

MINUTES

Regular Meeting
City Hall Council Chamber

May 21, 2007
Monday, 6:00 p.m.

Present: Mayor W. Ted Alexander, presiding; Council Members Christopher H. (Chris) Mabry, Robert H. (Bob) Still, Jeanette D. Patterson, Michael R. (Mike) Royster, Joel R. Shores, Jr., Dicky Amaya; City Manager Rick Howell, City Attorney Sam B. Craig, City Clerk Bernadette A. Parduski, Director of Utilities Brad R. Cornwell, PLS, EI, Police Chief Tandy P. Carter, Fire Chief William P. Hunt, Director of Planning Services Walter (Walt) Scharer, AICP; and media representatives

Mayor Alexander called the meeting to order at 6:00 p.m. and welcomed all who were in attendance. Mr. Howell gave the invocation and Officer Michael Chapman of the Police Department led the *Pledge of Allegiance*.

A. Approval of Agenda:

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

B. Public Hearings:

- 1) Consideration of the City of Shelby's participation in the Community Development Block Grant (CDBG) Program as administered by the North Carolina Department of Commerce through the Commerce Finance Center – Economic Development Category

Mr. Scharer introduced this matter for public hearing and stated that Teresa Spires, Economic Development Coordinator, with the Isothermal Planning and Development Commission was present and available to respond to questions regarding the City's participation in the CDBG Program. The City has received a pre-application form for an economic development project that may qualify for the funding of a sewer line extension.

Mayor Alexander opened the public hearing at 6:05 p.m. and invited comments from the public.

The public offered no comments and Mayor Alexander closed the public hearing at 6:06 p.m.

Council took no formal action.

2) **Consideration of an ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 19-2007**

Request to rezone property located at 911 Fallston Road, lying within the City's corporate limits, (Gregdon, Inc., Applicant) from the Residential-Office (R-O) District to the General Business 2 (GB2) District, Cleveland County Tax ID No. 22934, Tax Map S36, Block 1, Lot No. 17

Utilizing a map of the area, Mr. Scharer pointed out the subject property which is currently zoned R-O. The applicant has requested that the property be rezoned to General Business. The City's Land Development Plan designates the subject property as commercial and the Planning and Zoning Board unanimously approved this rezoning request. Mr. Scharer pointed out that the property is located in the Watershed Protection area and will be subject to WSIV overlay district regulations. The developer may appeal to City Council for a 10 percent/70 percent development option permit.

Mayor Alexander opened the public hearing at 6:07 p.m. and invited comments from the public:

- Teresa P. Proctor who resides at 1550 Spangler Drive in Shelby spoke on behalf of her sister. Ms. Proctor stated that her sister was approached by an unidentified party or parties about the possibility of permitting access to her property. Ms. Proctor further stated that her sister will not allow anyone permission to cross or access her property.

Mr. Scharer clarified the question of accessing property by another property owner through the process of obtaining an easement. Mr. Howell explained that the City may encourage property owners to consider an easement from time to time but only in specific instances, which did not apply in this particular matter.

Mayor Alexander closed the public hearing at 6:10 p.m.

ACTION TAKEN: Upon a motion by Mr. Amaya, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Ordinance No. 19-2007 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

3) Consideration of an ordinance amending the Unified Development Ordinance to modify the definition of Family Care Home: Ordinance No. 20-2007

Mr. Scharer stated that family care homes are facilities that provide health, counseling, or related services to a small number of persons in a family type environment. The North Carolina General Statutes provide that certain family care homes must be treated as single-family homes by local zoning ordinances. They cannot be prohibited in a district that allows single-family residences nor can they be subject to any special review requirements. Additionally, state law does permit zoning ordinances to regulate the density of those homes by utilizing an option requiring a half-mile separation between those particular uses. Staff recommended approval of the proposed text amendment to the definition of Family Care Home contained in the City's Unified Development Ordinance (UDO).

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

- Iverson Smith who resides at 1510 Knox Street in Shelby spoke on behalf of many of the residents of the Olde Farm area who support the proposed text amendment to the UDO's definition of Family Care Home. Mr. Smith also provided Council with a supporting petition containing 174 names signed by the homeowners of this area. Mr. Smith expressed many concerns and problems relating to the proliferation and clustering of family care homes in residential areas as well as the negative effects on the City's economic development efforts. Mr. Smith urged Council's favorable consideration in strengthening the protection for single family neighborhoods within the City by preserving the single family nature and character while still allowing a reasonable number of family care homes as provided by the law.**
- Donald Allen who resides at 119 Kenwood Drive in Shelby spoke in support of the proposed text amendment concerning family care homes and reiterated Mr. Smith's comments. Mr. Allen requested Council's favorable consideration and approval of the ordinance.**

Mayor Alexander closed the public hearing at 6:17 p.m.

