

MINUTES

Regular Meeting
City Hall Council Chamber

March 21, 2016
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members David W. White, David Causby, Dennis C. Bailey, Ben Kittrell, Dicky Amaya; City Manager Rick Howell, City Clerk Bernadette A. Parduski, NCCMC, MMC, City Attorney Robert W. (Bob) Yelton, Director of Finance Justin S. Merritt, MPA, 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, and Director of Planning and Development Services Walter (Walt) Scharer, AICP; and Reporter Casey White of The Shelby Star and Director of Cable Programming Greg Tillman of Cleveland Community College

Mayor Anthony called the meeting to order at 6:00 p.m., welcomed all who were in attendance, and recognized former City Council Member Joel Shores and former State Senator Wes Westmoreland in attendance. The Mayor gave the invocation and Mr. White led the *Pledge of Allegiance*.

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. Special Presentations:

- 1) Recognition of Ricky Lamar Stafford on the occasion of his retirement from employment with the City of Shelby: Resolution No. 7-2016

Mayor Anthony called upon Ricky Lamar Stafford. The Mayor formally read and presented framed Resolution No. 7-2016 to Captain Stafford. He then presented the key to the City and a City lapel pin to him in honor of and with heartfelt appreciation for 30 years of dedicated service to the City of Shelby Police Department.

Captain Stafford was also bestowed the *Cardinal Award*, which is among the most prestigious awards presented by the North Carolina Office of the Governor. On behalf of Governor McCrory, Mayor Anthony formally read and presented the

honor to Captain Stafford in recognition of his dedication and outstanding service as an exemplary employee of the State of North Carolina.

Humbled by the recognition, Captain Stafford expressed his appreciation to all. He recognized his wife and his son in attendance.

- 2) Recognition of Justin S. Merritt, Finance Director, and the City of Shelby's Finance Department as recipients of the Certificate of Achievement for Excellence in Financial Reporting for the Fiscal Year ended June 30, 2015

Acknowledging a long legacy, Mayor Anthony was pleased to announce that the Government Finance Officers Association awarded the Certificate of Achievement for Excellence in Financial Reporting to the City of Shelby for its Comprehensive Annual Financial Report (CAFR) yet again. It is a testament to the commitment of past and present management and finance directors, whose work is often taken for granted, as to full public disclosure and communication of the financial condition of the City of Shelby.

Mayor Anthony recognized and congratulated Mr. Merritt as he accepted the 18th Certificate of Achievement on behalf of the City.

C. Public Comment: None

D. Public Hearings:

- 1) Consideration of a proposed ordinance to amend the Unified Development Ordinance (UDO) of the City of Shelby: Ordinance No. 13-2016

Mr. Scharer introduced the proposed zoning text amendment to add Neighborhood Food and Beverage Service as a new use in the Neighborhood Business (NB) Zoning District. He defined the Neighborhood Food and Beverage Service as a use limited to the serving of ice cream, yogurt, coffee, juices, and similar items along with items such as bagels, muffins, and pastries. Mr. Scharer stated the development standards include a maximum of 1,800 square foot establishment and no on-premises cooking of food.

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

The public offered no comments and Mayor Anthony closed the public hearing at 6:13 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 13-2016 entitled, "A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE (UDO) OF THE CITY OF SHELBY".

2) Consideration of a resolution granting a Special Use Permit for elementary/secondary school at 2401 Joe's Lake Road: Resolution No. 11-2016

First, Mayor Anthony provided instructions that this hearing must be conducted in a quasi-judicial fashion. As such, these hearings must be evidentiary in nature and the decision of Council must be based upon that evidence. The purpose of the hearing is to establish facts, not to gather opinions about the desirability or popularity of the proposed development. Any person offering testimony must do so under oath and cross examination is allowed. The gathering of evidence outside the hearing by individual members is not permitted. There must be a written Findings of Fact regarding the specific proposal. The exercise of judgment and discretion must apply existing policies to the situation.

Next, Mr. Hendrick disclosed an ex-parte communication in which he received and returned a phone call from/to Todd Tongel, who expressed his concerns about a trailhead being located near Pinnacle Classical Academy, to explain the quasi-judicial nature of the hearing.

Mr. Bailey disclosed a series of ex-parte communications involving various associations with the Pinnacle Classical Academy. Under the circumstances, he questioned whether the applicant had an objection to his ability to judge fairly. Mr. Yelton advised Mr. Bailey could question the applicant but that in itself would not disqualify him from hearing the matter.

