

## MINUTES

Regular Meeting  
City Hall Council Chamber

June 20, 2022  
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members David Causby, David White, Charles Webber, Violet Arth, Andrew L. Hopper Sr., and Emilie Bullock.; City Manager Rick Howell, MPA, ICMA-CM, Assistant City Manager Justin S. Merritt, MPA, Assistant City Manager Benjamin (Ben) Yarboro, City Attorney Andrea Leslie-Fite, City Clerk Carol Williams, Public Information and Communications Officer Chip Nuhrah, Director of Finance Elizabeth (Beth) Beam, CPA, Director of Human Resources Deborah (Deb) Jolly, Police Chief Jeffrey (Jeff) Ledford, Fire Chief William Hunt, EFO, Director of Planning and Development Services Walter (Walt) Scharer, AICP, Assistant Public Works Director Scott Black, Stormwater/Engineer Coordinator Tyler Brooks, Civil Engineer Justin Wright, and Jennipher H. Harrill, Social Media Manager, Blue Eyes Media Connections

Mayor Anthony called the meeting to order at 6:00 p.m. and delivered the invocation.

Mr. Causby led the Pledge of Allegiance.

A. Approval of agenda:

1) Motion to adopt the proposed agenda

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

B. Special Presentation:

1) City of Shelby 2022 Phase II Stormwater Annual Report Update – Tyler Brooks, Stormwater/Engineering Coordinator

Mr. Brooks began with a history of the Stormwater Program:

2010 – City was designated as a Phase II Stormwater Entity

2012 – City Received its first Phase II Stormwater Permit

2014 – Stormwater Utility Fee established

2015 – Stormwater Division established with the City Engineering Department

2018 – City renewed its Phase II Stormwater Permit

Mr. Brooks defined Stormwater as rainwater that hits an impervious surface such as parking lots, roofs, and streets that create stormwater runoff. This

runoff may pick up pollutants that directly enter creeks and streams without being treated.

Mr. Brooks stated there are six measures of the Stormwater permit:

- Public Education and Outreach
- Public Participation and Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Runoff Control
- Post-Construction Runoff Control
- Pollution Prevention and Good Housekeeping for Municipal Operations

Mr. Brooks further commented that Public Education is conducted by:

- sending bill inserts out in the utility bills every March and October
- distribute brochures through city facilities, hardware stores, pet stores and paint stores
- maintain stormwater website
- set up stormwater education booths at community festivals (Merry Go Round Festival, Carl Spangler Trail Dedication)
- In FY 2021 - 2,124 brochures and handout distributed

Mr. Brooks further commented on Public Participation and Involvement is conducted by:

- Participating in creek cleanups
- Earth Day and Rotary Club litter sweeps
- Partnered with Broad Riverkeeper to install a Trash Trout

In the first clean out of the Trash Trout they collected 50 lbs. of trash including 21 bottles and 12 balls.

Mr. Brooks concluded by stating there is an upcoming Creek Cleanup event on Saturday, June 25 from 10:00am – 12:00pm at Palmer Park

C. Public Comment: None

D. Public Hearings:

- 1) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina (301 N. Post Road): Ordinance No. 38-2022

Mr. Scharer introduced a zoning map amendment for property located at 301 N. Post Road (Elizabeth Baptist Church) from R10 zoning district to R10-CZ zoning district to operate Gaston Christian School at the Family Life Center

building at Elizabeth Baptist Church. Mr. Scharer stated the conditional use amendment is to eliminate the setback requirement for schools. The City's development standards require a 300-foot setback, but the current structure at Elizabeth Baptist Church is 70 feet from the nearest residential structure.

Mr. Scharer stated that the amendment is consistent with the Shelby Comprehensive Land Use.

Mayor Anthony opened the public hearing at 6:12 p.m. and invited comments from the public.

Marc Stout who resides at 1625 Lowell Bethesda Road, Gastonia, North Carolina spoke as the head of Gaston Christian School. Mr. Stout stated that the school is growing so fast that this location in Shelby would be a temporary fix until another permanent structure is purchased. Mr. Stout stated there will be approximately 80 students attending this satellite school this year.

Mayor Anthony closed the public hearing at 6:14 p.m.

Mayor Anthony asked City Attorney Leslie-Fite to help guide Council in this matter on the statement of reasonableness. Mrs. Leslie-Fite referred Council to General Statute 160D-605 printed in their agenda. Mrs. Leslie-Fite explained that this process requires a two-part analysis:

- Council is required to deliver a consistency statement or inconsistency statement.
- Council is required to adopt a reasonableness statement or unreasonable statement.

