

## MINUTES

Regular Meeting  
City Hall Council Chamber

April 20, 2009  
Monday, 6:00 p.m.

**Present:** Mayor W. Ted Alexander, presiding; Council Members Christopher H. (Chris) Mabry, Jeanette D. Patterson, Michael R. (Mike) Royster, Joel R. Shores, Jr., Andrew L. Hopper, Sr.; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, CMC, Director of Utilities Brad R. Cornwell, PLS, EI, 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 Larry G. Ware

Mayor Alexander called the meeting to order at 6:00 p.m., welcomed all who were in attendance, and recognized former Mayor Michael Philbeck. The Mayor gave the invocation and Mr. Howell led the *Pledge of Allegiance*.

Next the Shelby High School Orchestra played the national anthem of the United States of America, "The Star Spangled Banner", and the Jinotega School of Music Band played the Nicaraguan national anthem, "Hail to thee, Nicaragua".

### A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

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

### B. Special Presentations:

- 1) Recognition of Jinotega, Nicaragua School of Music Band

Mayor Alexander introduced Band Director Pedro Jose Zeas of Jinotega, Nicaragua, Shelby's Sister City, who traveled here with the Municipal School of Music Band to visit and perform community concerts. The Mayor invited the public to attend the remaining scheduled concerts on April 21, 2009 at Cleveland Community College and on April 22, 2009 at Eastside Baptist Church.

Mayor Alexander formally read his Proclamation, as well as the certificates of recognition and appreciation for each band member, and presented them to

**Mr. Zeas.**

**Mr. Zeas, through an interpreter, expressed his sincere gratitude to the City of Shelby and its community for making this trip a dream come true for him and the band members.**

**2) Recognition of Coach Aubrey Hollifield and the 2009 Shelby High School Golden Lions Basketball Team: Resolution No. 16-2009**

**Mayor Alexander called upon Coach Aubrey Hollifield of the Shelby High School Golden Lions Basketball Team and formally read and presented framed Resolution No. 16-2009 to Coach Hollifield as a tribute to their championship season.**

**Coach Hollifield accepted the resolution and expressed appreciation and gratitude to the community on behalf the Golden Lions. He introduced team members present as follows: Jay Royster, Cody Allen, Josh Hillman, Ryan Canoy, Derrick Mayo, Miles Lawrence, Eric Mayo, Devin Mitchell, Quevalas Murray, Aaron Brown, Zack Hutchinson, and Thomas Allen.**

**3) Recognition of Conductor John Champney and the Shelby High School Orchestra: Resolution No. 17-2009**

**Mayor Alexander called upon Conductor John Champney of the Shelby High School Orchestra and formally read and presented framed Resolution No. 17-2009 to Mr. Champney as a tribute to their outstanding performance at Carnegie Hall in New York City on March 8, 2009.**

**Mr. Champney accepted the resolution and expressed appreciation and gratitude to the community for their support. He introduced orchestra members present as follows: Tony Watson, Gracie Blackley, Megan Jubane, Murphy Taylor, Thompson Wall, and Isabelle Lahaie.**

**4) Recognition of the Mayor's Outstanding Volunteer Service Recipients for March 2009: Katherine Brooks and Sarah Beam**

**Mayor Alexander recognized Katherine Brooks and her daughter, Sarah Beth Beam, who donated all the household items from their previous home to a single mother with two children who recently lost everything in a house fire. Mrs. Brooks also donated a keyboard to the Jinotega School of Music. She wanted the public to know that there are people who are in need of items that most of us take for granted and challenged others to donate.**

**Mayor Alexander presented framed certificates to Katherine Brooks and Sarah Beth Beam on behalf of the City of Shelby.**