After taking his oath and utilizing location and zoning maps of the area, Mr. Scharer pointed to the subject property at 2401 Joe's Lake Road, noting the existing Pinnacle Classical Academy on South Post Road. The former Hallelujah Acres subdivision is located to the west and is adjacent to the site. The site is currently vacant as future phases of the subdivision were never completed. The applicant is proposing the construction of a new school campus.

Mr. Scharer stated the property is currently zoned Residential-Office-Conditional Use (RO-CU). The additional use of an elementary/secondary school is permitted in RO-CU Zoning District with a Special Use Permit issued by City Council. Utilizing the site plan, Mr. Scharer pointed to a sidewalk along Joe's Lake Road as required by City Code in conjunction with new development. The applicant is proposing not to include sidewalk facilities as part of its site plan. However, staff recommended adding a sidewalk along

Joe's Lake Road in front of the campus as a condition of the Special Use Permit.

Mr. Howell clarified City Code requires the sidewalk regardless of the Unified Development Ordinance (UDO), which authorizes the establishment of the Special Use Permit process. The code requirement for sidewalks was explained and discussed. It was noted Council would have to address the sidewalk condition as a separate matter.

Next, Mr. Scharer described the applicant's landscape buffer detail identified on the site plan which also meets the landscaping requirements of the UDO.

Mr. Scharer stated staff recommended, as a condition of the Special Use Permit, a greenway on the back side of the site connecting the existing facilities on the former Hallelujah Acres subdivision. Staff recommended these facilities as part of the City's goals found in the Shelby Comprehensive Pedestrian Plan, the Shelby Comprehensive Transportation Plan, and the Carolina Thread Trail Master Plan for Cleveland County.

Mr. Scharer clarified the proposed greenway is not a part of the Carolina Thread Trail Master Plan. The greenway was added due to several other existing City plans.

Mr. Scharer concluded by recommending the Special Use Permit and stated the requested permit is within the jurisdiction of the City of Shelby according to the UDO; the application is complete, and if completed as proposed in the application, the proposed development will comply with all the requirements of the UDO. He further stated the proposed Special Use Permit application is consistent with the Shelby Comprehensive Land Use Plan.

Mayor Anthony opened the public hearing at 6:32 p.m. and sworn testimony was given as follows:

Mark Patterson who resides at 114 Victoria Park Drive in Shelby, North Carolina testified as the architect for Pinnacle Classical Academy in support of the Special Use Permit application. Mr. Patterson provided renderings of the new school campus construction as well as the future phases. He stated a letter from the United States Department of Agriculture was received identifying the buffer as wetlands and the construction of a greenway will impact the wetland area on this site.

Wes Westmoreland who resides at 849 West Marion Street in Shelby, North Carolina testified in support of the Special Use Permit application and as a founding member of the Pinnacle Classical Academy and current board

chair. Mr. Westmoreland stated the original Pinnacle Classical Academy site plan dated December 4, 2015, which was submitted for the February 15, 2016 City Council meeting, did not include sidewalks or a greenway. After a meeting with City staff, a new site plan was developed by Odom Engineering to include the items requested by the City but only for the Board of Directors at Pinnacle Classical Academy to consider. Mr. Westmoreland further stated, although two site plans may have been prepared, Pinnacle Classical Academy at no time has put forward a plan to include a greenway or sidewalk for this site. He submitted the agenda item of February 15, 2016, which was postponed, as evidence.

Mr. Westmoreland stated there are two issues for Council's consideration, the Special Use Permit itself and the conditions recommended by City staff placed on that permit, in addition to learning the sidewalk is a requirement of City Code. He intended to present evidence to establish all the requirements have been met to approve the Special Use Permit and to present evidence that the recommendations from City staff as conditions for approval are not reasonable and do not meet all the considerations required for Council's approval. It was Mr. Westmoreland's understanding that it is acceptable for Council to separate the conditions from the permit and to consider the conditions on one vote and the permit on a second vote.

Next, Mr. Westmoreland presented correspondence from Cleveland County Health Director Dorothea Wyant, Cleveland County Sheriff Alan Norman, and Prudential Carolinas Realty owner/broker Marlene Peeler. He requested each individual be accepted as an expert in their respective fields of public health, public safety, and property values. By consensus, Council qualified Dorothea Wyant, Sheriff Alan Norman, and Marlene Peeler as expert witnesses and accepted the information to support the respective Findings of Fact.

Mr. Westmoreland stated he has no objection to Mr. Bailey's participation in the hearing of this matter.