ACTION TAKEN: Upon a motion by Mr. Still, second by Mr. Shores, City Council voted unanimously to approve and adopt Ordinance No. 20-2007 entitled, "AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY THE DEFINITION OF FAMILY CARE HOME".

Mayor Alexander called for a brief recess at 6:16 p.m. and reconvened the meeting at 6:17 p.m.

C. Public Comment:

- 1) J. Benton Reid who resides at 317 South Thompson Street in Shelby stated that of the three budget proposals recently presented, he supported Mr. Howell's budget proposal because "it suits the City best". However, in Mr. Reid's opinion the \$2.00 solid waste fee increase places an undue burden on poorer households who would pay a disproportionate share. He questioned whether the solid waste increase applied to businesses. Mr. Reid suggested his alternative which included a \$1.00 solid waste fee increase based on 9,000 trash cans (85 percent residential customers) and .005 tax rate increase.

D. Consent Agenda: All items listed below are considered to be routine and will be enacted by one introduction, motion, second, and vote. There will be no separate discussion of these items unless a Council Member so requests, in which event, the item will be removed from the consent agenda and considered separately.

ACTION TAKEN: Mayor Alexander presented the consent agenda and asked if any item should be removed before calling for action. There being no requests for removal, Mrs. Patterson made a motion to approve the consent agenda and each item as presented. After a second from Mr. Royster, the consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Special Meeting of May 1, 2007
- 2) Approval of the Minutes of the Special Meeting of May 3, 2007
- 3) Approval of the Minutes of the Regular Meeting of May 7, 2007
- 4) Approval of the Minutes of the Special Meeting of May 8, 2007
- 5) Approval of the Minutes of the Special Meeting of May 10, 2007
- 6) Special Event Permit Application:
 - a. Mt. Calvary Baptist Church to sponsor Community Explosion 2007 on Saturday, July 14, 2007
- 7) Approval of a resolution to accompany application for Preserve America Community designation: Resolution No. 35-2007

- 8) Approval of a resolution awarding the bid for the East Dixon Boulevard Waterline Replacement Project: Resolution No. 36-2007
- 9) Approval of a resolution awarding the bid for the East Marion Street Sewer Line Replacement Project: Resolution No. 37-2007
- 10) Approval of a resolution awarding the bid for the underground electric at Crystal Springs Estates: Resolution No. 38-2007
- 11) Approval of a resolution awarding the contract for the Suttle Street Culvert Replacement for the City of Shelby 2005 Community Development Block Grant (CDBG) Concentrated Needs Project No. 05-C-1399: Resolution No. 39-2007
- 12) Adoption of FY 2006-2007 Budget Ordinance Amendment No. 9: Ordinance No. 21-2007

END CONSENT AGENDA

E. Special Presentations: None

F. Unfinished Business:

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

a. Firemen's Relief Fund Board of Trustees

Mrs. Parduski reported that the Board of Trustees is seeking a new member to fill an unexpired term concluding January 2008 which was created by the resignation of Mr. Winn. Mr. Tim Wright has submitted his application for consideration.

Mr. Amaya nominated Mr. Wright.

ACTION TAKEN: Upon a motion by Mr. Still, second by Mr. Amaya, City Council voted unanimously to close the nominations and to appoint Mr. Wright to the unexpired term concluding January 2008.

b. Planning and Zoning Advisory Board

Mrs. Parduski reported that the terms of three inside members are set to conclude June 2007. The incumbents have been contacted. Mr. Haywood

Homsley wishes to continue his service and Mrs. Ginny Hughes and Mrs. Carol Rhea wish to complete their service at the end of June.

The applicants who wish to be considered for appointment include: Bill McCarter, Marty Allen, Ulysses Gary Collins, Robert Mike Lowery, Jr., and Scott Bankhead.

Mr. Still nominated Mr. Bankhead.

Mr. Royster nominated Mr. Homsley and Mr. Allen.

Mr. Shores nominated Mr. McCarter.

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

Council cast the following votes:

- Mr. Marty Allen received a unanimous vote.
- Mr. Scott Bankhead received a unanimous vote.
- Incumbent, Haywood Homsley, received five affirmative votes (Mabry, Still, Patterson, Royster, and Amaya).
- Mr. Bill McCarter received one affirmative vote (Shores).

