

MINUTES

Regular Meeting
Don Gibson Theatre

February 15, 2021
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Eric B. Hendrick, David W. White, David Causby, Violet Arth Dukes, Charles Webber, and Andrew Hopper, Sr.; City Manager Rick Howell, MPA, ICMA-CM, Assistant City Manager Justin S. Merritt, MPA, City Attorney Andrea Leslie-Fite, City Clerk Bernadette A. Parduski, Public Information and Communications Officer Chip Nuhrah, Director of Finance Elizabeth B. (Beth) Beam, CPA, Director of Human Resources Deborah C. (Deb) Jolly, Director of Energy Services Julie R. McMurry, Director of Water Resources David W. Hux, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, EFO, Director of Parks and Recreation Charlie Holtzclaw, Director of Planning and Development Services Walter (Walt) Scharer, AICP, Lead for North Carolina Fellow Shelby Holmes; Stan Lowery, Executive Director, Don Gibson Theatre, and Jennipher H. Harrill, Social Media Manager, Blue Eyes Social Media Connections

Mayor Anthony called the meeting to order at 6:00 p.m. and certified a quorum of City Council was present. It was noted the meeting was being held electronically pursuant to General Statute 166A-19.24. A location for public access to the meeting was established at the Don Gibson Theatre in accordance with the current Executive Orders of Governor Cooper and the North Carolina Department of Health and Human Services COVID-19 guidelines.

The Mayor delivered the invocation.

A. Approval of agenda:

- 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 presented.

B. Public Comment: None

C. Public Hearings:

- 1) Consideration of a resolution granting a Special Use Permit to Southwood Realty Company at South Dekalb Street: Resolution No. 1-2021

Mayor Anthony provided instructions as to the quasi-judicial process as follows:

Council conducts a formal evidentiary hearing to find facts and their discretion is limited; due process requires all witnesses to swear or affirm their testimony; each finding must be supported by competent, relevant, and substantial evidence in the record, not personal preference or opinion; Council must make findings of fact and then apply the existing laws and policies to those facts to arrive at a decision; and information provided by Mr. Scharer within the agenda packet and his presentation are to be considered evidence and factored in as part of the decision-making process.

Mayor Anthony opened the evidentiary hearing for consideration of an application for a Special Use Permit to Southwood Realty Company at South Dekalb Street at 6:06 p.m. Sworn testimony was given as follows:

Mr. Scharer introduced Resolution No. 1-2021 and the Special Use Permit Application applied for by Southwood Realty Company. He noted the proposed development is located along South Dekalb Street between Shelby High School and Shelby Middle School. The current zoning for the project is Corridor Protection District (CPD) which allows multi-family apartments through the Special Use Permit process. Mr. Scharer further stated staff has reviewed the site plan for the Palisades of Shelby residential development project submitted by the applicant and recommended approval of this Special Use Permit. He added the proposed Special Use Permit request is consistent with the Shelby Comprehensive Land Use Plan.

Mayor Anthony admitted Mr. Scharer's presentation as part of the record.

Next, the applicant, Southwood Realty Company, presented evidence and legal arguments in support of the request:

William Ratchford who provided his business address as Southwood Realty Company, 165 South York Street in Gastonia, North Carolina, and appeared on behalf of the same as the applicant. Mr. Ratchford is a licensed engineer and developer in this family-owned business headquartered in Gastonia, North Carolina. He stated Southwood Realty currently manages and operates 20,000 units in three states while building 1,000 to 1,200 units per year. Mr. Ratchford further stated the proposed multi-family residential project will provide much needed workforce rental housing in the City of Shelby with 312 units, garages, and full amenities at a valuation of \$51 million. He mentioned Southwood Realty has owned Madison Park Apartment Homes in Shelby and has had its presence in the City since 2012. Mr. Ratchford added the Palisades brand of apartment communities is very similar to Southwood's most recent project, Groves at Town Center completed in Fletcher, North Carolina.

