

MINUTES

Regular Meeting
City Hall Council Chamber

June 16, 2008
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, Andrew L. Hopper, Sr.; City Manager Rick Howell, City Clerk Bernadette A. Parduski, CMC, City Attorney Robert W. (Bob) Yelton, Director of Finance Theodore B. (Ted) Phillips, CPA, Director of Utilities Brad R. Cornwell, PLS, EI, Assistant Fire Chief Jacob E. (Jake) Whisnant, Interim Police Chief Jeffrey H. (Jeff) Ledford, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Planning Services Walter (Walt) Scharer, AICP; and media representatives

Absent: Council Member Joel R. Shores, Jr.

Mayor Alexander called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. Mayor Alexander gave the innovation and introduced veteran, Wyatt Keith Proctor, a decorated United States Marine Corps Sergeant having served from 1982 to 1993, who led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

Mr. Hopper requested that Item E-6 under the Consent Agenda be removed and placed under New Business as Item G-3 for discussion.

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

B. Special Presentation:

- 1) Recognition of the Mayor's Outstanding Volunteer Service Recipient for June 2008: Julia Dellinger

Mayor Alexander recognized the volunteer nominated by the Cleveland County Council on Aging, Julia Dellinger. Mrs. Dellinger has been an ambassador for the Senior Center since 1989.

Mrs. Dellinger recognized members of her immediate family in attendance.

Mayor Alexander presented the framed certificate to Julia Dellinger on behalf of the City of Shelby and the Cleveland Association of Volunteer Administrators (CAVA).

C. Public Comment:

- 1) **Matrina Clark** who resides at 1308 Frederick Street in Shelby addressed Council regarding two issues, her electric service with the City and the demolition of 504 Suttle Street. Ms. Clark referenced her letter provided to Council on this date. She restated her request and response deadline she included in that letter concerning her release from the City's electric service. Ms. Clark also requested Council to consider a six month reprieve on the City's demolition of 504 Suttle Street in order for her to make a decision regarding the house which was owned by her uncle.

D. Public Hearings:

- 1) **Consideration of an ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 25-2008**

Request to rezone property located at 1138 East Marion Street from the General Business (GB) District and the Residential 10 (R-10) District to the General Business 2 (GB 2) District

Parcel ID Nos. 21190 and 21191 or Tax Map 6-62, Block 2, Lot Nos. 3 and 4

Utilizing a map of the area, Mr. Scharer pointed out the subject property located at 1138 East Marion Street as a split zoned lot. Currently 3.8 acres of the 5.5 acre site is zoned GB. The remaining acreage (1.7) of the property is zoned R-10. Mr. Scharer said that staff is not clear as to how and when this split zoning occurred and the applicant has requested a zoning change to GB2. Mr. Scharer concluded by stating that land uses along Marion Street are primarily commercial.

Mayor Alexander opened the public hearing at 6:11 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 6:12 p.m.

ACTION TAKEN: Upon a motion by Mrs. Patterson, second by Mr. Mabry, City Council voted unanimously to approve and adopt Ordinance No. 25-2008 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

- 2) **Consideration of a resolution authorizing the closeout of the Carolina/Suttle Street Concentrated Needs Project under the North Carolina Department of Commerce, Division of Community Assistance, Small Cities Community Development Block Grant (CDBG) Program (Project No. 05-C-1399): Resolution No. 41-2008**

Mr. Scharer stated that the City is required to hold a public hearing to inform the public that the Carolina/Suttle Street Concentrated Needs Project has been completed and that the City intends to close out this grant. Mr. Scharer reminded Council that the City was awarded a Community Development Block Grant by the North Carolina Department of Commerce-Division of Community Assistance and the grant was used to:

- **Rehabilitate three single family dwellings on Carolina Avenue**
- **Acquire and demolish three dilapidated buildings**
- **Make drainage and sewer improvements in the area**
- **Repair a failed culvert under Suttle Street**
- **Build a community park located on the corner of Carolina Avenue and Suttle Street**

Messrs. Mabry and Hopper commented on the positive improvements in the area.

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

The public offered no comments and Mayor Alexander closed the public hearing at 6:16 p.m.

ACTION TAKEN: Upon a motion by Mr. Ware, second by Mr. Hopper, City Council voted unanimously to approve and adopt Resolution No. 41-2008 entitled, "A RESOLUTION AUTHORIZING THE CLOSEOUT OF THE CAROLINA/SUTTLE STREET CONCENTRATED NEEDS PROJECT UNDER THE NORTH CAROLINA DEPARTMENT OF COMMERCE, DIVISION OF COMMUNITY ASSISTANCE, SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM (PROJECT NO. 05-C-1399)".

