

MINUTES

Regular Meeting of Shelby City Council
Don Gibson Theatre

February 5, 2024
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony, III, presiding; Council Members Andrew L. Hopper, Sr., David Causby, Violet Arth, David White, Charles Webber, and Emilie Bullock; City Manager Rick Howell, MPA, ICMA-CM, Assistant City Manager Ben Yarboro, Assistant City Manager Justin Longino, MBA, City Attorney Jason Lunsford, City Clerk Carol Williams, Deputy City Clerk Breanna Jones, Director of Human Resources Deborah (Deb) Jolly, Fire Chief William Hunt, EFO, Chief of Police Brad Fraser, Public Works Director Scott Black, Director of Water Resources Brian Wilson, and Public Information and Communications Officer Chip Nuhrah

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

Mrs. Bullock led the Pledge of Allegiance.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda presented.

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

B. Public Hearings:

- 1) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina for parcels 21879, 22277, 63473, and 63932 (Thrift Road/Nancy Dr.): Ordinance No. 8-2024

Mr. Longino presented this item to Council and stated this property is unique because it's mostly in Cleveland County, but it is adjacent to our ETJ, so we have authority to annex and apply zoning regulations to the parcels. Mr. Longino continued by stating tonight's Public Hearing is a conditional zoning request which means the developer follows an approved site plan.

Mr. Longino reviewed how density is calculated and that our UDO allows certain density in each of our zoning districts. According to Mr. Longino the amendment request is for R6-CZ with a density of 2.67 dwelling units per acre

and no more than 213 single-family homes. Mr. Longino further stated the developer wishes to use the provision allowed in the UDO that is known as a cluster development, which makes the lot sizes smaller but keeps the open space, natural areas and stream buffers. Mr. Longino stated that this site plan has been reviewed by our Police, Fire, Public Works, and Utilities Departments and all have said they can handle services to this development.

Mr. Longino updated Council on improvements the developer and Mr. Rucker have decided on to help alleviate concerns:

- A third entrance located on Nancy Drive to help traffic flow
- A 50' buffer behind the lots on Nancy Drive
- Increasing the lot width from 41' to 51' on those lots located behind the existing parcels on Nancy Drive

If approved, the zoning changes will not take effect until after an annexation decision is made, which will be determined tonight. Mr. Longino clarified that if the zoning amendment is not approved then the annexation request will be withdrawn.

Mr. Longino concluded by stating the Planning and Zoning Board recommends the proposed zoning amendment.

Mayor Anthony opened the public hearing at 6:09 p.m. and invited comments from the public.

Delton Barnes who resides at 911 W. Marion Street, Shelby, North Carolina is a local attorney that is representing several property owners of Nancy Drive. Mr. Barnes stated this board is bound by the requirements of Section 8.4(h) that requires a statement of consistency and reasonableness if a zoning amendment is approved. Mr. Barnes gave three reasons why Council cannot satisfy these requirements:

- The largest tract of land is outside of the corporate city limits and the ETJ.
- Conditional zoning is dangerous and not in the best interest of the community; right now, in Pinnacle Estates there are 30 newly built vacant homes, which shows there is a surplus over demand. True Homes, LLC has 22 complaints listed with the Better Business Bureau since 2021, mainly for quality of work and warranty issues; this could lead to a surplus of substandard homes that would bring down the property values of the existing neighborhood.
- Future Land Use Plan identifies this property as Residential Medium density; the proposed zoning request of R6 is not Medium density, it is considered high density, therefore, this requested zoning goes against the Land Use Plan. Voting for this zoning amendment would

be going against the adopted Land Uses Plan. R10 and R8 zoning districts are more accommodating to this neighborhood.

Mr. Barnes concluded with the statement that because of these reasons, City Council should vote no for this zoning amendment.

Terry Thomas who resides at 212 Nancy Drive, Shelby, North Carolina commended the developers for addressing the concerns of residents and making the changes, but it doesn't go far enough. Mr. Thomas says he's not opposed to growth and annexation, but he's not in favor of this rezoning. Mr. Thomas states that too much emphasis is being put on the DUA (dwelling units per acre) which covers the entire area of the project, but all the area of the project is not being developed which makes the 2.67 density number misleading. Mr. Thomas says the average proposed lot size is 7,100 square feet and if you divide that into the acre size (43,560 sq. ft.) then you get 6.13 homes per acre. Mr. Thomas also believes the 18 acres of trees that are being preserved is also misleading because a majority of those trees are in a 50' stream buffer which makes that area less cost effective to develop. Mr. Thomas concluded by asking Council if they would want this in their backyard.