G. Thomas Jones III, PE who provided his business address as WGLA Engineering, PLLC, 724 Fifth Avenue West in Hendersonville, North Carolina,

spoke in support of Southwood Realty as a quality developer of apartment complexes. Mr. Jones also stated he has had a longstanding, professional relationship with Triangle Real Estate and Southwood Realty Company, both owned by the Ratchford family.

Mayor Anthony closed the public hearing at 6:11 p.m.

After hearing all who wished to present testimony on said Special Use Permit request and considering the facts presented in this case, City Council concluded and made the Findings of Fact and Conclusions of Law which are found in Attachment A of Resolution No. 1-2021.

ACTION TAKEN: Mr. Hopper made a motion to approve and adopt Resolution No. 1-2021 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO SOUTHWOOD REALTY COMPANY AT SOUTH DEKALB STREET", including the accompanying Findings of Fact and Conclusions of Law which are based upon competent, substantial, and material evidence of the following:

- The requested permit is within its jurisdiction according to the Table of permitted uses; and
- The application is complete; and
- If completed as proposed in the application, the development will comply with the requirements of the ordinance; and
- It will not materially endanger the public health or safety; and
- It will not substantially injure the value of adjoining or abutting property; and
- Will be in harmony with the area in which it is located; and
- Will be in general conformity with the Comprehensive Land Use Plan or other plans officially adopted by the City Council.

The vote was unanimous.

**2) Consideration of a resolution and order permanently closing an unopened right-of-way between Textile Street and East Shannonhouse Street:
Resolution No. 2-2021**

Mr. Scharer introduced Resolution No. 2-2021 for Council's consideration. Previously, the City received a request and petition from abutting property owners to permanently close an unopened right-of-way between Textile Street and East Shannonhouse Street. If approved, the resolution and order would permanently close this unopened right-of-way, returning ownership to the abutting property owners. In this case, the properties are owned by three property owner limited liability companies (LLC), a group owned and managed by the same entity. Mr. Scharer stated the request is part of the proposed Cambridge Commons multi-family development. The developer,

Cleveland County 2 MMR Limited Partnership, may redesign this part of the project with the right-of-way being closed for better access and parking. Mayor Anthony opened the public hearing at 6:17 p.m. and invited comments from the public.

The public offered no comments.

Mayor Anthony closed the public hearing at 6:18 p.m.

The Mayor explained at the conclusion of the public hearing that Council may not immediately act on the item under consideration. Under a provision adopted in 2020 modifying the North Carolina General Statutes, when Council holds a virtual meeting with a public hearing, public comment is required to be accepted at a minimum of 24 hours after the scheduled meeting. Therefore, consideration of the adoption of Resolution No. 2-2021 may take place at Council's next regularly scheduled meeting of March 1, 2021.

3) Consideration of a proposed ordinance to amend the Unified Development Ordinance of the City of Shelby: Ordinance No.4-2021

Mr. Scharer presented this proposed zoning text amendment to create Conditional Zoning District in the Unified Development Ordinance (UDO) of the City Code. As background information, he stated in 2019 the North Carolina General Assembly passed a new set of land development regulations in 160D of the North Carolina General Statutes. This legislation requires local governments in North Carolina to amend their land development regulations to follow the new 160D land development statute.

Mr. Scharer further stated this proposed text amendment to the City's UDO follows the new requirements found in 160D. Specifically, the amendment eliminates Conditional Use District Zoning and replaces it with Conditional Zoning. These zoning districts are similar, but the new Conditional Zoning eliminates the need for a quasi-judicial hearing that was previously necessary with Conditional Use District Zoning. Conditional Zoning Districts should be established to allow City Council to consider proposed uses and tailor the zoning to accommodate those uses and promote innovative design while addressing anticipated problems that may arise from the establishment of the proposed uses. No use shall be permitted within a Conditional Zoning District except pursuant to the conditions imposed as part of approval. The permitted uses shall be limited to those permitted in the corresponding base or general use zoning district unless otherwise restricted. The Conditional District is not subject to all the traditional ordinance standards. Instead, design elements are determined for the specific development and written into the zoning map amendment Ordinance, which becomes law. A site plan must be submitted with any Conditional Zoning District application and

developed in accordance with the site plan approved by City Council in the zoning map amendment ordinance.