**5) Recognition of the Mayor's Outstanding Volunteer Service Recipient for April 2009: Junius T. Gardner**

**Mr. Gardner was not present to accept his certificate.**

**Mayor Alexander declared a recess at 6:24 p.m. and reconvened the meeting at 6:26 p.m.**

**C. Public Comment:**

- 1) David Smith who resides at 1012 Earl Road in Shelby expressed his concerns about jobs and utilities. He requested to know what the City was planning in terms of recruiting jobs for Shelby and the County as well as providing utilities, especially maintaining the water supply if drought conditions continue to exist.**
- 2) Hubert Webb, who resides at 1329 B Lenoir Drive in Shelby, stated he is the Property Manager of the Lenoir Drive Apartments. Mr. Webb said he has been involved with the renovations of this apartment complex since 2007. He expressed appreciation for the support he has received from the Pinehurst Community Watch Association and the Shelby Police Department for his cleanup efforts of the property. However, Mr. Webb and his partner have encountered a series of indifferences with the Cleveland County Magistrate's Office and particularly with Magistrate and Council Member Larry Ware in obtaining various warrants and evictions.**

**Mayor Alexander explained to Mr. Webb that although Mr. Ware is both a Magistrate and a Council Member, City Council is not the entity with authority or supervision over the Magistrate's Office in judicial matters. The Mayor also commended Mr. Webb for his work at the Lenoir Drive Apartments.**

- 3) Bobby Spikes, who resides at 1334 Newton Street in Shelby, stated he is the coordinator of the Pinehurst Community Watch Association. Mr. Spikes spoke in support of his community watch area which is a part of the Weed and Seed Program consisting of Monroe Street, Newton Street, Concord Street, Durham Street, Lenoir Drive, and Frederick Street, and includes the Lenoir Drive Apartments. He read a prepared statement and respectfully requested that Mr. Ware as Council Member and Magistrate consider changing his alleged opinion of the area and extended an offer to him to work with the residents to further improve conditions.**

**Mr. Hopper, who resides on Monroe Street, stated he became aware of this situation in March 2009. He commended Mr. Webb and his partner for**

their management and leadership and considers the Lenoir Drive Apartments an asset to the community. Mr. Hopper encouraged Mr. Webb to continue his efforts and offered to personally navigate him through the legal system.

**D. Public Hearing:**

- 1) **Consideration of a resolution granting a Special Use Permit to Penco Land Company, LLC for 1020 Sue Lane near County Home Road: Resolution No. 27-2009**

**Parcel ID No. 53518 or Tax Map 6-56, Block 1, Portion of Lot 76**

After taking his oath, Mr. Scharer presented the staff report. Utilizing a map of the area, Mr. Scharer stated that this proposed Special Use Permit (SUP) is for a site at 1020 Sue Lane considering a 48 unit multi-family development. Mr. Scharer stated that a multi-family development with 25 or more units is permitted by a SUP in the General Business (GB) zoning district. Mr. Scharer concluded by stating that staff has reviewed the proposed site plan and recommended approval.

Upon questioning, Mr. Scharer responded that a SUP does not differentiate between a multi-family development and a senior dwelling complex.

Mayor Alexander opened the public hearing at 6:40 p.m. and explained the quasi-judicial process. Sworn testimony was given as follows:

David Smith who resides at 1012 Earl Road in Shelby stated he was undecided about the Special Use Permit but expressed several concerns. Mr. Smith is concerned about increased traffic congestion in the area and made reference to police logs for various multi-family complexes. In Mr. Smith's opinion, there is no difference between a subsidized development and one built with tax credits. He believes these types of developments attract an undesirable element to the area.

Michael Philbeck who resides at 1805 Arbor Way Drive in Shelby spoke in support of the Special Use Permit. Mr. Philbeck provided background information on his involvement with this project and its developer, as well as a previously approved project, dating back to December 2007. He detailed the findings of fact, stated that the applicant has met the burden relative to the proposal, and requested Council's favorable decision.

Frankie Pendergraph who resides at 2708 Highway 64 West in Apex, North Carolina spoke in support of the Special Use Permit. She is the developer of the proposed development, Abbington Gardens. Ms. Pendergraph described

Abbingtion Gardens as an all-inclusive, multi-story building of 48 units for independent living with an established rent schedule. She submitted a floor plan for viewing. Ms. Pendergraph anticipates total development costs to be approximately \$5 million with construction to begin in Spring 2010. The units will be deed-restricted to senior citizens and handicapped or disabled tenants for 50 years. Ms. Pendergraph added that her company has been successful in both North and South Carolina with similar projects.