Allison Hodges who resides at 215 Nancy Drive, Shelby, North Carolina brought up the fact that the CDC's guidelines declare that to help stop the transmission of COVID-19 people should stay 6' apart. Ms. Hodges stated the buffer between homes is only going to be 5' apart if this zoning is approved.

Gayle Welch who resides at 209 Nancy Drive, Shelby, North Carolina researched True Homes, LLC on the Better Business Bureau website and is concerned about the 22 complaints against them. He stated there is a neighborhood in Landis, NC that was developed by True Homes, LLC and had raw sewage issues. Mr. Welch also stated that True Homes, LLC sued Union County and wondered if that's the type of company the city wants to deal with. Mr. Welch gave his opinion on the proposed density and thinks the number of acres going towards green space and roads needs to be subtracted from the density equation. He believes the traffic in his neighborhood will quadruple what it is now. Mr. Welch stated that growth in the 1990's in Shelby was R20 zoning districts, now it's R6 which is like Charlotte. Mr. Welch mentioned the commute to Charlotte is terrible so why would people move here for the same lot sizes they can get in Charlotte, especially since Shelby doesn't offer the amenities that Charlotte does.

Carol Wiegand who resides at 210 Nancy Drive, Shelby, North Carolina is a retired general contractor and fell in love with the quality of homes and the quality of neighborhood when she moved to Rucker Downs. Ms. Wiegand stated she's concerned about the asphalt on the roads and how it will hold up with the increase in traffic and the heavy construction equipment tearing up

the roads and tracking mud onto the street; she wondered if the developer would consider putting a tire washing station during construction to alleviate that issue. Ms. Weigand wondered if it's possible to put the access roads to the new development outside of Rucker Downs which would lessen the traffic in her neighborhood. Ms. Weigand stated there are no sidewalks in Rucker Downs right now and she is concerned for the safety of kids playing, seniors walking, and pets being walked in the neighborhood. Ms. Weigand stated she shares the other concerns that her neighbors have already spoken of.

Will Rucker who resides at 110 Edgewater Drive, Shelby, North Carolina stated he is a family member of the property owner. Mr. Rucker stated that due to the uncertainty of the location of the 74 Bypass further development in the Rucker Downs area stalled for several years, but the vision and intent never wavered. With family members aging and having other interests, a decision was made that now was the time to look at the options available for this property. Mr. Rucker is confident that True Homes, LLC is a good partner for this development and the homes are not going to be "cookie-cutter." Mr. Rucker stated the changes in the development were made after the concerns of the residents at the previous Council meeting. Mr. Rucker stated that Shelby needs to grow in a controlled and appealing manner that will attract new residents and keep our residents here. Mr. Rucker mentioned that today's homeowners want good property value, ease of maintenance, little yard work, and they enjoy other activities that don't involve weekends tending to yards and housework. Today's homeowners enjoy walking trails and gathering spaces to connect with neighbors. Mr. Rucker stated that this tract of land could have been rezoned for many other uses; however, his family decided to keep it residential.

Eddie Moore whose business address is 2100 S. Tryon Street, Charlotte, North Carolina is employed with McAdams Engineering and is working with the developer of this property. He is available for any questions.

Shaun Gasparini who is employed by True Homes, LLC located at 2649 Brekonridge Centre Drive, Monroe, North Carolina addressed Council as the applicant. Mr. Gasparini answered some of the concerns brought up tonight:

- The 22 Better Business Bureau complaints in three years is outstanding considering True Homes, LLC builds over 2,000 homes a year. ProBuilder Magazine named True Homes, LLC the 2020 Builder of the Year.
- For clarification, the raw sewage situation in Landis, NC occurred five years after the home was built.
- Medium density as stated in the Comprehensive Land Use Plan is a single family detached development with approximately 4 units per acre – the plan presented tonight is 2.67 units per acre, so well within the guidelines.

- Pinnacle Estates is a completely different development model from a national builder that builds homes without a buyer in mind (spec homes); so, they probably do have vacant new homes available. True Homes, LLC builds a home with specific buyer's choices that they've made through the design center in Monroe, North Carolina.
- A tire washing station is a fine idea and they will try to implement it.

Mr. Gasparini concluded by proudly stating that True Homes, LLC values the relationship with the home buyer.

Mayor Anthony closed the public hearing at 6:54 p.m.

Mr. Howell and Mr. Lunsford clarified for Council the zoning and annexation issue brought up by Mr. Barnes. North Carolina allows a municipality to rezone a property outside of their jurisdiction and pursue the annexation of that same property simultaneously. According to NCGS 160D-202, the zoning has to be attached to an annexed property within 60 days. If the rezoning is approved, then an annexation hearing can be conducted in the same meeting. The date of the rezoning ordinance will be after the date of the annexation; therefore, the property is annexed into the municipality, and the approval of the zoning is dated the following day.