Mr. Scharer noted Conditional Zoning Districts will replace all future and past Conditional Use Zoning Districts.

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

Mayor Anthony opened the public hearing at 6:21 p.m. and invited comments from the public.

The public offered no comments.

Mayor Anthony closed the public hearing at 6:22 p.m.

The Mayor explained at the conclusion of the public hearing that Council may not immediately act on the item under consideration. Under a provision adopted in 2020 modifying the North Carolina General Statutes, when Council holds a virtual meeting with a public hearing, public comment is required to be accepted at a minimum of 24 hours after the scheduled meeting. Therefore, consideration of the adoption of Ordinance No. 4-2021 may take place at Council's next regularly scheduled meeting of March 1, 2021.

D. Consent Agenda:

Mayor Anthony presented the consent agenda. Mrs. Arth Dukes moved to approve the consent agenda and following items were unanimously adopted:

- 1) Approval of the Minutes of the Regular Meeting of February 1, 2021
- 2) Approval of a resolution approving the contract for the performance of the City of Shelby's annual audit and preparation of financial statements for the Fiscal Year ending June 30, 2021: Resolution No. 10-2021
- 3) Adoption of Fiscal Year (FY) 2020-2021 Budget Ordinance Amendment No. 8: Ordinance No. 5-2021
- 4) Adoption of an ordinance establishing a capital project ordinance and budgets for the City of Shelby's Transportation Asset Management Plan Update Project: Ordinance No. 6-2021

E. Unfinished Business:

- 1) Consideration of appointments to City advisory boards and commissions:

a. Firefighters' Relief Fund Board of Trustees

Mrs. Parduski stated the City Council appointed members to the Board of Trustees serve at the pleasure of their respective governing board until they resign and/or are reappointed. She reported a vacancy has been created due to the retirement and relocation of Jimmy Wellmon.

There is one application on file in the Clerk's Office:

- Brian Alexander Hawkins

Mr. White nominated Brian Alexander Hawkins for appointment.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to close the nominations and accept the nominee for appointment by acclamation.

b. Shelby Cleveland County Regional Airport Advisory Board

Mrs. Parduski reported the terms of four incumbents, Richard Fletcher, Eric Bester, Paul Hounshell, Jr., and Billy Wright, conclude February 2021. All the incumbents wish to continue their service on this board.

There is one application on file in the Clerk's Office:

- Robert Farrow

Mr. White nominated Richard Fletcher, Eric Bester, Paul Hounshell, Jr., and Billy Wright, for reappointment.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to close the nominations and accept the nominees for reappointment by acclamation.

2) Consideration of a resolution approving a contract for Uptown Municipal Service District Services between the City of Shelby and Uptown Shelby Association, Inc.: Resolution No. 8-2021

Mr. Howell introduced Resolution No. 8-2021 and the proposed Contract for Uptown Municipal Service District Services. In accordance with North Carolina General Statute 160A-536, the City solicited proposals for the provision of services within the Uptown Municipal Service District. A public hearing, as required, was held on Monday, February 1, 2021, to seek public input on the proposed contract with Uptown Shelby Association, Inc., the only organization to submit a proposal. Because the hearing was held

electronically, Council was not able to act immediately on this resolution because of a provision adopted by the North Carolina General Assembly in 2020 modifying the North Carolina General Statutes requiring acceptance of public comment on the issue at hand for at least 24 hours following the close of the hearing.

Mr. Howell recommended the approval and adoption of Resolution No. 8-2021 together with the Contract between the City of Shelby and Uptown Shelby Association, Inc.