Lee VanDeCarr who resides at 3924 Browning Place in Raleigh, North Carolina spoke in support of the Special Use Permit. He serves as general counsel and Director of Development for The Pendergraph Companies. Mr. VanDeCarr commented on Ms. Pendergraph's experience and good reputation in North and South Carolina.

Mayor Alexander closed the public hearing at 6:58 p.m.

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 27-2009 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO PENCO LAND COMPANY, LLC FOR 1020 SUE LANE NEAR COUNTY HOME ROAD".

**E. Consent Agenda:**

**ACTION TAKEN:** Mayor Alexander presented the consent agenda. Mr. Shores 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 April 6, 2009
- 2) Approval of a resolution declaring the intent of the City Council of the City of Shelby to consider the permanent closure of an alley between Lee Street and Hudson Street: Resolution No. 28-2009
- 3) Approval of a resolution to establish walking routes for the Eat Smart Move More Coalition: Resolution No. 29-2009
- 4) Adoption of FY 2008-2009 Budget Ordinance Amendment No. 6: Ordinance No. 13-2009

**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 that Chair Allen Langley submitted a letter dated February 20, 2009 requesting Council's consideration in removing board member, Darryl Stephen Ager, for absenteeism at board meetings. Mr. Ager's term concludes July 2011. Applications on file include the following: Craig Ferree, Chavis Gash, and Joan D. Spencer.

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Royster, City Council voted unanimously to remove Darryl Stephen Ager from the Parks and Recreation Advisory Board for absenteeism and to appoint a member to the vacancy created for an unexpired term concluding July 2011.

Mrs. Patterson nominated Craig Ferree.

Mr. Hopper nominated Chavis Gash.

**ACTION TAKEN:** Upon a motion by Mr. Royster, second by Mr. Shores, City Council voted unanimously to close the nominations for the unexpired term concluding July 2011.

Council cast the following votes:

Craig Ferree received four affirmative votes (Mabry, Patterson, Royster, and Shores).

Chavis Gash received one affirmative vote (Hopper).

By consensus, Council appointed Craig Ferree to the Parks and Recreation Advisory Board for the unexpired term concluding July 2011.

**b. Planning and Zoning Board**

Mrs. Parduski reported that the terms of five incumbents, Marlene Peeler, Mark Carter, Rick Washburn, Bob Cabaniss (Extraterritorial jurisdiction (ETJ) member), and Roy Dedmon (Extraterritorial jurisdiction (ETJ) member) will expire June 2009. All five incumbents wish to continue their service. Mrs. Parduski explained that Mr. Cabaniss and Mr. Dedmon, as ETJ members, must be reappointed by the Cleveland County Commissioners.

Mr. Shores nominated Marlene Peeler, Mark Carter, and Rick Washburn; and recommended Mr. Cabaniss and Mr. Dedmon to the Cleveland County Commissioners for reappointment.

**ACTION TAKEN:** Upon a motion by Mr. Royster, second by Mr. Hopper, City Council voted unanimously to close the nominations.

By consensus, Council reappointed incumbents, Marlene Peeler, Mark Carter, and Rick Washburn to the Planning and Zoning Board for terms concluding June 2012; and recommended Mr. Cabaniss and Mr. Dedmon to the Cleveland County Commissioners for reappointment.

- 2) Consideration of an Ordinance of the City of Shelby, amending Division 2 of Article II of Chapter 4 of the City of Shelby, North Carolina Code of Ordinances by deleting current Sections 4-71 through 4-75 and adding new Sections 4-71 through 4-75 (Animal Control Ordinance): Ordinance No. 14-2009

Mr. Howell reminded Council that this revised ordinance was introduced and discussed on April 6, 2009. He reviewed the proposed amendments as follows:

- The revised ordinance would increase the current leash law penalties now set at \$15 and \$25 for the first and second offenses to \$50, \$75, and \$100 for first, second, third, and subsequent offenses.
- The revised ordinance adopts the Cleveland County Animal Control Ordinance by reference which would provide the Cleveland County Animal Control Officer much more enforcement capabilities within the City limits.

