

MINUTES

Regular Meeting
City Hall Council Chamber

March 16, 2009
Monday, 6:00 p.m.

Present: Mayor W. Ted Alexander, presiding; Council Members Christopher H. (Chris) Mabry, Larry G. Ware, Jeanette D. Patterson, Michael R. (Mike) Royster; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, CMC, Director of Finance Theodore B. (Ted) Phillips, CPA, Director of Human Resources Deborah C. (Deb) Jolly, Director of Utilities Brad R. Cornwell, PLS, EI, Fire Chief William P. Hunt, Assistant Fire Chief Jacob E. (Jake) Whisnant, Director of Planning Services Walter (Walt) Scharer, AICP; and media representatives

Absent: Council Members Joel R. Shores, Jr. and Andrew L. Hopper, Sr.

Mayor Alexander called the meeting to order at 6:00 p.m. and welcomed all who were in attendance.

On behalf of Council, the Mayor extended condolences to Chief William Hunt on the loss of his father and to Parks and Recreation Director Charlie Holtzclaw on the loss of his mother. Next, Mayor Alexander congratulated Shelby High School for two recent accomplishments: The Golden Lions for their first-ever 2A State Basketball Championship victory and the orchestra for performing at Carnegie Hall in New York City. The Mayor also mentioned that Shelby native, Doug Limerick, will soon replace the late Paul Harvey's timeslot on the ABC Radio Network.

Mrs. Patterson gave the invocation and PFC Robert L. Roadcap, a decorated soldier currently serving in the United States Army, led the *Pledge of Allegiance*.

Mayor Alexander recognized former Council Member Dicky Amaya.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

Mayor Alexander announced a change of sequence under Special Presentations to the following:

- 2) Presentation of Keep America Beautiful, Inc. President's Circle Recognition Award 2008 to Keep Shelby Beautiful – Sandra Renick, Keep Shelby Beautiful (KSB)

- 3) Recognition of Quentin Cash as the Western North Carolina Association of Firefighters (WNCAFF) Firefighter of the Year for 2008
- 4) Destination Cleveland County (DCC) update – Chair Brownie Plaster and Executive Director Emily Epley

The Mayor also announced that Item J-1 would be added as a Closed Session as follows: To consult with attorney retained by the City Council in order to preserve the attorney-client privilege between the attorney and the City Council pursuant to North Carolina General Statute 143-318.11 (a) (3).

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Ware, City Council voted unanimously to approve the agenda as amended.

B. Special Presentations:

- 1) Recognition of Bobby E. Jones on the occasion of his retirement from employment with the City of Shelby: Resolution No. 66-2008

Mayor Alexander called upon Mr. Jones and recognized members of his immediate family. Assisted by Chief Hunt, the Mayor formally read and presented framed Resolution No. 66-2008 to Mr. Jones. He also presented the key to the City and a City lapel pin to Mr. Jones in honor of and with heartfelt appreciation for 33 years of his dedicated service to the City of Shelby.

- 2) Presentation of Keep America Beautiful, Inc. President's Circle Recognition Award 2008 to Keep Shelby Beautiful – Sandra Renick, Keep Shelby Beautiful (KSB)

Mrs. Renick introduced herself as a representative of the Board of Directors of Keep Shelby Beautiful, Inc. (KSB), an affiliate of Keep America Beautiful, Inc. (KAB). She described KSB as a volunteer service organization to channel interested people into ways to improve the community. Next Mrs. Renick introduced Tommy Forney, Amusements Supervisor for Shelby Parks and Recreation, as the KSB Executive Coordinator. The purpose of KSB is to help citizens, businesses, and groups to make and keep their neighborhoods clean, to promote waste minimization and beautification, and to combat the root causes of litter through education and behavior change.

Mrs. Renick stated that Keep America Beautiful (KAB), established in 1953, is the nation's largest volunteer based community action and education organization. With a network of nearly 1,000 affiliate and participating organizations, KAB forms public-private partnerships and programs that

engage individuals to take greater responsibility for improving their community environments.

Mrs. Renick added that KAB's signature annual event is known as the Great American Cleanup and promoted KSB's target cleanup date set for April 18, 2009.

Mrs. Renick concluded by stating that KSB received the KAB President's Circle Award in December 2008, which recognizes exemplary performance made by certified affiliates of the national nonprofit, by conducting an annual Litter Index designed to help remedy "litter hot spots", leveraging community resources, and engaging volunteers to take greater responsibility for their community environment. Additionally, KSB has conducted activities in KAB's three core focus areas of litter prevention, waste reduction, and beautification/community improvement in 2008.