ACTION TAKEN: Upon a motion made by Mrs. Arth Dukes, City Council voted unanimously to approve and adopt Resolution No. 8-2021 entitled, “A RESOLUTION APPROVING A CONTRACT FOR UPTOWN MUNICIPAL SERVICE DISTRICT SERVICES BETWEEN THE CITY OF SHELBY AND UPTOWN SHELBY ASSOCIATION, INC.”.

F. New Business:

- 1) Consideration of a resolution awarding the residuals services management contract to EMA Resources, Inc.: Resolution No. 11-2021

Mr. Howell introduced Resolution No. 11-2021 together with a Professional Service Agreement between the City of Shelby and EMA Resources, Inc. He stated the First Broad River Wastewater Treatment Plant is in the final stages of a major upgrade to the solids (residuals) handling facilities where the solids are removed through the treatment of wastewater and are processed for disposal. The previous process utilized a composting operation for the treatment and where the final product was distributed to the public as mulch. Mr. Howell reminded Council the compost facility was in very bad condition and on the verge of failure.

With the new upgrades, Mr. Howell said the City has demolished the compost facilities and is operating the new processes for treatment. This new operation requires a contractor to land apply the solids through a permit issued by the State of North Carolina. The City of Shelby applied for this permit and received same in January 2021.

Mr. Howell further stated the proposed agreement would contract with EMA Resources Inc. of Mocksville, North Carolina to annually handle biosolids or sludge from both the Wastewater Treatment Plant and the Water Treatment Plant. He added the estimated annual costs for both plants is \$120,000. This will be a recurring annual cost that is offset by the operational savings at the treatment plants because of the capital upgrades.

ACTION TAKEN: Upon a motion made by Mr. Hendrick, City Council voted unanimously to approve and adopt Resolution No. 11-2021 entitled, “A

RESOLUTION AWARDING THE RESIDUALS SERVICES MANAGEMENT CONTRACT TO EMA RESOURCES, INC.”.

- 2) Consideration of a resolution requesting the North Carolina State Legislature to approve a local bill to remove the cap on satellite annexations for the City of Shelby: Resolution No. 12-2021

Mr. Howell introduced Resolution No. 12-2021 for Council’s consideration. If approved, the resolution would request members of the local delegation to the General Assembly to add the City of Shelby to House Bill 24 sponsored by Representative John Torbett of Gaston County. Mr. Torbett’s bill added the Town of Stanley to a list of 115 municipalities already included in this exemption. Mr. Howell will then contact Representative and Speaker of the House Tim Moore, Senator Ted Alexander, and Representative Kelly Hastings to provide them with this request by City Council.

Mr. Howell explained the North Carolina General Statutes require that non-contiguous (satellite) areas proposed for annexation must meet certain standards. One of the standards requires that the area within the proposed satellite corporate limits, when added to the area within all other corporate limits, may not exceed 10 percent of the area within the primary corporate limits of the annexing city. The total sum of satellite annexed areas cannot exceed 10 percent of the size of the primary city limits. This was nearly an issue when voluntary annexations were agreed upon by the Cleveland County and Clearwater Paper Corporation a few years ago. The City was able to annex a North Carolina Department of Transportation property along the new Bypass, making that area contiguous with the Walmart Distribution Center property which is within the primary corporate limits. The City does still have areas such as the Shelby Cleveland County Regional Airport, the Foothills Commerce Center, the Wastewater Treatment Plant, the former Hallelujah Acres, Pebble Creek subdivision and some others that are smaller satellite annexations. This area equals 5.4 percent of the total primary corporate limits at present. Currently, there are 730 acres satellite and 13,520 acres primary corporate limits. Mr. Howell stated this could be a limiting factor as development occurs to future voluntary annexation requests.

Mr. Howell further explained this does have some importance as the City’s utility systems have grown and now serve areas close but not contiguous to the primary City limits. There have been some recent inquiries from residential, commercial, and industrial developments requesting the possibility of connecting to City utilities, in particular sewer, and receiving public safety services. The current City policy requires annexation for property owners wishing to connect to sewer only if the City can provide like or similar service as in the primary corporate limits.

