

MINUTES

Regular Meeting
City Hall Council Chamber

November 18, 2019
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Eric B. Hendrick, David White, David Causby, Violet Arth Dukes, Charles Webber, and Dicky Amaya; City Manager Rick Howell, ICMA-CM, City Clerk Bernadette A. Parduski, City Attorney Robert W. (Bob) Yelton, Assistant City Manager/Director of Finance Justin S. Merritt, MPA, Director of Energy Services Julie R. McMurry, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, EFO, Director of Public Works Daniel C. (Danny) Darst, Jr., and Director of Planning and Development Services Walter (Walt) Scharer, AICP; and Director of Cable Programming Greg Tillman of Cleveland Community College and The Video Factory

Mayor Anthony called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. The Mayor gave the invocation and Mr. Causby led the *Pledge of Allegiance*.

A. Approval of agenda:

Mayor Anthony requested the addition of Item D-1 (c) under Public Hearings as follows:

- Consideration of a resolution approving the purchase of the property known as the rail corridor in Cleveland County, North Carolina pursuant to the Agreement of Purchase and Sale: Resolution No. 76-2019

1) Motion to adopt the proposed agenda

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

B. Special Presentation:

1) Recognition of William Craig Earwood on the occasion of his retirement from employment with the City of Shelby: Resolution No. 63-2019

Mayor Anthony called upon Craig Earwood, who recognized his wife in attendance. The Mayor formally read and presented framed Resolution No.

63-2019 to Sergeant Earwood. Mayor Anthony then presented a City lapel pin to him in honor of and with heartfelt appreciation for 29 years of dedicated service to the City of Shelby Police Department.

Sergeant Earwood was also conferred with the *Order of the Long Leaf Pine*, which is among the most prestigious awards presented by the North Carolina Office of the Governor. On behalf of Governor Roy Cooper, Mayor Anthony formally read and presented the commendation to Sergeant Earwood in recognition of his dedication and outstanding service as an exemplary employee of the State of North Carolina.

Humbled by the recognition, Sergeant Earwood expressed his appreciation to all.

C. Public Comment:

Liz Flowers who resides at 116 Belvedere Avenue in Shelby, North Carolina expressed her concerns about the speed of motorists who race down Belvedere Avenue. The posted speed limit is 35 mph. She and her neighbors are seeking remedies to slow down the speeders before a tragedy occurs. Miss Flowers intends to submit an application to the City's Speed Calming Initiative for consideration.

D. Public Hearings:

- 1) City of Shelby's proposed financing of the Rail Trail Corridor Purchase Project as authorized under North Carolina General Statute (NCGS) 160A-20

Mr. Howell stated this public hearing, together with Resolution No. 69-2019 and Resolution No. 70-2019, is scheduled as part of the required financing process under the terms of NCGS 160-20. A 10-day public notice has been published to make the public aware of the City's intent to borrow money to purchase the Norfolk Southern Rail Corridor.

Following the public hearing, City Council may consider the two action items:

- Resolution No. 69-2019 authorizes the Finance Director to file an application on behalf of the City with the North Carolina Local Government Commission (LGC) for approval of the project and the proposed financing contract. If approved, the Finance Director would prepare and submit this to the LGC for earliest possible consideration so that the City may close on this transaction within the time frame spelled out in the current agreement with Norfolk Southern, which is

no sooner than November 29, 2019 and no later than December 12, 2019.

- Resolution No. 70-2019 would approve a financing agreement pending approval of the North Carolina Local Government Commission between the City of Shelby and Fidelity Bank. The financing provides for the amount not to exceed \$5,500,000 at an interest rate not to exceed 2.0 percent for a term of 10 years.

Next, Mr. Merritt stated Council previously approved a financing agreement between the City of Shelby and Fidelity Bank for a lesser amount of \$1,340,000 at 1.89 percent for a term of 59 months. This resolution and contract would supersede that agreement. It is necessary to now enter into the revised contract to provide interim full financing until such a time as the City of Shelby receives reimbursement from North Carolina Department of Transportation in the amount of \$4,160,000. The City has been told that due to the current cash flow crunch it will be delayed to later in the calendar year 2020 before the grant reimbursement can take place. As part of the contract with Fidelity Bank, it is stated that upon receipt of the reimbursement, the City of Shelby will immediately pay down the full \$4,160,000 toward the loan amount.