Mayor Alexander accepted the plaque awarded to Keep Shelby Beautiful on behalf of the City and expressed appreciation to all those associated with KSB.

3) Recognition of Quentin Cash as the Western North Carolina Association of Firefighters (WNCAFF) Firefighter of the Year for 2008

As a past President of WNCAFF, Assistant Fire Chief Jack Whisnant provided background information on this Association of 300 fire departments and their membership serving 33 counties throughout the Piedmont regions of North Carolina. The WNCAFF offers information, advocacy, and training to its membership and represents the Western region to the North Carolina State Firemen's Association. Each year, the Association honors an individual from the membership as its Firefighter of the Year.

Assistant Fire Chief Whisnant announced a member of the Shelby Fire & Rescue Department was recognized for this distinction. Firefighter Quentin Cash was selected for the honor and his educational background, community service, and involvement in fire service were considerations for his selection. Mr. Cash is also active in his home community serving the Cherryville Little League, Cherryville area ministries, and Cherryville First Baptist Church. Additionally, Mr. Cash is a member of the Cherryville Fire Department. Mr. Cash's other honors include Cherryville Firefighter of the Year 2007 and the Optimist Club Firefighter of the Year 2006. Assistant Fire Chief Whisnant concluded by stating that Mr. Cash has served the Shelby Fire & Rescue Department with distinction since 2005, having recently been promoted to Driver-Engineer.

Assistant Fire Chief Whisnant recognized Quentin Cash and presented the plaque to him as Mayor Alexander read the inscription.

4) Destination Cleveland County (DCC) update – Chair Brownie Plaster and Executive Director Emily Epley

Mrs. Epley began her presentation by briefing Council on various DCC activities since their last update in July 2008 and included the following:

- September 2008 – awarded Smithsonian traveling exhibit for 2010
- November 2008 – awarded \$35,000 for a capacity grant from Z. Smith Reynolds Foundation to be used for operational expenses
- Ongoing – attend community functions such as the Chamber retreat, Travel and Tourism Council, Uptown Summit meetings
- Continuing grant research and applications
- Conducting audit with CPA firm
- Scheduling speaking engagements at every opportunity – Clubs, Channel 33, and Channel 19
- Establishing local and regional relationships with similar groups

Next Mrs. Epley highlighted DCC's recent activities and accomplishments at the Don Gibson Theatre and the Earl Scruggs Center as follows:

Don Gibson Theatre

- Held groundbreaking ceremonies on September 27, 2008
- Ongoing – monthly construction meetings
- Finalized participation loan with five local banks
- Attended the North Carolina Rural Center's annual forum in Raleigh, North Carolina
- Conducting search for the theatre's Executive Director

Earl Scruggs Center

- Concluded Cultural Inventory by four researchers from the University of North Carolina
- Held public presentation of findings from Cultural Inventory research
- Conducted training with University of North Carolina's Southern Oral History Program leaders for oral history volunteers
- Held recruitment and training of transcriptionists
- Held meeting with architect, Roger Holland, and Cissy Anklam, museum team leader, and Beth Miles, principal designer
- Ongoing – artifact documentation continues at the storage facility with 3,000 items completely documented according to museum standards

- Conducted asbestos survey at Courthouse

To conclude, Mrs. Epley detailed DCC's upcoming activities including:

- Ongoing – oral history gathering
- Introduction and opportunity to meet Executive Director of The Don Gibson Theatre
- Ongoing – Cissy Anklam returns to work in artifacts
- Filming of Earl Scruggs in Cleveland County and Nashville, Tennessee

5) Annual Audit Report and Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ended June 30, 2008 – Brian J. Broom, CPA, Director, and Dave Kerestes, CPA, Manager, of Dixon Hughes, PLLC

Mr. Kerestes introduced himself and stated that he has been involved with the City's audit four of the last five years. Mr. Kerestes encouraged Council to review the letter dated February 27, 2009 detailing the required auditor communications which is contained in Dixon Hughes' report. Mr. Kerestes stated there were no major issues or concerns that were discussed with management in connection with Dixon Hughes' 2008 audit.