Mr. Howell anticipated that these amended provisions will address and provide more effective tools for dealing with animal control issues within the City limits. He recommended the finalized ordinance be adopted and approved by Council at this time.

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Royster, City Council voted unanimously to approve and adopt Ordinance No. 14-2009 entitled, "AN ORDINANCE OF THE CITY OF SHELBY, AMENDING DIVISION 2 OF ARTICLE II OF CHAPTER 4 OF THE CITY OF SHELBY, NORTH CAROLINA CODE OF ORDINANCES BY DELETING CURRENT SECTIONS 4-71 THROUGH 4-75 AND ADDING NEW SECTIONS 4-71 THROUGH 4-75".

G. New Business: None

H. City Manager's Report:

- 1) North Carolina Baptist Men's Camp

Mr. Howell reminded Council of the North Carolina Baptist Men's (NCBM) previous presentation regarding their intent to develop a mission camp on acreage purchased and located in South Shelby near Kate's Skating Rink. In February 2009 the NCBM formally requested that the City consider funding construction of an access road (public street) from South Lafayette Street to their property line. The street was proposed to be constructed mostly on an existing but unopened public right-of-way not currently in use. The preliminary expense submitted by the NCBM estimated this cost to be approximately \$180,000 if constructed to the minimum standards set forth by the City. Mr. Howell stated this is not realistic from the City's financial standpoint and the City does not have a funding mechanism within its current policy. Mr. Howell reiterated the cost for road construction of this nature is the responsibility of the developer of a property. Because the nature of the mission camp does have potential to have a great benefit to the City along with the potential for a residential component with this project, Mr. Howell recommended that Council should consider allowing the NCBM to take advantage of an established (reimbursement) policy which provides financial incentives for the development of residential streets within the City limits. Council concurred and the NCBM were advised to pursue these incentives in accordance with existing City policy. Ultimately the street would be dedicated and maintained as a City street for Powell Bill purposes.

## 2) State/Federal Legislative Updates

### a. Annexation

Mr. Howell briefed Council on legislation to extensively revise North Carolina's annexation statutes currently under consideration by the General Assembly. He stated that for over 50 years the State's annexation laws have served North Carolina well. However, with more than 20 bills introduced in the House or Senate that would restrict or effectively eliminate town-initiated annexations, municipal officials are being urged to support, through the North Carolina League of Municipalities (NCLM), legislation that would reform the statutes but retain fairness in annexation for in-town residents and the ability to manage growth through annexation. Mr. Howell recommended Council consider a resolution in support of the NCLM's proposed bills based on a 20-point proposal which address concerns of citizens regarding the annexation process.

### b. Collective Bargaining

Mr. Howell provided information that unions are pushing hard to lift North Carolina's ban on collective bargaining between State and local governments and police officers, firefighters, teachers, and other State and local employees. Legislation at the federal level would mandate collective



bargaining with unions representing public safety employees. Bills now before the General Assembly would do away with North Carolina's longstanding ban. The NCLM believes that local boards, elected by citizens, should continue to determine salaries and benefits based on local conditions and circumstances. As with many decisions, municipal officials face a balancing act, carrying out their responsibilities to their residents and being fair to employees. Collective bargaining makes finding that balance more difficult for municipal officials. Mr. Howell stated that collective bargaining is not in the best interest of the hardworking North Carolina taxpayers or the dedicated, hardworking municipal workforce.

Mr. Howell also mentioned that proposed federal card check legislation would eliminate the secret ballot process for establishing unions and replace it with a process where a majority of employees sign a card and the union is established. This card check process would allow unreasonable influence on employees to support unionization. Mr. Howell reminded Council that North Carolina has had a long-standing statutory prohibition against local governments entering into collective bargaining with unions.