Mr. White addressed the lack of growth for many years in the City of Shelby and how the current price of land and materials have made developers rethink how to make a profit, which has resulted in smaller lot sizes.

Ms. Arth asked for clarification on the possible road damage that was brought up and Mr. Howell stated the City would hold the developer accountable for any destruction of city streets during the building process. The City and NCDOT have standards that are in place that will be adhered to. Mr. Howell continued by stating once the development is complete the city will maintain the roads.

Mr. Howell addressed the issue of esthetics and stated the General Assembly has stripped cities from having authority to regulate esthetics. Secondly, the city does not have authority to regulate anything but the building codes which are state regulated. Mr. Howell mentioned that some builders do just the minimum and others do much more. Mr. Lunsford stated this is a conditional zoning which will have requests from both the developer and the city until a final plan is approved; and there is going to be an HOA with this development which will provide its own obligations for homeowners that buy into the development.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted 4-3 (Anthony, White, Causby, Hopper) to approve Ordinance No. 8-2024 entitled, "A PROPOSED ORDINANCE AMENDING THE

ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA FOR PARCELS 21879, 22277, 63473, AND 63932 (THRIFT ROAD/NANCY DR.)” due to the proposed subdivision being consistent with the surrounding neighborhood and reasonable due to being compatible with the neighborhood.”

2) Consideration of an ordinance to extend the corporate limits of the City of Shelby, North Carolina (Thrift Road/Nancy Dr.): Ordinance No. 9-2024

Mr. Longino explained to Council that if this annexation ordinance is approved it will be dated February 5, 2024 and the zoning ordinance that was just approved will have a date of February 6, 2024; therefore, the property will be annexed and then the next day approval of the zoning amendment. Mr. Longino presented to Council the annexation petition by stating this is two parcels with the larger parcel being in Cleveland County and the smaller parcel is also in Cleveland County but is contiguous with two small parcels that are in the city limits.

Mr. Longino concluded by stating city departments are able to provide services and are capable of serving the development; and staff recommends the proposed annexation.

Mayor Anthony opened the public hearing at 7:15 p.m. and invited comments from the public.

Allison Hodges who resides at 215 Nancy Drive, Shelby, North Carolina stated to Council that instead of focusing on growth, they should consider the constituents that already live here. Ms. Hodges reminded Council that they are elected officials, voted in by their constituents.

Will Rucker who resides at 110 Edgewater Road, Shelby, North Carolina expressed his appreciation to Council for the zoning approval. Mr. Rucker also stated that he'd like this property to be annexed into the city and receive city services and pay city taxes.

Eddie Moore whose business address is 2100 S. Tryon Street, Charlotte, North Carolina is employed with McAdams Engineering and is working with the developer of this property. He is available for any questions.

Shaun Gasparini who is employed by True Homes, LLC located at 2649 Brekonridge Centre Drive, Monroe, North Carolina stated he is available for any questions regarding the annexation.

Mayor Anthony closed the public hearing at 7:18 p.m.

Ms. Arth stated that since the zoning request had passed, then she feels it is in the best interest of the area to have city sewer and water services.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve Ordinance No. 9-2024 entitled, "AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF SHELBY, NORTH CAROLINA (THRIFT ROAD/NANCY DR.)" due to its consistency that it conforms to the surrounding area."

- 3) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina for parcels 49302 and 27806 (S. Lafayette St./Melrose Dr.): Ordinance No. 10-2024**

Mr. Longino presented to Council the zoning map amendment of approximately 60 acres on South Lafayette Street and Melrose Drive; stating this is a conditional zoning request.

Mr. Longino reminded Council that these same parcels were rezoned R6-CZ (Conditional Zoning, townhomes) and CPD (Corridor Protected District) in 2022 to allow for the development of 201 townhomes; however, the developer now wishes to build 137 single-family homes instead of the townhomes. Mr. Longino continued by stating the newly requested zoning is R6-CZ (single-family homes) for the South Lafayette Street parcel and CPD-CZ for the Melrose Drive parcel. Mr. Longino presented the revised site plan showing the layout of the single-family development, including buffers and open spaces.

Mr. Longino concluded by stating that staff and the Planning and Zoning Board recommend this zoning amendment request.

Mayor Anthony opened the public hearing at 7:22 p.m. and invited comments from the public.