Mr. Kerestes presented the Audit and Financial Statement Summary and highlighted the following items during his presentation:

- Page 10 – Dixon Hughes' report for the 2008 audit expressed an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Mr. Kerestes said that since the City received and expended more than \$500,000 in federal and state grant monies, the auditors are required to perform a compliance audit and have expressed an unqualified opinion as well. Mr. Kerestes mentioned Dixon Hughes' Reports on Compliance and Internal Control disclosed two findings in financial reporting and utility billing.
- Page 11 – The table summarizes fund balance information. The Local Government Commission (LGC) recommends that every governmental entity maintain their available fund balance in the general fund at the larger of 8 percent (of expenditures and transfers to other funds) or half the group average. The City's available fund balance percentage is at 24.68 percent for 2008 and the group average available fund balance percentage is 36 percent.
- Page 12 – The table summarizes property tax collection and collection rates. The City's ratio of taxes collected to net levy is at 96.34 percent.

The 2008 group average ratio of taxes collected to net levy is 97 percent.

- Page 13 – The pie charts show a two-year comparison of general fund expenditures.
- Page 14 – The pie charts show a two-year comparison of general fund revenues.
- Pages 15-19 – Communication of Internal Control Related Matters

Dixon Hughes does not consider the observations and recommendations to be significant deficiencies but four areas which include Information Technology, Credit Cards, Investments, and a Whistleblower Policy are presented for consideration to enhance the City's day-to-day operations.

Mr. Kerestes concluded by disclosing two material weaknesses in the City's internal control over financial reporting, as well as the associated corrective action plans, which are detailed in the CAFR, as follows:

- There were a number of audit adjustments needed to assure that the financial statements are fairly presented. In January 2009 the City hired its first Assistant Finance Director. One of the responsibilities of this new position will be to review the balance sheet of each fund, every month. This will help reduce the number of audit adjustments done at year end.
- In preparing for the new utility billing software in March 2009, the City reviewed old outstanding receivable balances and noticed there was approximately \$991,000 to be written off. The City went "live" with this new software in March 2009. The new software will give the City the ability to age receivables. With the new data, the City will be able to better manage receivables and set up new procedures on when to write off outstanding receivables.

Upon questioning, Mr. Howell and Mr. Phillips clarified the amount of tax revenue collected from licenses and the cable television franchise. They also explained the \$991,000 of old outstanding utility receivables written off in the current year as substantially brought about by old bankruptcies.

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. 10-2009

Request to rezone property located at 312 South Post Road from the Residential 10 (R 10) District to the General Business 2 (GB 2) District

Parcel ID No. 22218 or Tax Map 6-8, Block 1, Lot No. 37U

Utilizing a map of the area, Mr. Scharer pointed out the subject property of approximately 8 acres located south of Elizabeth School and Cleveland Community College. Mr. Scharer stated other land uses in the area include retail, service industries, multi-family, and single family dwellings. The GB 2 District is established as a district in which to accommodate a wide range of retail, business, professional, and personal services; office; and limited wholesale and warehousing uses.

The current Land Development Plan classifies the property as institutional. However, the City's newly proposed Comprehensive Land Use Plan designates this area as a Minor Activity Center. The subject property is on the outer edge of this Minor Activity Center. Minor Activity Centers include mostly neighborhood retail which provides services for surrounding neighborhoods, generally a trade area of approximately one mile.

Mr. Scharer concluded by stating that the Planning and Zoning Board unanimously recommended this zoning change.

Mayor Alexander opened the public hearing at 6:48 p.m. and invited comments from the public:

Stacy Heavner who resides at 417 Allen Street in Shelby spoke against the zoning change. He expressed concerns regarding the intersection at Kings Road Extension and South Post Road, including lack of traffic control and increased traffic congestion. In Mr. Heavner's opinion, the requested zoning change is generic and vague since the applicant does not cite a proposed use.

Barbara Hamrick who resides at 304 South Post Road in Shelby spoke in favor of the rezoning application and stated that this is her family's property. Ms. Hamrick volunteered that she is considering relocating her business, which she operated for 10 years at the former Farmers Market.

Mayor Alexander closed the public hearing at 6:56 p.m.

Mayor Alexander clarified, as a point of law, that the applicant is not required to specifically state an intended property use for a general rezoning request

and Ms. Hamrick did so voluntarily.