Mrs. Leslie-Fite instructed Council that when a motion is made, it should include addressing the plan consistency part (Section 1 of the Ordinance) and whether the rezoning is reasonable or unreasonable (Section 2 of the Ordinance).

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 38-2022 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA (301 N. POST ROAD)" based on the consistency statement in Section 1 and the reasonableness statement in Section 2 of the Ordinance.

- 2) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina (Philbeck Street): Ordinance No. 39-2022

**Mr. Scharer introduced a zoning map amendment for property located on Philbeck Street from R8 zoning district to R6-CZ zoning district. Mr. Scharer stated the applicant wishes to build a multi-family development with 25 units. According to Mr. Scharer, approving the zoning amendment tonight does not approve the 25 units because a Special Use Permit is required for 25 units or more.**

**Mr. Scharer stated the zoning amendment is consistent with the Comprehensive Land Use Plan. Mr. Scharer stated that the applicant has provided a traffic analysis; however, the traffic analysis is not necessary for the zoning change but would be necessary for the Special Use permit.**

**Mr. Hopper raised concerns about the narrowness of Philbeck Street and the traffic concerns with Marion West apartments already on Philbeck Street.**

**Mr. Howell asked Mr. Scharer to clarify the difference between the R6 density and the R8 density that is allowed. Mr. Scharer stated that Marion West apartment's density was allowed before the current UDO guidelines, so the density of those apartments is not as high as what the City would allow currently. R8 allows 1 unit per 8000 square feet for a single-family structure or 2 units per 12000 square feet duplexes. R8 does not allow multi-family structures. Mr. Scharer continued by stating R6-CZ allows multi-family units and would be compatible with the current land use on Philbeck Street.**

**Mayor Anthony opened the public hearing at 6:25 p.m. and invited comments from the public.**

**Mayor Anthony stated that Council has been presented and should take into consideration the three emails (Kloeber, Melton and Garey) that were submitted from citizens that could not attend tonight's meeting:**

**Ken Kloeber who resides at 850 W. Marion Street, Shelby, North Carolina**

**David Melton who resides at 841 W. Marion Street, Shelby, North Carolina**

**Michelle Garey who resides at 840 W. Marion Street, Shelby, North Carolina**

**Ric Francis who resides at 844 W. Marion Street, Shelby, North Carolina spoke of his concerns of the narrowness of Philbeck Street which he travels every day. Mr. Francis believes 25 more units on 1.2 acres is going to hinder the traffic that is already unsafe. Mr. Francis stated he is a big proponent for more housing in Shelby and the right for affordable housing.**

**Stevie Brooks who resides at 866 W. Marion Street, Shelby, North Carolina stated she has worked with various departments within the City of Shelby trying to improve the traffic and speeding on West Marion Street. Ms. Brooks believes a development on Philbeck Street will certainly increase traffic flow.**

**Ms. Brooks is in favor of development, but it should be intentional and progressive, not disruptive.**

**Randy Sweeting who resides at 858 W. Marion Street, Shelby, North Carolina encouraged Council to read and consider the email from Mr. Sweeting's neighbor, Ken Kloeber. Mr. Sweeting's opinion is that the email from Mr. Kloeber includes constructive information that is important in the decision whether to amend the zoning of Philbeck Street.**

**Caleb Peeler who resides at 9029 Jaldena Drive, Charlotte, North Carolina, is a Civil Engineer with Peeler Engineering and represents the owners of the property on Philbeck Street. Mr. Peeler stated he received this plan and reviewed the Comprehensive Land Use Plan for the City and saw that this area does have multi-family development.**

**Mayor Anthony closed the public hearing at 6:33 p.m.**

**Mayor Anthony stated that Mr. Kloeber's email is full of information but most of that information is geared toward the Special Use permit application phase if this zoning is amended.**

**Ms. Arth asked City Attorney Leslie-Fite whether the property owner should be applying for the zoning change instead of the engineer of the project. Attorney Leslie-Fite stated that in North Carolina engineers are permitted to submit applications on behalf of the property owner.**

**Mr. Webber asked Mr. Scharer what the petitioner can build on the property as it is currently zoned. Mr. Scharer stated single family homes or duplexes.**

**Mr. Hopper reiterated his concern of the narrowness of Philbeck Street and the added traffic a 25-unit development would cause. Mr. Hopper strongly believes in keeping the integrity of our neighborhoods.**

**ACTION TAKEN: Upon a motion made by Mr. Hopper, City Council voted unanimously to deny Ordinance No. 39-2022 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA (PHILBECK STREET)" based on the analysis of it being consistent with the Comprehensive Land Use Plan however it is unreasonable due to the incompatibility of the character of the existing neighborhood.**

**3) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina (Seattle Street): Ordinance No. 40-2022**

**Mr. Scharer introduced a zoning map amendment for property located on Seattle Street from R10 zoning district to R6-CZ. Mr. Scharer stated the**

zoning amendment is inconsistent with the Comprehensive Land Use Plan; however, the property does have sewer availability which makes it consistent. Mr. Scharer stated that the Comprehensive Land Use Plan was outdated when this property was previously zoned.