Lastly, Mr. Merritt summarized the amended proposal outlined by Fidelity Bank as follows:

- The loan amount is not to exceed \$5,500,000.00.
- The interest rate is fixed at 2.00 percent tax exempt rate. The interest rate will revert back to the original tax-exempt rate of 1.89 percent after the NCDOT grant funds have been applied to the subject loan and term reverts back to 59 months.
- 119-month term – Ten regular principal and interest payments made annually in arrears. Estimated loan closing date. Loan interest start date is December 11, 2019. First annual principal and interest loan payment estimated to be due on 12/11/2020. Final principal and interest loan payment estimated to be due on November 11, 2029.
- Once NCDOT grant funds estimated in the amount of \$4,160,000.00 become available to the City, these grant funds will be applied to the subject Fidelity Bank loan in the form of a principal curtailment and then the original Request for Proposal awarded to Fidelity Bank will revert back to its original awarded rate/terms of a 1.89 percent tax exempt interest rate not to exceed a 59-month term with annual payments made in the arrears.
- The City may make prepayments and/or principal curtailments at any time without penalty from the Bank.

Mayor Anthony opened the public hearing at 6:17 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:18 p.m.

- a. Consideration of a resolution authorizing the filing of an application for approval of a financing agreement authorized by North Carolina General Statute 160A-20: Resolution No. 69-2019

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 69-2019 entitled, “A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20”.

- b. Consideration of a resolution approving a financing agreement authorized by North Carolina General Statute 160A-20: Resolution No. 70-2019

ACTION TAKEN: Upon a motion made by Mrs. Arth Dukes, City Council voted unanimously to approve and adopt Resolution No. 70-2019 entitled, “A RESOLUTION APPROVING A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20”.

- c. Consideration of a resolution approving the purchase of the property known as the rail corridor in Cleveland County, North Carolina pursuant to the Agreement of Purchase and Sale: Resolution No. 76-2019

Mr. Howell introduced Resolution No. 76-2019 for Council’s consideration and explained the item is not included within the public hearing notice. He referenced two documents, the Agreement of Purchase and Sale and the Assignment of Agreement of Purchase and Sale. The Agreement of Purchase and Sale was previously executed between Norfolk Southern Railway Company as the seller of the rail corridor and the Conservation Fund as the purchaser of this property pursuant to the National Trails Systems Act on behalf of the City of Shelby. This resolution will authorize staff to accept the Assignment of Agreement of Purchase and Sale in order that the City of Shelby can close on the property with Norfolk Southern Railway Company.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Resolution No. 76-2019 entitled, “A RESOLUTION APPROVING THE PURCHASE OF THE PROPERTY KNOWN AS

**THE RAIL CORRIDOR IN CLEVELAND COUNTY, NORTH CAROLINA
PURSUANT TO THE AGREEMENT OF PURCHASE AND SALE”.**

- 2) Consideration of a resolution granting an amendment to a Conditional Use District to Don Peeler Realty Inc. for 2100-2200 Joe’s Lake Road:
Resolution No. 71-2019

Mayor Anthony opened the public hearing at 6:25 p.m. and sworn testimony was given as follows:

Mr. Scharer introduced the proposed amendment to a Conditional Use District, stating the applicant is proposing to include single-family dwellings as one of the permitted uses.

Utilizing both location and zoning maps of the area, Mr. Scharer pointed to the subject property along Joe’s Lake Road. The site was zoned Residential Office-Conditional Use (RO-CU) District for multi-family dwellings by the City in 2007. Mr. Scharer added this proposed amendment is consistent with the City’s Comprehensive Land Use Plant.

Mr. Scharer concluded by stating the Planning and Zoning Board recommended approval of the proposed amendment to a Conditional Use District for properties located at 2100-2200 Joe’s Lake Road for single-family dwellings.

Mayor Anthony closed the public hearing at 6:26 p.m.

Having heard all of the evidence and arguments presented at the hearing, Council finds and determines the application is complete. Council was presented with no evidence as to the following findings as read by Mayor Anthony:

- The development will not materially endanger the public health or safety
- The development will not substantially injure the value of adjoining or abutting property
- Will be in harmony with the area in which it is to be located
- Will be in general conformity with the Comprehensive Land Use Plan or other plans officially adopted by Council

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 71-2019 entitled, “A RESOLUTION GRANTING AN AMENDMENT TO A CONDITIONAL USE DISTRICT TO DON PEELER REALTY INC. FOR 2100-2200 JOE’S LAKE

ROAD”.

3) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 78-2019

Mr. Scharer introduced this proposed zoning map amendment for the property located at 1607 East Dixon Boulevard and East Main Street. The owner is Willie Green and the applicant is 5-Star Athlete Development LLC. Utilizing both location and zoning maps, Mr. Scharer pointed to and stated there are two subject properties. One is currently zoned R10 and one is zoned General Business and R10. The applicant wishes to construct multi-family housing units and has requested rezoning on both properties from the current R10 to R6 Residential District Conditional Use (R6-CU). Other properties in the area are zoned GB General Business District, RO Residential Office District, and R10 Residential District. Mr. Scharer also presented the proposed site plan associated with the proposed R6-CU zoning district.