ACTION TAKEN: By consensus, Council appointed Marty Allen, Scott Bankhead, and Haywood Homsley to the Planning and Zoning Board with terms concluding June 2010.

c. Parks and Recreation Advisory Board

Mrs. Parduski reported that the terms of three members are set to conclude July 2007. The incumbents have been contacted. Mr. Allen Langley wishes to continue his service and Mrs. Martha Noblitt wishes to complete her service in July. There is a vacant position which also must be filled.

The applicants who wish to be considered for appointment include: Andrew L. Hopper, Sr., Robert Mike Lowery, Jr., and Gene Matheney.

Mr. Royster nominated Mr. Langley.

Mrs. Patterson nominated Mr. Hopper.

Mr. Still nominated Mr. Matheney.

By consensus, Council elected to continue the nominations.

G. New Business:

- 1) Consideration of a resolution approving the Animal Control Services Agreement between Cleveland County and the City of Shelby: Resolution No. 40-2007**

Mr. Howell presented the revised Animal Control Services Agreement which has come up for renewal after being in effect for the past five years. Mr. Howell stated that there are no significant changes however pointed out that the amounts for services and vehicle compensation will increase annually by the amount of the Consumer Price Index. Mr. Howell suggested to Council that they consider an annual review process for this agreement.

Upon questioning, Mr. Craig advised that the term and termination clauses of the agreement allow for either party, the City or Cleveland County, to give a 90-day written notice to terminate the agreement or to automatically renew additional terms of one (1) year each under the same terms and conditions that existed at the end of each preceding renewal period.

ACTION TAKEN: Upon a motion by Mr. Still, second by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 40-2007 entitled, "A RESOLUTION APPROVING THE ANIMAL CONTROL SERVICES AGREEMENT BETWEEN CLEVELAND COUNTY AND THE CITY OF SHELBY", as presented, and gave direction to Mr. Howell to establish an annual review process for this agreement.

- 2) Consideration of a resolution directing the City Clerk to determine sufficiency of a voluntary annexation petition from Hallelujah Communities, LLC: Resolution No. 41-2007**

Utilizing a map of the area, Mr. Scharer pointed out the 56 acres owned by the petitioner, Hallelujah Communities, requesting an additional satellite annexation. The subject property is located adjacent to the site annexed for Hallelujah Acres in 2006.

Mr. Scharer stated that, in addition to the annexation petition, the owners of Hallelujah Acres have submitted a Planned Unit Development (PUD)

proposal which has been approved by the Planning and Zoning Board and will be submitted to Council for approval in June 2007.

Staff recommended proceeding with the annexation process for this site.

ACTION TAKEN: Upon a motion by Mr. Royster, second by Mrs. Patterson, City Council voted unanimously to approve and adopt Resolution No. 41-2007 entitled, "A RESOLUTION DIRECTING THE CITY CLERK TO DETERMINE SUFFICIENCY OF A VOLUNTARY ANNEXATION PETITION FROM HALLELUJAH COMMUNITIES, LLC".

- 3) Consideration of a resolution to adopt an Agreement of Electric Suppliers between the City of Shelby and Rutherford Electric Membership Corporation: Resolution No. 42-2007

Mr. Cornwell began his presentation of the Agreement of Electric Suppliers with an overview of the General Assembly of North Carolina Senate Bill 512 (SB 512) which became law in June 2005. SB 512 required electric membership corporations (co-ops) and cities that own and maintain their own electric distribution lines to enter good faith negotiations by May 31, 2007 concerning the provision of future electric services within areas outside of the corporate limits of such cities, and the development of agreements relating to the provision of electric services, the location of lines, and the areas within which electric service may be provided by such electric suppliers. Accordingly, and due to good communication with Rutherford Electric Membership Corporation (REMC) since 1965, as stated by Mr. Cornwell, the City has reached an agreement that is mutually beneficial to both parties.

Mr. Cornwell detailed the negotiation of territories by referencing Exhibit A, which is a map entitled, "Agreement of Electric Suppliers: City of Shelby and Rutherford EMC" and incorporated into the agreement, per the map legend:

- The three mile Shelby negotiated territory (less and except REMC assigned and negotiated territory)
- 1965 North Carolina Utilities Commission assigned REMC territory
- 1965 North Carolina Utilities Commission unassigned territory (negotiated to REMC along Highway NC 150)

Additionally, Mr. Cornwell explained that any premises initially requiring electric service after the date of this agreement located only partially

within an area assigned to a party under this agreement may be served by either the City or REMC, whichever supplier the consumer chooses.