Scott Stone whose business address is 8008 Corporate Center Drive, Charlotte, North Carolina is with American Engineering and is representing BRD Land & Investment, LP which is the applicant. Mr. Stone stated this new plan is for fewer number of lots and he is available if any questions.

Kyle DiPretoro whose business address is BRD Land & Investment, LP, located at 8008 Corporate Center Drive is the applicant for this rezoning amendment. Mr. DiPretoro stated that after the previous rezoning in 2022 the development team concluded that single-family homes were preferred and would sell better; therefore, they have come back to Council for this new rezoning.

Mayor Anthony closed the public hearing at 7:24 p.m.

Ms. Arth stated she remembered this zoning amendment of 201 townhomes and voted against it. She further stated this is a good illustration of conditional zoning and was glad to see the developer revise the plans to accommodate the area.

Mr. Hopper also stated that the developers listened to the people and Council and this revised zoning amendment is a direct result of that.

ACTION TAKEN: Upon a motion made by Mr. Hopper, City Council voted unanimously to approve Ordinance No. 10-2024 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA FOR PARCELS 49302 AND 27806 (S. LAFAYETTE ST. /MELROSE DR" due to its consistency to conform with the current Land Use Plan and is reasonable to what is in the community."

**4) Consideration of a resolution granting a Special Use Permit to McMurry Co, Royster Marital Trust Et al for parcel 19678 on Gidney Street:
Resolution No. 10-2024**

Mr. Longino presented this item to Council by addressing the criteria for a Quasi-Judicial hearing. To find facts, Council conducts a formal evidentiary hearing. Due process mandates that all parties must present factual evidence under sworn testimony. Each finding, requested to be stated by the speaker, must be supported by competent, material, and substantial evidence, not unsupported allegations, inadmissible hearsay, or lay opinions. Council must make findings of fact and then apply the existing laws and policies to those facts to arrive at a decision. The information provided by Mr. Longino within the agenda packet is to be considered evidence to be factored in as part of the decision-making process.

Mr. Longino presented the site plan to Council and gave the following details:

- The parcel consists of 42 acres and is currently zoned R6
- Our UDO states any townhome development with 25 units or more requires a Special Use Permit
- 159 townhomes are proposed with 31 buildings that will consist of 2 – 8 townhome units per building
- The density for the proposed townhome development is 3.57 units/per acre and the typical lot size would be 2,400 square feet
- There is a 50' buffer around the townhomes that abut nearby residential areas, so that applies to Deerfield Drive and off of Grice Street
- The development connects to Deerfield Drive and Gidney Street

- There will be sidewalks in the internal network of the development and streets will be built to the City's standards; the developer is agreeable in paying a fee in lieu for a sidewalk along Gidney Street as well
- The developer will also dedicate an easement for future greenway alignment with the Carolina Thread Trail plan
- The proposed sewer line plan that is still pending staff review is that the existing sewer line will be abandoned, and a new sewer line will be redirected to follow along the residential path of the development.
- For clarification Mr. Longino pointed out that one entrance to the development lines up with the existing road that goes into the Lowe's parking lot; and Hickory Creek runs along the area
- Mr. Longino stated the Planning and Zoning Board does not approve Special Use Permits, these are approved by Council
- Also, to clarify for Council, Mr. Longino pointed out that there are three access points: two on Gidney Street and one off of Deerfield Drive.
- Mr. Longino stated a traffic impact analysis is not a requirement and has not been conducted

Mayor Anthony opened the public hearing at 7:35 p.m. and invited comments from the public.

Kevin Wilke-Nadler whose business address is 3700 South Blvd., Charlotte, North Carolina stated he is a representative for V3 Southeast and was available if there were any technical questions or questions about the site plan.

Carlos Oates who resides at 329 Gidney Street, Shelby, North Carolina stated most of his questions have already been answered. He stated a few years ago this property was labeled non-developable and wonders what changed. Mayor Anthony stated Council will make note of that, but this is not the time to answer questions. Mr. Oates stated that the sidewalk would be a good addition to the area but was concerned about the increase in traffic in the area. Mr. Oates thought a traffic impact study would be a good idea and possible lane redesign. Mr. Oates mentioned the community is made up of mainly older, more established individuals with many females and he is concerned for the safety of residents. Mr. Oates concluded by stating he hoped there would be an increase in police presence.

Mayor Anthony closed the public hearing at 7:38 p.m.