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

- 1) **Approval of the Minutes of the Special Meeting of May 19, 2008**

- 2) Approval of the Minutes of the Regular Meeting of June 2, 2008
- 3) Approval of a resolution awarding the bid for the underground cable replacement (electric) at Charleston Place Mall, Concrete Supply, Sedgefield Apartments, Grover Street, Eaves Road, and the Cleveland County Courthouse: Resolution No. 42-2008
- 4) Approval of a resolution accepting the North Carolina League of Municipalities (NCLM) Green Challenge: Resolution No. 43-2008
- 5) Adoption of FY 2007-2008 Budget Ordinance Amendment No. 8: Ordinance No. 26-2008
- 6) REMOVED AND PLACED UNDER NEW BUSINESS AS ITEM G-3

Approval to designate Robert W. Yelton as City Attorney and Yelton, Farfour & Lutz, P. A. as Attorneys of Record for the City of Shelby
- 7) Cancellation of the regularly scheduled City Council meeting of July 7, 2008

END CONSENT AGENDA

F. Unfinished Business:

- 1) FY 2008-2009 Annual Operating Budget for the City of Shelby
 - a. Consideration of the FY 2008-2009 Budget Ordinance No. 27-2008

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Hopper, City Council voted unanimously to approve and adopt Ordinance No. 27-2008 entitled, "CITY OF SHELBY FY 2008-2009 BUDGET ORDINANCE".

- b. Consideration of the FY 2008-2009 Supplemental Budget Ordinance No. 28-2008

ACTION TAKEN: Upon a motion by Mr. Mabry, second by Mr. Ware, City Council voted unanimously to approve and adopt Ordinance No. 28-2008 entitled, "CITY OF SHELBY FY 2008-2009 SUPPLEMENTAL BUDGET ORDINANCE".

- c. Consideration of the reimbursement resolution with regard to installment financings for FY 2008-2009: Resolution No. 44-2008

ACTION TAKEN: Upon a motion by Mr. Hopper, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 44-2008 entitled, "CITY OF SHELBY REIMBURSEMENT RESOLUTION WITH REGARD TO INSTALLMENT FINANCINGS FOR FY 2008-2009".

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

a. Planning and Zoning Board

Mrs. Parduski reported that the term of incumbent, Janet Berry, is set to conclude June 2008. Miss Berry has reconsidered and wishes to continue her service as an extraterritorial jurisdiction (ETJ) member of this board. If reappointed by Council, Miss Berry must also be approved by the Cleveland County Board of Commissioners as an ETJ member. Mrs. Parduski reminded Council that there are no applications for ETJ members on file.

Mr. Royster nominated Janet Berry.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Hopper, City Council voted unanimously to close the nominations for the ETJ member position and elected to reappoint Miss Berry to the Planning and Zoning Board for a term concluding June 2011, pending approval from the Cleveland County Board of Commissioners.

b. Zoning Board of Adjustment

Mrs. Parduski reported that the terms of four incumbents, Mike Griffin, David Beam, Bill McCarter, and Martha Davis are set to conclude July 2008. Mr. Beam, Mr. McCarter, and Miss Davis wish to continue their service while Mr. Griffin has decided to complete his service. Mr. McCarter and Miss Davis are alternates. The only application on file is that of Eric Michael Bester.

Mr. Ware nominated Bill McCarter for full member.

Mrs. Patterson nominated Eric Bester for full member.

Mr. Royster nominated Martha Davis for full member.

Mr. Mabry nominated David Beam for full member.

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

Council cast the following votes for two full members:

David Beam received a unanimous vote.

Eric Bester received one affirmative vote (Patterson).

Bill McCarter received two affirmative votes (Mabry and Ware).

Martha Davis received two affirmative votes (Royster and Hopper).

In order to break the tie vote between Bill McCarter and Martha Davis, Council cast the following votes for one full member:

Bill McCarter received two affirmative votes (Mabry and Ware).

Martha Davis received three affirmative votes (Patterson, Royster, and Hopper).

By consensus, Council reappointed David Beam and appointed Martha Davis as full members to the Zoning Board of Adjustment for terms concluding July 2011.

Council cast the following votes for two alternate members:

Eric Bester received three affirmative votes (Ware, Patterson, and Royster).

Bill McCarter received a unanimous vote.