Mayor Anthony opened the public hearing at 6:40 p.m. and invited comments from the public.

Caleb Peeler who resides at 9029 Jaldena Drive, Charlotte, North Carolina, represents the owner and construction team for this project. Mr. Peeler reviewed the project and the Comprehensive Land Use Plan and believes the project is in keeping with the Comprehensive Land Use Plan and also matches the densities in the surrounding area.

Mayor Anthony closed the public hearing at 6:41 p.m.

**ACTION TAKEN:** Upon a motion made by Mr. Webber, City Council voted unanimously to approve and adopt Ordinance No. 40-2022 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA (SEATTLE STREET)" based on the consistency of the Comprehensive Land Use Plan in Section 1 of the Ordinance and is reasonable for the area based on Section 2 of the Ordinance.

**4) Consideration of a proposed ordinance amending the zoning map of the City Of Shelby, North Carolina (Mid Street): Ordinance No. 41-2022**

Mr. Scharer introduced a zoning map amendment for property located on Mid Street changing the zoning district from R20 to R10. Mr. Scharer reminded Council that in October of 2021 this proposal was rejected by Council until the property owner, Mr. Blanton, secured the necessary permits from the Cleveland County Health Department certifying there is enough septic repair area on the proposed parcels. Mr. Scharer declared that the appropriate permits were obtained; therefore, the applicant is hoping to move forward with this project.

Mayor Anthony inquired about staff not recommending this proposed amendment. Mr. Scharer stated that as "good planning practice" this proposal is not recommended. Ms. Arth asked for more clarification on Mr. Scharer's meaning of "good planning practice." Mr. Scharer stated that smaller lots are not usually suitable for septic tank permits; however, the applicant was able to secure the septic permits.

Mr. Howell commented that typically in R10 zoning districts sewer is available. Mr. Scharer stated that there is sewer in the vicinity of this area, but sewer is not directly connected to this property.

Mr. Howell continued by stating that the County has issued the septic permits and presumably they are valid, and the septic system can be installed on the smaller lots. Mr. Howell further stated that if the septic systems failed due to an inadequate repair area, then the homeowners would be left with a system that would not work and the property owners may then have to petition the City for sewer service. If this scenario happened Mr. Howell stated that the extension of sewer service to this area would be a shared cost between the City and the property owners.

Ms. Arth inquired whether this decision would create a precedent in any way. Attorney Leslie-Fite stated this is a fact-based situation, so therefore the statutory uniqueness of this property would keep this decision unique. Mrs. Leslie-Fite further reminded Council that this is a conditional rezoning instead of a general rezoning; therefore, making it a unique hearing.

Mr. White said that it seemed the applicant had complied with everything he was required to do. Mr. Scharer stated the applicant complied with the items he volunteered to take care of.

Mayor Anthony opened the public hearing at 6:49 p.m. and invited comments from the public.

Kenny Blanton who resides at 3742 Artee Road, Shelby, North Carolina reminded Council that last time (October, 2021) they passed the motion on the condition that he obtain evidence from the Cleveland County Health Department that he has secured adequate repair areas on each lot. Mr. Blanton stated he has taken care of that condition at considerable expense. Mr. Blanton stated that the septic systems have been operating since the 1960's and have never had any problem, but now there is a repair field in case something does go wrong. Mr. Blanton further stated that its his understanding that if something happened to the septic system and there is not a repair field there are other ways of handling those situations. Mr. Blanton hopes Council will do what they said they'd do since he has satisfied the condition requested.

Caroline Brown who resides at 1455 S. Aspen Street, Lincolnton, North Carolina inquired about the verbiage that the permits were presumably valid. Ms. Brown stated that Cleveland County issued these permits and if they failed to give proper permits that is not the fault of Mr. Blanton or the single mother who resides at the property. Ms. Brown further stated that it's been her experience as a realtor that if a septic system fails then it's usually removed and another one is installed. Ms. Brown thanked Mr. Blanton for

being such a good person as they've dealt with this situation. Ms. Brown asked Council to consider this unique situation and amend the zoning request.