Mr. Scharer further stated the Shelby Comprehensive Land Use Plan for this area designates the site as a Corridor Revitalization Area and the proposed amendment is consistent with the Plan. He added the Planning and Zoning Board recommended approval of the proposed zoning map amendment for property located at 1607 East Dixon Boulevard from Residential 10 (R10) zoning district to Residential 6-Conditional Use (R6-CU) zoning district.

Mayor Anthony opened the public hearing at 6:28 p.m. and invited comments from the public:

Stacy Heavner who resides at 1802 David Drive in Shelby, North Carolina volunteered to serve as group spokesman and to speak against the proposed zoning map amendment. Mr. Heavner, who does not live in the area considered for rezoning, stated he lives in an adjoining neighborhood off Country Club Road, and became sympathetic to the residents. Through his own research, he stated the applicant’s plans are not consistent with what the neighborhood is about. This is a well-established neighborhood which has historically held its property values and has a low crime rate. Many of the families living there are multi-generational. Adding multi-family housing units to the area would not only reduce property values but could bring criminal activity to an area where many families have been invested for generations. The construction would also bring issues of increased traffic, parking, water runoff, and flooding to the area. Mr. Heavner presented a petition of signatures from residents in the area who were against the rezoning.

Jim Myers who resides at 825 Cabaniss Drive in Shelby, North Carolina spoke against the proposed zoning map amendment. Mr. Myers stated the zoning

board has approved the change but all that means is it fits the City land use plan and meets the City's desire for housing on the land. Mr. Myers' issue is can this change bring affordable housing to his neighborhood and affect the future value of his property. The current owners of the community who bought property under the current zoning did not gamble when they bought the property. They bought into single-family housing. When Mr. Green bought his property, he did not buy property zoned for the proposed current intention, he gambled on a change. If it is built, Mr. Myers hopes Mr. Green will build it well, and to the best quality and standards, and not the cheapest bidder as his name and reputation in this community will be on it. If it is not built, Mr. Myers wished Mr. Green well in his next project and that it is understood that the process took its course.

Thomas Addis who resides at 1621 Mountain Lane in Shelby, North Carolina spoke against the proposed zoning map amendment. Mr. Addis addressed the impact of safety. Having lived in the neighborhood for more than 35 years, Mr. Addis stated the area along nearby Highway 74 has grown tremendously. Along with that growth came heavy traffic, speeding, failure to observe stop signs, and congestion into the area. Adding multi-family housing units will only increase the amount of traffic and the potential for more accidents.

Mayor Anthony closed the public hearing at 6:50 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted 5 (Hendrick, White, Causby, Arth Dukes, and Amaya) to 1 (Webber) to deny Ordinance No. 78-2019 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

Mayor Anthony declared a recess at 6:52 p.m. and reconvened the meeting at 6:54 p.m.

- 4) Consideration of a resolution granting a Special Use Permit to 5-Star Athlete Development, LLC at 1607 East Dixon Boulevard and East Main Street: Resolution No. 72-2019

THE PUBLIC HEARING WAS NOT HELD DUE TO THE FACT THE REZONING REQUEST WAS DENIED BY ORDINANCE NO. 78-2019.

E. Consent Agenda:

ACTION TAKEN: Mayor Anthony presented the consent agenda. Mr. White made a motion to approve the consent agenda. The consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Regular Meeting of November 4, 2019
- 2) Approval of Special Event Permit Application:
 - a. Uptown Shelby Carriage Rides, requested dates: November 29, December 6, December 13, and December 20, 2019
- 3) Approval of a resolution honoring Ricardo (Dicky) Amaya for his service to the City of Shelby: Resolution No. 73-2019
- 4) Adoption of an ordinance authorizing demolition of a dwelling (605 East Suttle Street): Ordinance No. 79-2019
- 5) Adoption of an ordinance authorizing demolition of a dwelling (414 Mint Street): Ordinance No. 80-2019

END CONSENT AGENDA

F. Unfinished Business:

- 1) Consideration of a resolution authorizing a contract with Republic Services of North Carolina, LLC (GDS) for the provision of curbside recycling services to the City of Shelby: Resolution No. 74-2019

Mr. Howell introduced Resolution No. 74-2019 for discussion purposes and Council's consideration. If approved, this resolution would allow for the execution of a one (1) year contract between the City and Republic Services for the continuation of the current curbside rollout single stream recycling program that has been in place since January 1, 2012.

Mr. Howell specified the proposed term of the agreement would be one (1) year at a monthly cost per customer of \$4.63 per month effective January 1, 2020. Collection would remain in sync with the current schedule, which mirrors City solid waste collection, of four days per week and every other week collection for customers. The stated costs includes Republic's full operational costs to service the contract but provides for an increase if Rutherford County's Transfer Facility fees increase during the contract year. Currently, Republic hauls collected recyclables to Rutherford County Transfer Facility and then to the Materials Recovery Facility in Conover.

