- a. Community Relations Council

Mrs. Parduski stated as previously reported to Council on October 4, 2010, a resignation has created a vacancy for an unexpired term concluding August 2011. No new applications have been received and the following applicants remain on file in the Clerk's Office: Alfred Babineau, Michael Shawn Collins, David Forms, and Randy Skelton.

Council briefly discussed the vacancy as Mr. Mabry expressed his desire to make a nomination.

ACTION TAKEN: Upon a motion by Mr. Shores, second by Mr. Hopper, City

Council voted 5 to 1 (Bailey) to continue the nominating process for an unexpired term concluding August 2011 on the Community Relations Council.

G. New Business: None

H. City Manager's Report:

1) Review of the City's Monthly Financial Summary

Mr. Howell distributed the revised City's Monthly Financial Summary, Fiscal Year to Date at August 31, 2010, which included sales tax collections. He provided a brief review and comment of the year to date through August 2010 as follows:

- Current property tax collections
- Sales tax collections
- Solid waste fees
- General Fund expenditures by department
- General Fund Debt Service which includes installment purchase contracts
- Water Revenue Budget including inside and outside water usage
- Water sales in dollars budget
- Water Fund Debt Service which includes general obligation bonds, revenue bonds, and installment purchases
- Sewer Revenue Budget including inside and outside sewer usage
- Sewer Sales Budget
- Sewer Fund Debt Service which includes revenue bonds, a State revolving loan for the compost facility, and installment purchases
- Electric Revenues Budget
- Electric Expenses Budget
- Electric Margin Budget
- Electric Fund Debt Service which includes revenue bonds and installment purchases
- Natural Gas Revenues Budget
- Natural Gas Expenses Budget
- Natural Gas Margin Budget
- Natural Gas Debt Service which includes revenue bonds and installment purchases
- Utilities Fund expenditures by department
- Weather Variances which includes heating degree and cooling degree days

2) Mr. Howell gave Council a brief status update regarding the Job Ready

Shell Building Project and related infrastructure improvements at the Foothills Commerce Center. The kickoff programming meeting was held on October 14, 2010 with staff and architect, Rick Wash, of WHN Architects and monthly meetings will continue to be scheduled. At this time, Mr. Howell requested any contractor inquiries about the project be referred directly to him.

I. Council Announcements and Remarks:

- 1) **Mrs. Patterson reminded all that October is recognized as National Breast Cancer Awareness Month. Before the Council meeting, she distributed the symbolic pink ribbons, which promote awareness of breast cancer issues, and expressed her appreciation to all for wearing the ribbons.**
- 2) **Mr. Anthony announced that he is one of the Team Safe Kids North Carolina runners in the 2010 Marine Corps Marathon to be held in Washington, DC on October 31, 2010. He is running to raise the consciousness and funds for Safe Kids North Carolina to help protect children from accidental injuries.**
- 3) **Mr. Mabry and Mr. Hopper expressed their appreciation to City staff involved in the very successful and highly attended Shelby-Cleveland County Regional Airport annual Fly In and Public Open House of the new terminal building on October 16, 2010.**
- 4) **Mr. Bailey mentioned his tour of the Shelby-Cleveland County Regional Airport with Congressman Patrick McHenry who visited on October 15, 2010. Mr. Bailey also attended and participated in the Commissioning Ceremony of the Shelby Fire & Rescue Department's Engine 31 on October 15, 2010.**
- 5) **Mayor Alexander made the following announcements:**
 - **“New Harmonies: Celebrating American Roots Music” is a Museum on Main Street project organized by the Smithsonian Institution Traveling Exhibition Service and the exhibition will be presented in association with the North Carolina Humanities Council at The Don Gibson Theatre beginning November 13, 2010 through December 29, 2010.**

The Mayor also distributed programs announcing upcoming acts at the Don Gibson Theatre.

- Trick or treating for Halloween in the City of Shelby will take place on Saturday, October 30, 2010.
- The Livermush Expo and Uptown Shelby Fall Festival are October 23, 2010 and will be held in conjunction with the Art of Sound Music Festival which begins October 21 and runs through October 23, 2010.
- North Shelby School will present their “Bach Rocks Fall Musical” on October 28, 2010 at 6:30 p.m. at the Carlos Young Building on the School’s campus.
- The City’s Solid Waste Division has scheduled its Fall Bulky Item Pick-up for this week, October 18 through 22, 2010.
- Congratulated Public Works Director Danny Darst on the recent birth of his grandson, Ananias Clinton Darst.
- The Greatest Treat Festival will be held on October 31, 2010 from 4:00 p.m. to 6:00 p.m. at Shelby City Park.

6) Mr. Hopper mentioned Council members will attend the North Carolina League of Municipalities Annual Conference in Winston-Salem, North Carolina which will be held October 24-26, 2010.

J. Closed Session:

- 1) To complete the annual performance evaluation of the City Manager pursuant to North Carolina General Statute 143-318.11(a) (6)
- 2) To consult with the City Attorney in order to preserve the attorney-client privilege pursuant to North Carolina General Statute 143-318.11 (a) (3)

ACTION TAKEN: Mr. Hopper made a motion to enter into a closed session to conduct the annual performance evaluation of the City Manager pursuant to the appropriate North Carolina General Statute as cited. Council consulted with Mr. Yelton who advised that the topics met the statutory requirements for a closed session. The Mayor invited all Council members present, Mr. Yelton, and Mr. Howell to attend. The motion was seconded by Mr. Bailey. The motion passed unanimously and Council moved into closed session at approximately 8:28 p.m.

ACTION TAKEN: Upon a motion by Mr. Shores, second by Mr. Anthony, City Council voted unanimously to return to regular session at 9:20 p.m.

K. 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 9:21 p.m.

Respectfully submitted,

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

**W. Ted Alexander
Mayor**

Minutes of October 18, A. D. 2010