By consensus, Council reappointed Bill McCarter and appointed Eric Bester as alternate members to the Zoning Board of Adjustment for terms concluding July 2011.

c. Parks and Recreation Advisory Board

Mrs. Parduski reported that the terms of two incumbents, Marie Hendrick and Darryl Stephen Ager, are set to conclude July 2008. Both Mrs. Hendrick and Mr. Ager wish to continue their service. Mr. Jim Allen has submitted his letter of resignation dated May 21, 2008, effective immediately. Mr. Allen's unexpired term concludes July 2009. Applications on file in the Clerk's Office include the following: Craig Ferree, Chavis Gash, and Shanda Hoskins.

Mr. Ware nominated Marie Hendrick.

Mrs. Patterson nominated Craig Ferree.

Mr. Hopper nominated Stephen Ager.

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

Council cast the following votes for two incumbent members:
Stephen Ager received a unanimous vote.

Marie Hendrick received four affirmative votes (Mabry, Ware, Royster, and Hopper).

Craig Ferree received one affirmative vote (Patterson).

By consensus, Council reappointed Stephen Ager and Marie Hendrick to the Parks and Recreation Advisory Board for terms concluding July 2011.

For the unexpired term concluding July 2009:

Mr. Ware nominated Shanda Hoskins.

Mrs. Patterson nominated Craig Ferree.

Mr. Hopper nominated Chavis Gash.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Mabry, City Council voted unanimously to close the nominations for the unexpired term concluding July 2009.

Council cast the following votes for the unexpired term concluding July 2009:

Craig Ferree received two affirmative votes (Patterson and Royster).

Chavis Gash received one affirmative vote (Hopper).

Shanda Hoskins received two affirmative votes (Mabry and Ware).

In order to break the tie vote between Craig Ferree and Shanda Hoskins, Council cast the following votes for one member to fill the unexpired term concluding July 2009:

Craig Ferree received two affirmative votes (Patterson and Royster).

Shanda Hoskins received three affirmative votes (Mabry, Ware, and Hopper).

By consensus, Council appointed Shanda Hoskins to the Parks and Recreation Advisory Board for the unexpired term concluding July 2009.

G. New Business:

- 1) Consideration of a resolution authorizing execution of an agreement between the City of Shelby and the North Carolina Municipal Power Agency (NCMPA) entitled Renewable Energy Development and Service Agreement: Resolution No. 45-2008**

Mr. Cornwell provided Council with background information regarding the legislation referred to as Senate Bill (SB 3). SB 3 passed by the General Assembly in 2007, requires all cities who are electric suppliers, as well as cooperatives and investor owned utilities, to comply with certain Renewable Energy and Energy Efficiency Portfolio Standards (REPS). Mr. Cornwell explained as part of SB 3, by the year 2012, the City will have to show levels equaling 3 percent of year 2011 retail sales as renewable energy and/or reduction due to efficiency. This level jumps to 6 percent in 2015 of the total 2014 retail sales and beyond 2018, the City will have to show renewable energy and/or reduction in the amount of 10 percent of the year 2017 retail sales.

Beginning on September 1, 2009, the City is required by the North Carolina Utilities Commission (NCUC) to submit a compliance report detailing the REPS compliance during the previous calendar year. As such, the City must submit a compliance plan to the NCUC by September 1, 2008. The agreement before Council is to allow the North Carolina Municipal Power Agency Number 1 (NCMPA1) to act as the City's agent in submitting the plan and also overseeing the majority of its development. Mr. Cornwell stated that he will rely heavily on NCMPA1 and his colleagues in other municipalities to develop a plan that is best suited for all agency member cities. It is Mr. Cornwell's goal as a member of the ElectriCities Energy Efficiency Team to develop a plan that all member cities can work together on without duplicating efforts and all are able to comply in a reasonable manner.

By adoption of this agreement, Council will be allowing Mr. Cornwell to work with NCMPA1 to develop the compliance plan and have it submitted to the NCUC by September 1, 2008.

ACTION TAKEN: Upon a motion by Mr. Hopper, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 45-2008 entitled, "A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF SHELBY AND THE NORTH CAROLINA MUNICIPAL POWER AGENCY (NCMPA) ENTITLED, RENEWABLE ENERGY DEVELOPMENT AND SERVICE AGREEMENT".

- 2) Consideration of a resolution approving a financing agreement authorized by North Carolina General Statute 160A-20: Resolution No. 46-2008

Mr. Phillips provided background information regarding the financing agreement and received proposals from several banks in response to the Request for Proposals (RFP) for the financing of the City's rolling stock (police cars, etc.) purchases as budgeted in FY 2007-2008. The total amount to be financed is \$720,945.35 and the financing term will be 59 months. After an evaluation of the proposals submitted by various banks, Mr. Phillips recommended that the City select RBC Centura to finance this equipment. RBC Centura had the lowest interest rate at 3.25 percent with closing costs of \$100 for a total cash outlay of \$792,397.25.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mr. Ware, City Council voted unanimously to approve and adopt Resolution No. 46-2008 entitled, "A RESOLUTION APPROVING A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20".