Mr. Westmoreland determined all seven Findings of Fact have been fully met according to the testimony from those Council has acknowledged as experts in each field. Therefore, Council is obliged to approve the Special Use Permit as presented by the applicant.

With regard to the conditions recommended by City staff, Mr. Westmoreland acknowledged Council may attach to any Special Use Permit such reasonable requirements in addition to those specified in the UDO that will ensure that the development in its proposed location:

- Will not endanger the public health or safety
- Will not injure the value of adjoining or abutting property
- Will be in harmony with the area in which it is located
- Will be in conformity with the Comprehensive Land Use Plan, Comprehensive Transportation Plan, or other plans officially adopted by Council

Mr. Westmoreland stated these conditions are legally held to the same standards as the permit itself, explaining the lack of relevance to the project and providing the following evidence:

Mr. Westmoreland stated both the recommended sidewalk and greenway originate in a field and terminate in a wooded area. If they are to be considered as alternative transportation routes, they would serve no purpose for students walking to school because charter schools are not considered neighborhood schools. At Mr. Westmoreland's request, Council accepted David Odom of Odom Engineering PLLC as an expert on site design planning. He stated the term reasonable must also consider cost as a significant factor and presented a letter from Mr. Odom providing cost estimates for sidewalk and greenway at Pinnacle Classical Academy in excess of \$160,000. Mr. Westmoreland was also qualified as an expert in Pinnacle's building planning by Council. He stated since the new Pinnacle Classical Academy is being funded by the United States Department of Agriculture and its regulations apply to the project, the monetary impacts of the conditions could affect the completion of Phase I of the school. He added the additional cost of the sidewalk and greenway would delay the completion of classroom space well beyond 2017. At Mr. Westmoreland's request, Council accepted Anthony W. High, Sr., State Environmental Coordinator with the United States Department of Agriculture, as an expert in compliance and financing. He presented a letter from Mr. High stating the agency's current environmental regulation prohibits funding wetland impacts. Mr. Westmoreland reiterated the United States Department of Agriculture is financing the Pinnacle Classical Academy project and has identified the greenway easement as wetland.

At Mr. Westmoreland's request, Council accepted Captain Joel Shores of the Cleveland County Sheriff's Department as an expert on school safety. Joel Shores who resides at 818 Crowder Road in Shelby, North Carolina addressed the safety concerns of this particular school site and the proposed greenway locations. In his professional opinion, Captain Shores summarized that the extra access to a greenway is something he could not recommend if he were requested to produce a school safety plan for the proposed Pinnacle Classical Academy.

At Mr. Westmoreland's request, Council accepted North Carolina State

Trooper Brian Theis as an expert in school safety. Brian Theis who resides at 102 Schweppe Lane in Shelby, North Carolina expressed his concerns as to which law enforcement agency would patrol and respond to any safety issues along the proposed greenway. He spoke as both expert and as parent about the responsibility for securing a greenway on school property.

Utilizing an aerial map of the Shelby Middle School campus, Mr. Westmoreland noted this traditional public school built five years ago depicts only sidewalks strictly on its campus to connect parking to facilities. There are no sidewalks around the perimeter of the school.

Mr. Westmoreland further stated since several of the City's planning documents were entered into evidence in the City's proposal, he was compelled to explain their relevance to the Pinnacle Classical Academy project. He provided copies of the Shelby Strategic Growth Plan, the Carolina Thread Trail Master Plan for Cleveland County Communities, and the Cleveland County Comprehensive Transportation Plan, and cited references within each planning document which applied to sidewalk and greenway facilities.

Mr. Westmoreland requested that a public school in an undeveloped rural area within the City's Extraterritorial Jurisdiction (ETJ) not be required to build a sidewalk and a greenway that begin and end with no connection or likelihood of one for the foreseeable future. This request is based on expert testimony that clearly indicated an increased risk to public safety and unreasonably puts the project in demonstrable financial stress if not defeat.

Mr. Westmoreland summarized it has been established through the testimony of experts the application provided:

- The requested permit is within the jurisdiction of the City of Shelby according to the UDO.
- The application is complete.
- If completed as proposed in the application, the proposed development will comply with all the requirements of the UDO.
- If completed as proposed in the application, will not endanger the public health or safety.
- If completed as proposed in the application, will not injure the value of adjoining or abutting property.
- If completed as proposed in the application, will be in harmony with the area in which it is located.
- If completed as proposed in the application, will be in conformity with the Shelby Comprehensive Land Use Plan.