Council was presented with the application and testimony from staff and Mr. Wilke-Nadler and having heard no opposition testimony in relation to the required findings enumerated 1 – 13, Council took a vote on the Special Use Permit application:

1. The applicant for the property submitted the required application and site plan for special use permit.
2. The subject parcels lay within the City of Shelby fronting Gidney Street in the R6 Residential zoning district between Deerfield Drive and Kenwood Drive.
3. According to Article 9-3-1, a townhome development is permitted in R6 Residential.
4. Land Use in the surrounding area is a mixture of Industrial, Institutional, Commercial, and Residential.
5. The petitioner has declared that the intended use of the property is for townhomes.
6. Other than what is shown on the site plan, no other changes to the site are planned.
7. To the best of staff's knowledge, no non-conformities currently exist on the property, and none will be created by the requested special use permit.
8. The use will not materially endanger the public health or safety if located where proposed and developed according to the plan.
9. The use will not substantially injure the value of adjoining or abutting property .
10. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the Comprehensive Land Use Plan.
11. That existing and/or proposed infrastructure to support the development including, but not limited to, public and private streets, utilities and storm drainage is sufficient.
12. That the design as proposed will result in a viable community that will add to the quality and choice of housing in Shelby.
13. That approving the location of the development does not have the effect of concentrating higher density housing in a particular area of the city.

ACTION TAKEN: Upon a motion made by Mr. Causby, City Council voted unanimously to approve Resolution No. 10-2024 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO MCMURRY CO, ROYSTER MARITAL TRUST ET AL FOR PARCEL 19678 ON GIDNEY STREET due to being consistent with the Comprehensive Land Use Plan and reasonable because of the size and benefits the neighboring property."

C. Consent Agenda:

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

- 1) Approval of the Minutes of the Regular Meeting of January 8, 2024

- 2) Adoption of a budget ordinance amendment for the City of Shelby's Depot Project: Ordinance No. 11-2024
- 3) Adoption of FY 2023-2024 budget ordinance amendment #4 (Sumter St. property): Ordinance No. 12-2024
- 4) Adoption of an ordinance establishing a capital project ordinance and budgets for the City of Shelby's American Rescue Plan Stormwater Asset Management and Modeling Project: Ordinance No. 13-2024
- 5) Approval of a resolution directing the City Clerk to determine sufficiency of a voluntary annexation petition from Piedmont Amistad, LLC: Resolution No. 11-2024
- 6) Approval of Special Event Applications:
 - a) Uptown Block Party, requested date: May 18, 2024

END OF CONSENT AGENDA

D. Unfinished Business:

None

E. New Business:

- 1) Approval of a resolution authorizing the selection of McGill Associates, PA for engineering services for the First Broad River Sewer Outfall Improvements Project: Resolution No. 12-2024

Mr. Howell introduced this agenda item and reminded Council that this is a \$12.5 million dollar project that we asked Senator Ted Alexander to include in the state budget. This project will replace a significant portion of the First Broad River Outfall. If this resolution is approved, it will authorize McGill Associates, PA to be the design engineer for the project.

Mr. Yarboro provided details of this project which include:

- Sewer outfall is the main line with many tributary lines coming to it, then it carries that flow from the area and drainage basin to the Waste Treatment Plant.

- Extensive modeling has been conducted in the last three months and have identified hydraulic flow issues that are caused by undersized lines, and grades that do not meet current standards.
- This project will address existing issues which include replacing approximately 8,000 linear feet of deteriorating 24” gravity sewer line that was installed in the 1950s with 30” to 36” piping.
- McGill Associates, PA were selected after advertising a Request for Qualifications; of the six responses the City received, McGill Associates scored the highest from the committee.

Mr. Yarboro provided a map showing the large area of the city that this project will improve and where the proposed sewer line would be located.

ACTION TAKEN: Upon a motion made by Mr. Webber, City Council voted unanimously to approve Resolution No. 12-2024 entitled, “A RESOLUTION AUTHORIZING THE SELECTION OF MCGILL ASSOCIATES, PA FOR ENGINEERING SERVICES FOR THE FIRST BROAD RIVER SEWER OUTFALL IMPROVEMENTS PROJECT.”

F. City Manager’s Report

Mr. Howell expressed to Council that the City is diligently working on the RAISE grant application; this will be the fifth time the City has applied. Mr. Howell reminded Council that this \$25 million grant, if awarded, would complete the Carolina Harmony Trail; USDOT will make the decisions on grant recipients at the end of June. Elected officials will be asked to assist by letters of support or making phone calls to our legislators.

G. Council Announcements and Remarks

Mr. Hopper asked for clarification on the dates for the Essentials of Municipal Government class in Asheville; those dates are February 15th - 16th.

H. Adjournment:

1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to adjourn the meeting at 7:53 p.m.

Respectfully submitted,

**Carol Williams
City Clerk**

**O. Stanhope Anthony, III
Mayor**

Minutes of February 5, 2024