Mr. Howell stated the City currently pays \$2.78 per customer so the increase proposed by Republic is substantial. They have justified the increase during discussions, noting that their ability to do minimal sorting for international recycling markets has disappeared. The overseas market has tightened and

these customers are demanding clean recyclables if they are taking them at all. Domestic customers continue to demand a clean stream. Recyclable sorting costs have skyrocketed as a result. There is intense labor involved in the sorting process and the cost of that labor has increased. After having multiple discussions with Republic over the past several months, Mr. Howell believes this one year extension is a reasonable approach although he does not believe their proposed pricing is reasonable or sustainable for the City. An extension would allow the City to further evaluate the service to determine its long term viability. During the year, if approved by City Council, the City would continue to carefully evaluate the level of contamination within the stream. From there, a plan to further educate customers about contamination would need to be developed and implemented. This plan could also contain punitive measures that could include fines and revocation of recycling carts.

The resolution was presented to allow Council to discuss the proposed fee by Republic and the merits of continuing the program or allowing it to expire. Discussion followed. Council took no action regarding Resolution No. 74-2019. By consensus, Council gave direction to staff to reevaluate and research recycling options to be reported at their annual retreat in early 2020. Lastly, Council encouraged residents to take their recyclables to the Cleveland County Recycling Centers.

- 2) Consideration of a resolution awarding the bid for design and construction of distribution lines and metering to serve the new WTP facility: Resolution No. 75-2019

Mr. Howell introduced Resolution No. 75-2019 for Council's consideration. If approved, this resolution would award a contract in the amount of \$141,925.00 to Williams Electric Company of Shelby, North Carolina for the construction of electric distribution lines and metering equipment to serve the new Water Treatment Plant pumping station and backup power generation system located on Grover Street. This funding was previously appropriated by Council in April 2019 via a project budget ordinance. Mr. Howell noted that this project was bid using the informal bidding method. Only one bid was received for this project and due to time constraints, it is recommended that Council proceed with the award. It should also be noted that the project engineer, Progressive Engineering Consultants, Inc., has reviewed the bid along with current market pricing and found it to be fair,

reasonable, and in line with what is being seen on other public projects. Progressive Engineering has provided a letter recommending this bid award.

ACTION TAKEN: Upon a motion made by Mrs. Arth Dukes, City Council voted unanimously to approve and adopt Resolution No. 75-2019 entitled, “A RESOLUTION AWARDED THE BID FOR DESIGN AND CONSTRUCTION OF DISTRIBUTION LINES AND METERING TO SERVE THE NEW WATER TREATMENT PLANT FACILITY”.

G. New Business: None

H. City Manager’s Report:

- 1) Mr. Howell reminded Mayor and Council to attend the Cleveland Association of Government Officials (CAGO) meeting on December 5, 2019 at 6:30 p.m., LeGrand Center. Responses are due by November 27, 2019.
- 2) Mr. Howell encouraged Mayor and Council to register for the Essentials of Municipal Government course presented in partnership by the North Carolina League of Municipalities (NCLM) and the University of North Carolina (UNC) School of Government, which is offered after each municipal election cycle.
- 3) Mr. Howell also announced that Isothermal Planning and Development Commission is hosting a webinar on December 10, 2019 for the UNC School of Government Ethics course. The course is required for all newly elected officials. It will be held at the Isothermal Regional Commission in Rutherford, North Carolina.

I. Council Announcements and Remarks:

- 1) Mr. Webber congratulated his fellow reelected Council members, David White and David Causby, and congratulated Andrew Hopper on his election to City Council. He also expressed his appreciation to and recognized Dicky Amaya for his public service.
- 2) Mr. White expressed his appreciation to Dicky Amaya and enjoyed serving on City Council with him.
- 3) Mr. Hendrick expressed his appreciation to Dicky Amaya for his public service and lessons taught.
- 4) Mrs. Arth Dukes expressed her appreciation to Dicky Amaya for his public service and his overall helpfulness.

Mrs. Arth Dukes mentioned she had several scheduling conflicts on December 5, 2019 would not be able to attend the Shelby Police Department's banquet nor the CAGO meeting.

- 5) Mayor Anthony expressed his appreciation to Dicky Amaya for his public service, calling him a model Council member for his diligence and preparation with regard to agendas and meetings.**

K. Adjournment:

- 1) Motion to adjourn**

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to adjourn the meeting at 7:36 p.m.

Respectfully submitted,

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

**O. Stanhope Anthony III
Mayor**

Minutes of November 18, 2019