ACTION TAKEN: Upon a motion made by Mr. Hopper, City Council voted unanimously to approve and adopt Resolution No. 12-2021 entitled, “A RESOLUTION REQUESTING THE NORTH CAROLINA STATE LEGISLATURE TO APPROVE A LOCAL BILL TO REMOVE THE CAP ON SATELLITE ANNEXATIONS FOR THE CITY OF SHELBY”.

G. City Manager’s Report:

- 1) Regarding the Rail Corridor equipment and material removal, Mr. Howell stated Norfolk Southern Corporation has terminated its agreement with the contractor removing the equipment and material from the corridor and is in the process of hiring a new, more experienced contractor. Mr. Howell met with the new contractor and he hopes to be complete with all the removal of the cross ties, signal equipment (overhead signals, signal boxes), and remaining rails under roadway crossings by the end of June 2021. This would include the removal of the rest of the rails that have been paved over and asphalt repair. Norfolk Southern has been very apologetic about this entire issue and he is optimistic the work will start shortly.
- 2) Mr. Howell updated Council about two private donors who wish to donate to the construction of the Shelby Rail Trail Depot Park Segment Phase I Project.
- 3) Mr. Howell mentioned the City has been approached by hotel developers recently requesting information specific to a market analysis for Shelby. The last market analysis was completed prior to the construction of the Fairfield Inn & Suites and is currently outdated. In the past the City has secured a grant from ElectriCities of North Carolina to assist with the cost of this market analysis. If the market analysis is positive, then there may be a real opportunity to attract private investment for the development of a hotel.
- 4) Mr. Howell reported the City will likely be notified of the expected group health insurance increase which would be effective July 1, 2021. The North Carolina League of Municipalities Municipal Insurance Trust Board is expected to meet this month and the City should receive notice shortly afterwards. New rates will be based upon the calendar year 2020 experience. As a comparison, the January 2021 Loss Ratio is 76.0 percent versus the January 2020 Loss Ratio of 163.5 percent for utilization purposes. Mr. Howell reiterated this is a key number for budget preparations.
- 5) Mr. Howell informed Council the Merry Go Round Festival Committee reviewed the potential for holding the annual event in April 2021 and after

careful, thoughtful discussions have decided to cancel due to the ongoing COVID-19 pandemic.

- 6) Regarding the Marion Street sinkhole repair and as previously reported to Council, the property owner at 1500 East Marion Street was provided notice in Fall 2020 to repair a sinkhole, which was determined to be a public nuisance on private property at this address. The property owner was afforded due process and chose to ignore the City's multiple notices. The City proceeded with making the repairs which are largely complete and will be placing a lien on the property to cover the costs.
- 7) Regarding the First Broad River Trail and Bridge repairs, Mr. Howell informed Council the work on the trail to repair the damage from the February 2020 flood has begun and should be complete within several weeks depending upon weather. The bridge design is being finalized and the work is expected to begin in early April. Mr. Howell is hopeful for a May 1, 2021 reopening of the First Broad River Trail with a new suspension bridge.
- 8) Mr. Howell mentioned a plan to conduct Council's annual planning retreat via Zoom. The format would include two two-hour sessions comprised of staff presentations along with an updated video of City projects. A final follow-up meeting would be scheduled to allow for Council's 2021-2022 goal-setting discussion.

H. Council Announcements and Remarks:

- 1) Mr. Causby announced that David White has written a book entitled, Making of a God Man, from My Story to His Story, now available for purchase and for the reading pleasure of all readers.
- 2) Mayor Anthony strongly encouraged all to visit the Earl Scruggs Center to view special exhibits entitled, "African American Builders and Architects" and "Redefining Builders: The African American Communities of Cleveland County", both on display in honor of Black History Month beginning in February and running through August 2021.

I. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. Hendrick, City Council voted unanimously to adjourn the meeting at 6:56 p.m.

Respectfully submitted,

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

**O. Stanhope Anthony III
Mayor**

Minutes of February 15, 2021