Mr. Howell addressed the comments from Ms. Brown and stated she is incorrect if she thought there was intent from him to question the County's ability to issue the permit. Mr. Howell stated he has great respect for people that work for the City and the County. Secondly, Mr. Howell stated he has previously held the job of a registered Sanitarian and he understands the permit process. Mr. Howell further stated there is no disrespect for the County permitting agency.

City Attorney Leslie-Fite stated this is a new application for a conditional rezoning; the application from last October was for general rezoning. Mrs. Leslie-Fite continued by stating Council does not have the ability to place conditions on rezoning. Mrs. Leslie-Fite said the applicant has voluntarily taken care of conditions and the applicant submitted his request as a conditional rezoning.

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

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 41-2022 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA (MID STREET)" based on the consistency of the Comprehensive Land Use Plan as stated in Section 1 of the Ordinance and although unreasonable as stated in Section 2 of the Ordinance.

5) Public Hearing for the proposed extension of the corporate limits of the City of Shelby, North Carolina (Eaves Rd)

Mr. Scharer introduced the public hearing by reminding Council that last month they approved the rezoning on Eaves Road and the applicant has requested annexing this site. Mr. Scharer further stated that an ordinance is not prepared due to the lack of surveying availability.

Mayor Anthony stated that tonight Council is conducting the Public Hearing but no further action due to the delay in obtaining a survey and ordinance.

Mayor Anthony opened the public hearing at 6:59 p.m. and invited comments from the public.

Caleb Peeler who resides at 9029 Jaldena Drive, Charlotte, North Carolina stated that this property has city sewer; therefore, he plans to design and build a subdivision. Mr. Peeler stated they desire to annex this property into the city to connect to City of Shelby utilities.



**Mayor Anthony closed the public hearing at 7:01 p.m.**

**6) Public Hearing for the proposed extension of the corporate limits of the City of Shelby, North Carolina (Rainbow Dr.)**

**Mr. Scharer introduced the public hearing by stating these properties are off of Charles Road on Rainbow Drive. The applicant hopes to connect to city sewer; therefore, wish to be annexed into the City of Shelby. Mr. Scharer further stated that an ordinance is not prepared due to the lack of surveying availability.**

**Mayor Anthony stated that tonight Council is conducting the Public Hearing but no further action due to the delay in obtaining a survey and ordinance.**

**Mayor Anthony opened the public hearing at 7:02 p.m. and the public offered no comments.**

**Mayor Anthony closed the public hearing at 7:03 p.m.**

**7) Public Hearing for the proposed extension of the corporate limits of the City of Shelby, North Carolina (Artee Rd.)**

**Mr. Scharer introduced the public hearing by stating the City of Shelby purchased this property recently for Economic Development and desire to annex this property. Mr. Scharer further stated that an ordinance is not prepared due to the lack of surveying availability.**

**Mayor Anthony opened the public hearing at 7:03 p.m. and the public offered no comments.**

**Mayor Anthony closed the public hearing at 7:04 p.m.**

**D. Consent Agenda:**

**Mayor Anthony presented the consent agenda. Mr. Causby moved to approve the consent agenda and the following items were unanimously adopted:**

- 1) Approval of the Minutes of the Regular Meeting of June 6, 2022**
- 2) Approval of a Resolution honoring Steven Maurice Seate, Jr. on the occasion of his retirement from employment with the City of Shelby: Resolution No. 45-2022**
- 3) Approval of a resolution ratifying cancellation of a Deed of Trust recorded at Deed Book 934 at Pages 733-741: Resolution No. 46-2022**

- 4) Approval of a resolution authorizing selection of TGS Engineers based on Qualifications for Professional Engineering Services for the County Home Road Reconstruction Project in Shelby, North Carolina: Resolution No. 47-2022
- 5) Approval of a resolution authorizing Destination By Design based on Qualifications for Professional Engineering Services for Shelby Depot Park Design, Bidding, And Construction Administration In Shelby, NC: Resolution No. 48-2022
- 6) Approval of a resolution approving and Accepting the revised City Of Shelby Stormwater Quality Management Program: Resolution No. 49-2022
- 7) Approval of a resolution authorizing disbursement of Travel and Tourism funding for Fiscal Year 2022-2023: Resolution No. 51-2022