Mr. Howell reiterated that Council must consider any and all allowable uses for the applicant's proposed GB 2 District rezoning change in this matter. Additionally, Mr. Howell gave explanation that the City maintains certain development standards which must be met and the intensity of use determines what potential road improvements will be required by the City and/or the North Carolina Department of Transportation at the expense of a developer.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Ordinance No. 10-2009 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

E. Consent Agenda:

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

- 1) Approval of the Minutes of the Regular Meeting of February 16, 2009
- 2) Approval of Special Event Permit Applications:
 - a. Uptown Shelby Association's 2009 Calendar of Events
 - b. Foothills Farmers Market 2009 Season
 - c. Ride for the Mind 2009 sponsored by Cleveland County Brain Injury Support Network on March 28, 2009
 - d. Shelby Sprint 5K/10K and Kids Fun Run sponsored by the Dover Foundation YMCA on May 9, 2009
- 3) Approval of a resolution in support of the Cleveland Correctional Center: Resolution No. 9-2009
- 4) Approval of a resolution accepting properties from Cleveland County: Resolution No. 10-2009

END CONSENT AGENDA

F. Unfinished Business:

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

a. Shelby Appearance Commission

Mrs. Parduski reminded Council that there is one vacancy for a member with a term which expires January 2012. Currently there are no applications on file.

Mayor Alexander announced that the City is seeking qualified applicants for this board and for future appointments to all its advisory boards.

b. Housing and Redevelopment Advisory Board

Mrs. Parduski reported that the terms of three incumbents, Angenette Homsley, Brenda Marable, and Robert Mike Lowery, Jr., will expire March 2009. All three incumbents have been contacted and wish to continue their service.

Mr. Royster nominated the incumbents, Angenette Homsley, Brenda Marable, and Robert Mike Lowery, Jr.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mrs. Patterson, City Council voted unanimously to close the nominations and elected to reappoint the incumbents, Angenette Homsley, Brenda Marable, and Robert Mike Lowery, Jr., to the Housing and Redevelopment Advisory Board for respective terms concluding March 2012.

c. Alcoholic Beverage Control Board

Mrs. Parduski reported that the term of one incumbent, Phil Hege, is set to conclude April 2009. Mr. Hege has been contacted and wishes to continue his service.

Mr. Ware nominated Phil Hege.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mrs. Patterson, City Council voted unanimously to close the nominations and elected to reappoint Mr. Hege to the Alcoholic Beverage Control Board for a term concluding April 2012.

d. Parks and Recreation Advisory Board

Mrs. Parduski advised Council that Chair Allen Langley had requested a deferment of Council's action in replacing a board member called for in his letter dated February 20, 2009.

- 2) Consideration of a resolution calling a public hearing and authorizing the solicitation of bids in connection with an Installment Financing Agreement for the acquisition, construction, and equipping of a fuel facility and the acquisition of various governmental equipment: Resolution No. 11-2009

Mr. Howell introduced Resolution No. 11-2009 for Council's consideration. If approved, this resolution would set a required public hearing date and authorize the solicitation of bids to finance the purchase of the previously authorized digital radio equipment, and in addition, the construction of a fueling station on City owned property (old Carnation plant). Mr. Howell stated although no formal agreement is in place, he has entered into discussions with the County Manager concerning a partnership for the fueling station to jointly serve the City and the County.

Upon questioning, the timeframe of the bidding process was discussed, which will also allow staff the opportunity to explore the potential costs of the fueling station. Mr. Howell anticipated a five to six year payback period on the construction.

Mr. Howell added that the public hearing of April 6, 2009 is required to allow public comment on the possible issuance of debt that is subject to review and approval by Council and the North Carolina Local Government Commission (LGC).

ACTION TAKEN: Upon a motion by Mr. Ware, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 11-2009 entitled, "A RESOLUTION CALLING A PUBLIC HEARING AND AUTHORIZING THE SOLICITATION OF BIDS IN CONNECTION WITH AN INSTALLMENT FINANCING AGREEMENT FOR THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF A FUEL FACILITY AND THE ACQUISITION OF VARIOUS GOVERNMENTAL EQUIPMENT".

G. New Business:

- 1) Consideration of a resolution authorizing execution of a Lease Agreement between the Optimist Club of Shelby, NC, Inc. and the City of Shelby, North Carolina: Resolution No. 12-2009

Mr. Howell provided background information about the City operating and maintaining the property known as Optimist Park for many years under an agreement with the Shelby Optimist Club. Staff recently became aware that

the City did not have a written lease to operate and maintain this park. Mr. Holtzclaw worked with the Optimist Club and Mr. Yelton to develop a lease agreement that sufficiently protected the interests of both the City and the Club. Mr. Howell concluded that the lease agreement formalizes a long-standing unwritten agreement which protects the City from liability issues as well as ensures that the Parks and Recreation Department continues to have access to this site for the purpose of providing recreational programming in the community.