#### **c. Municipal Streets and the State Highway System**

Mr. Howell made Council aware of the introduction of a Senate bill being advanced by the State Department of Transportation (NCDOT) which could result in the significant transfer of State-maintained roads to cities and towns for local maintenance responsibility, severely impacting Powell Bill funding and distribution.

Mr. Howell concluded by stating that there is a long list of bills with potentially major impact on cities and towns that are now pending before the North Carolina General Assembly and encouraged Council to attend Town Hall Day, sponsored by the NCLM, on May 6, 2009 and to make contact with their legislators.

3) Mr. Howell mentioned Police Officer Cody Nantz's premature daughter, Mackenzie, and requested that she be remembered in our thoughts and prayers.

#### **I. Council Announcements and Remarks:**

- 1) Mr. Mabry expressed his appreciation to all the citizens and City staff who participated in the Great American Cleanup on April 18, 2009.
- 2) Mrs. Patterson utilized this time to question Mr. Howell regarding the position of Assistant Finance Director reported to Council during the presentation of the annual audit report by Dixon Hughes on March 16,

2009.

Mrs. Patterson inquired as to why Mr. Howell never mentioned the new position of Assistant Finance Director to Council prior to the auditors' report.

Mr. Howell responded that this position had been funded in the Finance Department three years ago and was left vacant.

Mrs. Patterson raised a question as to the condition presented during the Fiscal Year 2008-2009 budget sessions that no new positions were funded.

Mr. Howell reiterated that the Finance position was added in Fiscal Year 2007-2008 and not filled primarily due to budget concerns. As of April 2009, there is a retirement scheduled in the Finance Department and the Assistant Finance Director will assume many of those duties. Mr. Howell added there was no new money placed in the Finance Department budget for Fiscal Year 2008-2009; the Finance position had been left unfilled until most recently.

Mrs. Patterson inquired as to why the Assistant Finance Director was not present at this meeting to take Mr. Phillips' place since a budget issue was on the agenda.

Mr. Howell responded that he generally handles these matters and it was not necessary for the Assistant Finance Director to be present.

Mrs. Patterson stated that since 2005 the total cost of the new financial software package was \$375,000 and allowed for the elimination of one position in the Finance Department.

Mr. Howell explained that the City operates a \$75 million budget with a lean Finance staff which includes a Finance Director, an Assistant Finance Director, an Accounting Manager, an Accountant (retiring April 2009), and an Accounting Technician.

Mrs. Patterson inquired if the City needs three Certified Public Accountants.

Mr. Howell responded affirmatively and stated that the City needs as much highly qualified, professional help in the form of Certified Public Accountants as possible which is evidenced by the numerous awards received for its financial reporting. Mr. Howell said that the City essentially operates a \$75 million business, including utilities, which

requires appropriate and significant financial reporting of public monies.

Mrs. Patterson inquired if the new Assistant Finance Director was the City's first of such a position.

Mr. Howell confirmed the Assistant Finance Director as a new position for the City.

- 3) Mr. Hopper expressed his appreciation to all for allowing the management of Lenoir Drive Apartments and the coordinator of Pinehurst Community Watch Association representing the residents to be heard in the public forum of the Council meeting. He again commended the management of the apartment complex for their professionalism and rallied support for their efforts in the neighborhood.
- 4) Mayor Alexander reminded all to attend the festivities associated with the Foothills Merry-Go-Round Festival which begins April 24 and runs through April 26, 2009. The Mayor also reminded Council that the annual Foothills Merry-Go-Round Festival Honors Awards Reception and Presentation Ceremonies will be held and hosted by First National Bank on April 23, 2009.

**J. Adjournment:**

- 1) Motion to adjourn

**ACTION TAKEN:** Upon a motion by Mr. Mabry, second by Mr. Shores, City Council voted unanimously to adjourn the meeting at 7:33 p.m.

Respectfully submitted,

Bernadette A. Parduski, CMC  
City Clerk

W. Ted Alexander  
Mayor