- 3) Consideration of approval to designate Robert W. Yelton as City Attorney and Yelton, Farfour & Lutz, P. A. as Attorneys of Record for the City of Shelby

Mr. Hopper raised his concerns regarding the Yelton law firm as the legal representative for two government entities, Cleveland County and the City of Shelby, and the potential for a conflict of interest. Mr. Hopper referred to the Yelton law firm as competent and professional and stated that the firm has served the City well. In this regard, Mr. Hopper said this discussion would not be necessary if the City had Yelton's law firm exclusively. Mr. Hopper suggested that Mr. Yelton be given a short transitional period to clear up some of the City's outstanding legal matters previously assigned to Sam Craig and that the City's legal services agreement be the topic for a workshop session in the very near future.

Mr. Royster commented that in December 2006 Council resolved the issue of a potential conflict of interest in the City Attorney and the law firm's representation of the City and placed it as a condition in the current contract. Upon questioning, Mr. Howell clarified the contractual provision of designating the City Attorney and the 60-day notice of intent to terminate the agreement by either party.

Upon questioning, Mr. Yelton advised that the contract's termination notice is there to protect the City's legal interests. Mr. Yelton stated that representing two governmental units is not any different than representing two other clients. Potentially there is a conflict, but if a conflict arises, then the Yelton firm would have to advise both clients in that particular case to find their own

counsel. Mr. Yelton reiterated that the Yelton firm cannot represent either one of them. Mr. Yelton said in the legal world, the possibility for a conflict of interest is seemingly always there. Mr. Yelton went on to state that there could be a conflict of interest more likely between the City and one of his private clients than there would be between the City and the County. Mr. Yelton added that there were four attorneys on staff at the Yelton firm when they entered into this contract with the City and there are four attorneys at the Yelton firm now. Mr. Yelton will be the City's primary contact.

ACTION TAKEN: Upon a motion by Mr. Ware, second by Mr. Mabry, City Council voted unanimously to designate Robert W. Yelton as City Attorney and Yelton, Farfour & Lutz, P. A. as Attorneys of Record for the City of Shelby until further notice per the terms and conditions of the Legal Services Agreement dated December 5, 2006.

ACTION TAKEN: Upon a subsequent motion by Mr. Ware, second by Mrs. Patterson, City Council voted unanimously to review the Legal Services Agreement in September 2008.

H. City Manager's Report:

At Mr. Howell's request, Mr. Cornwell prepared and distributed a handout to Council which provided an update on the City's water supply as it relates to the current drought situation. Mr. Cornwell said that he and his staff review the following comparative graphs daily:

- **Rainfall by the Month** – Mr. Cornwell commented that the area's average normal rainfall is well below average.
- **Finished Water Usage** – Mr. Cornwell commented that water usage is lower as a result of the City's voluntary conservation measures.
- **Dam Level/Flow over the Dam** – Mr. Cornwell stated that the City's flow is significantly lower than in June 2007 and the City is required to release 16 million gallons of water a day (currently flowing at 23 million gallons) by State permit levels.
- **Flow at Casar, North Carolina** – Mr. Cornwell continually monitors the gauging station in Casar where the City's water supply source begins.

Mr. Cornwell anticipates the City will face the same weather and water conditions as last summer.

Mr. Howell urged citizens to take heed regarding the area's water supply, reiterated the City's call for voluntary water restrictions, and will provide an updated press release on the water situation in the very near future.

I. Council Announcements and Remarks

Mr. Mabry announced and encouraged all to attend the blue grass show, *Pickin' at the Park*, on Saturday, June 21, 2008, beginning at 3:00 p.m. at the Shelby Parks and Recreation Community Center.

J. Closed Session:

- 1) Approval of the Minutes and General Account of the Closed Session of May 5, 2008**
- 2) To conduct the annual performance evaluation of the City Clerk pursuant to North Carolina General Statute 143-318.11 (a) (6)**

ACTION TAKEN: Mr. Hopper made a motion to enter into a closed session to approve the Minutes and General Account of the Closed Session of May 5, 2008 and to conduct the performance evaluation of the City Clerk 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. Howell, and Mr. Yelton to attend. The motion was seconded by Mr. Mabry. The motion passed unanimously and Council moved into closed session at approximately 7:15 p.m.

Respectfully submitted,

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

**W. Ted Alexander
Mayor**

Minutes of June 16, A. D. 2008