Mr. Cornwell further explained the caveat regarding SB 512 which is the continuing discussion about the introduction of new legislation to preempt SB 512 and would allow the North Carolina Utilities Commission to assign electric territory. By virtue of this agreement, the City will be avoiding any possibility of this subjection to electric regulation. While the City itself has no conflicts with REMC at this time, the agreement should ensure that the parties do not have any conflicts in the future. Mr. Cornwell said that the City not only met the requirements of SB 512, but also exceeded them in the opinion of ElectriCities. Mr. Cornwell credited Mr. Mark Otersen with ElectriCities for his assistance in this regard as well as ElectriCities attorney, Jep Rose. Mr. Rose assisted with the drafting and modifications to the agreement and it comes with his recommendation. Lastly, the City and REMC will seek approval of this Agreement of Electric Suppliers from the North Carolina Utilities Commission.

Mr. Howell reiterated Mr. Cornwell's comments and requested Council's favorable consideration of the agreement because it represents a proactive decision regarding the City's electric service.

ACTION TAKEN: Upon a motion by Mrs. Patterson, second by Mr. Royster, City Council voted unanimously to approve and adopt Resolution No. 42-2007 entitled, "A RESOLUTION TO ADOPT AN AGREEMENT OF ELECTRIC SUPPLIERS BETWEEN THE CITY OF SHELBY AND RUTHERFORD ELECTRIC MEMBERSHIP CORPORATION".

H. City Manager's Report:

- 1) Mr. Howell announced that FY 2007-2008 budget documents will be available to Council on Thursday, May 24, 2007.
- 2) Per Mr. Shores' request at the budget session of May 8, 2007, The Electric System Growth Areas Implementation Study prepared by ElectriCities will be provided to Council.
- 3) Mr. Howell requested Council to consider scheduling an update report from Destination Cleveland County regarding the group's recent activities.
- 4) Mr. Howell informed Council that the Parks and Recreation Master Planning process is underway and a resolution to establish a steering committee will be prepared for the June 4, 2007 meeting.

Miscellaneous announcements:

- 1) Mr. Cornwell announced the North Carolina Utilities Commission findings with regard to the inspection report for the natural gas distribution facilities operated by the City of Shelby Gas Department in reference to the Pipeline Safety Regulations conducted in April 2007. The report by Chris Isley, Interim Director of the Pipeline Safety Section, dated May 1, 2007 indicates that the facilities inspected appeared in good condition and no violations were detected.
- 2) Mr. Cornwell provided Council with the 2006 Consumer Confidence Report (CCR) and acknowledged Mr. Duane Sando for his work at the City's Water Plant. He explained that the Consumer Confidence Rule requires public water suppliers that serve the same people year round to provide consumer confidence reports to their customers. These reports are also known as annual water quality reports or drinking water quality reports. The CCR summarizes information regarding sources used (i.e. rivers, lakes, reservoirs, or aquifers), any detected contaminants, compliance, and educational information and will be mailed to the City's customers as well as posted on the City's website.
- 3) Mr. Still and Mr. Howell reminded Council to attend the YMCA Community Prayer Breakfast on Thursday, May 24, 2007.
- 4) Mr. Mabry recognized and congratulated the City's Electric Department for recently earning two national awards from the American Public Power Association: The Reliable Public Power Provider (RP₃) recognition for providing consumers with the highest degree of reliable and safe electric service and the Electric Utility Safety Award for safe operating practices in 2006.

Mr. Mabry also acknowledged and congratulated Council Member Joel Shores as a member of the Cleveland County Risk Watch Management Team who recently received an award for outstanding Risk Watch Champion Management Team in North Carolina.

- 5) Mrs. Patterson mentioned the encouraging news reported in the article entitled, "Shelby Police show drop of 12 percent in crime", which appeared in The Shelby Star today.
- I. Closed Session: To conduct the annual performance evaluation of the City Clerk pursuant to North Carolina General Statute 143-318.11 (a) (6)

ACTION TAKEN: Upon a motion by Mr. Still, second by Mr. Amaya, City

Council voted unanimously to enter into a closed session to conduct the performance evaluation of the City Clerk pursuant to the appropriate North Carolina General Statute.

ACTION TAKEN: Upon a motion by Mr. Still, second by Mr. Amaya, City Council voted unanimously to return to regular session.

Mayor Alexander stated that Council conducted their performance evaluation of the City Clerk and it was determined to be very favorable. The Mayor expressed Council's appreciation and gratitude to the City Clerk for her excellent work.

ACTION TAKEN: Upon a motion by Mr. Still, second by Mr. Royster, City Council voted unanimously to increase the annual compensation of the City Clerk at the recommended salary effective immediately.

- J. **Adjournment:** There being no further business for Council's consideration, Mayor Alexander adjourned the meeting at 7:30 p.m.

Respectfully submitted,

Bernadette A. Parduski
City Clerk

W. Ted Alexander
Mayor

Minutes of May 21, A. D. 2007