**E. Unfinished Business:**

- 1) Shelby Rail Trail Phase IA Project:
  - a. Adoption of a Budget Ordinance amendment for the City of Shelby's Rail Trail Corridor Project: Ordinance No. 42-2022
  - b. Approval of a resolution awarding the construction contract for the Shelby Rail Trail Phase IA Project: Resolution No. 50-2022

Mr. Howell introduced the Shelby Rail Trail Phase IA project that contains two items:

- Ordinance 42-2022 if approved amends project budget Ordinance No. 34-2017 by appropriating additional funding in the amount of \$2,795,850 from the proceeds of the sale of assets held in the General reserve account and a NC State SCIF grant for use in construction a section of Shelby Rail Trail from Sunset Cemetery to West Marion Street.
- Resolution No. 50-2022 if approved would authorize the award of a contract to construct the aforementioned section of the Shelby Rail Trail to Piedmont Utility Group in the amount of \$2,735,939.12. Due to only one bid received initially on May 6, 2022, the City had to readvertise and received only one bid again from Piedmont Utility Group. Mr. Howell continued that the bid from Piedmont Utility Group surpassed what was budgeted; however, staff has negotiated with Piedmont and were able to modify the recommended contract price to \$2,735,939.12.

**ACTION TAKEN:** Upon a motion made by Mr. Hopper, City Council voted unanimously to approve and adopt Ordinance No. 42-2022 entitled, "A BUDGET ORDINANCE AMENDMENT FOR THE CITY OF SHELBY'S RAIL TRAIL CORRIDOR PROJECT" and Resolution No. 50-2022, entitled, "A RESOLUTION AWARDDING THE CONSTRUCTION CONTRACT FOR THE SHELBY RAIL TRAIL PHASE IA PROJECT."

#### **F. New Business**

- 1) Approval of a resolution authorizing disbursement of Travel and Tourism funding to the Cleveland County Arts Council for Fiscal Year 2022-2023: Resolution No. 52-2022**

**Ms. Arth inquired if she needed to recuse herself from the vote due to being an employee of Cleveland County Arts Council. City Attorney Leslie-Fite stated she did not need to recuse herself due to the fact that she does not own an interest in the Arts Council nor serve as a Board member.**

**Mayor Anthony asked Council if there were any questions about the item, if not, a motion would be entertained.**

**ACTION TAKEN:** Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Resolution No.52-2022 entitled, "A RESOLUTION AUTHORIZING DISBURSEMENT OF TRAVEL AND TOURISM FUNDING TO THE CLEVELAND COUNTY ARTS COUNCIL FOR FISCAL YEAR 2022-2023"

- 2) Approval of a resolution authorizing disbursement of Travel and Tourism funding to the American Legion World Series for Fiscal Year 2022-2023: Resolution No. 53-2022**

**Mr. Hopper inquired if he needed to recuse himself from the vote due to being on the Board of the American Legion World Series. City Attorney Leslie-Fite stated Mr. Hopper did need to recuse himself since he serves as a Board member.**

**ACTION TAKEN:** Upon a motion made by Mr. Hopper, City Council voted unanimously to recuse Mr. Hopper from voting on Resolution No. 53-2022.

**ACTION TAKEN:** Upon a motion made by Mr. Webber, City Council (Webber, Causby, White, Arth, and Bullock) voted to approve and

**adopt Resolution No.53-2022 entitled, "A RESOLUTION AUTHORIZING DISBURSEMENT OF TRAVEL AND TOURISM FUNDING TO AMERICAN LEGION WORLD SERIES FOR FISCAL YEAR 2022-2023"**

**G. City Manager's Report:**

**None**

**H. Council Announcements and Remarks:**

**Mayor Anthony commented on the \$25 million RAISE grant application the City has submitted and would like to remind everyone to show their support for the Rail Trail by going on the City of Shelby website and clicking on the link provided.**

**Mayor Anthony also commented that Art of Sound, including Flea Fest, is this Saturday, June 25<sup>th</sup>.**

**Mr. White stated that this Saturday, First Baptist Church is celebrating their 175<sup>th</sup> Anniversary.**

**Mr. Webber stated that the Wall Street Journal had an article about Shelby recently.**

**Mr. Hopper had the pleasure of presenting a Lifetime Achievement Award to Bunny Clyde at the Shelby City Park.**

**I. Adjournment:**

**1) Motion to adjourn**

**ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to adjourn the meeting at 7:16 p.m.**

**Respectfully submitted,**

**Carol Williams  
City Clerk**

**O. Stanhope Anthony III  
Mayor**

## Minutes of June 20, 2022