Mr. Howell recommended Council's approval of the resolution authorizing the lease agreement.

ACTION TAKEN: Upon a motion by Mrs. Patterson, second by Mr. Royster, City Council voted unanimously to approve and adopt Resolution No. 12-2009 entitled, "A RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN THE OPTIMIST CLUB OF SHELBY, NC, INC. AND THE CITY OF SHELBY, NORTH CAROLINA".

H. City Manager's Report:

- 1) Mr. Howell reminded Council of their recently approved resolution to oppose the expansion of the Charlotte-Gastonia-Rock Hill, NC-SC 8-Hour Ozone Non-Attainment Area to include Cleveland County. He then informed Council that the North Carolina Department of Environment and Natural Resources (NCDENR) did concur and recommended same to the United States Environmental Protection Agency (EPA) for consideration and final determination.
- 2) Mr. Howell reminded Council that Mr. Scharer will present the City's Comprehensive Land Use Plan at their April 6, 2009 workshop session.
- 3) Mr. Howell advised Council that money available to local government for stimulus projects (through the American Recovery and Reinvestment Act) is going to be very competitive. Roughly \$140 million is earmarked for North Carolina's infrastructure development, which is not enough according to Mr. Howell considering all the other competing entities. Mr. Howell did submit three of the City's water and sewer projects by the preliminary deadline.
- 4) Mr. Howell announced that the North Carolina Department of Transportation (NCDOT) will hold a workshop, design public hearing, and Transportation Corridor Official Map Act public hearing for the US 74 Shelby Bypass in Cleveland County and for the US 74 improvements in Mooresboro on April 14, 2009 at Cleveland Community College. Mr. Howell explained that under this General Statute, building permits will be

restricted within the protected corridor. The law does not allow building permits to be issued within the boundaries of the corridor for a period of three years after the application for the building permit is submitted. The maps will be made available to the public for inspection at the City's Planning Services Department.

- 5) Mr. Howell expressed his appreciation to Mr. Phillips and the entire Customer Services Department for several months of intense effort and work in converting 25-year old software to the new Harris/Northstar collections/billing software, which went "live" on March 2, 2009, during a snowstorm. Mr. Howell also thanked Council for their support of the project and a system which will allow the Customer Services Department to serve the City's customers more efficiently and effectively.

Mayor Alexander chimed in to express his appreciation to the City crews who worked through the snowstorm and assisted in keeping City operations running smoothly.

I. Council Announcements and Remarks:

- 1) Council joined Mr. Royster in congratulating The Shelby Star's reporter, David Allen, and Cleveland Headline News' reporter, Kathryn Larson, on their respective wedding engagements.
- 2) Mayor Alexander announced that students and faculty from Shelby's Sister City of Jinotega, Nicaragua's Municipal School of Music will visit here the week of April 16-24, 2009. In addition to several public performances, the group will attend and perform at the City Council meeting of April 20, 2009.

J. Closed Session:

- 1) To consult with attorney retained by the City Council in order to preserve the attorney-client privilege between the attorney and the City Council pursuant to North Carolina General Statute 143-318.11 (a) (3)

ACTION TAKEN: Mr. Royster made a motion to enter into a closed session to consult with attorney retained by the City Council in order to preserve the attorney-client privilege between the attorney and the City Council pursuant to the appropriate North Carolina General Statute as cited. Council consulted with Mr. Yelton who advised that the topic met the statutory requirements for a closed session. The Mayor invited all Council members present and Mr. Howell, Mr. Yelton, and Mrs. Parduski to attend. The motion was seconded by Mrs. Patterson. The motion passed unanimously and Council moved into closed session at approximately 7:25 p.m.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Mabry, City Council voted unanimously to return to regular session at 7:44 p.m.

K. Adjournment:

1) Motion to adjourn

ACTION TAKEN: Upon a motion by Mr. Ware, second by Mr. Royster, City Council voted unanimously to adjourn the meeting at 7:45 p.m.

Respectfully submitted,

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

**W. Ted Alexander
Mayor**

Minutes of March 16, A. D. 2009