Therefore, the application for a Special Use Permit, by law, should be approved by Council. Further, it has been established the conditions recommended by City staff are unreasonable due to the costs and risks to the entire project and will endanger public safety. The collateral goals as outlined in the several plans referenced by City staff are voluntary or are not applicable. Therefore, the stipulations required in these recommendations are not legally met as conditions for the permit approval.

Given the information presented tonight that the sidewalk is required by City Code, Mr. Westmoreland asked that Council adjust the Code to not require an applicant to build a sidewalk if that is in fact what City Code suggests.

Based on the testimony presented, Mr. Westmoreland requested an affirmative vote for the permit as presented and without condition and requested that Council allow the school project not be required to build a sidewalk at least at this time. This may be accomplished by a vote to reject the conditions recommended by City staff because as established by testimony they do not meet the legally mandated requirements for passage immediately followed by a vote to approve the application as presented by the applicant on the basis that all conditions required for the permit have been met as established by the testimony. Any other action by Council would be in violation of State law.

Mayor Anthony responded that Council has no interest or intention in putting any undue burden on the applicant. The Mayor questioned whether an easement could be negotiated for a suitable location as a future pedestrian connection.

Mr. Scharer pointed to an access road as requested by the City's Sewer Department in order to gain entry to the sewer lift station.

Mr. Scharer also pointed out the sidewalk requirement did not exist at the time of the development of the Shelby Middle School, which became the impetus for Council passing the requirement.

Mayor Anthony closed the public hearing at 7:33 p.m.

Mr. Bailey stated it has been pointed out that it is virtually impossible to create a greenway through the Pinnacle property using the existing sewer easement. Considering the property is located in the ETJ, Mr. Bailey further stated not enough thought was given to the requirement to placing sidewalks, especially for a school in the ETJ. It is an inappropriate requirement to have one placed there. However, it may be reasonable to request and only request, that in the future, the City would like to gain an easement across the front of the Pinnacle property to connect one sidewalk to another. He said

there is no need for Section 3. Conditions: 2, 3, and 4 of the Special Use Permit labeled Attachment A.

Discussion continued concerning the future construction of a sidewalk for connectivity purposes and the City's Sewer Department access to the easement.

Mr. Bailey made a motion to remove Section 3. Conditions: 1, 2, 3, and 4 of the Special Use Permit labeled Attachment A, adding a provision for an easement to construct sidewalks adjacent to the Pinnacle Classical Academy's frontage along Joe's Lake Road to connect future sidewalks.

Mr. Howell recommended that the City require an easement to access its sewer line and lift station on the eastern side of the property at Serenity Drive due to the construction of the school and the use of the archery range, which may cut off current access to the existing easement from the Hallelujah Acres development.

Mr. Yelton advised easements should be designated in writing before the Special Use Permit is recorded in the Office of the Register of Deeds.

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to remove Section 3. Conditions: 1, 2, 3, and 4 of the Special Use Permit labeled Attachment A, adding a provision for an easement to construct sidewalks adjacent to the Pinnacle Classical Academy's frontage along Joe's Lake Road to connect future sidewalks and adding a requirement if the City is restricted by Pinnacle Classical Academy from being able to currently access its sewer line and lift station that Pinnacle Classical Academy would install a gravel road from the edge of its property at Serenity Drive to the City's lift station at Pinnacle Classical Academy's expense.

ACTION TAKEN: Upon a motion made by Mr. Bailey, City Council voted unanimously to approve and adopt Resolution No. 11-2016 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT FOR ELEMENTARY/SECONDARY SCHOOL AT 2401 JOE'S LAKE ROAD", as amended.

Mayor Anthony declared a recess at 7:49 p.m. and reconvened the meeting at 7:52 p.m.

- 3) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina and granting a Special Use Permit to Children's Therapeutic Services Office at 1300 Gidney Street: Ordinance No. 14-2016

After taking his oath and utilizing location and zoning maps of the area, Mr. Scharer pointed to the subject property at 1300 Gidney Street, which is approximately 5.2 acres in size. Currently, the property is vacant and is adjacent to the existing James Home for Children. The applicant, Children's Home of Cleveland County, Inc., is proposing to rezone 1.8 acres of the site from Residential 10 (R10) to Residential Office-Conditional Use (RO-CU) with child therapeutic services as the conditional use.

Next, Mr. Scharer utilized the site plan and elevation plan to depict the proposed land use and building. He stated although the facility has an office function, the primary use is residential with two single occupant dwelling units. The character of the surrounding neighborhood is maintained with a compatible residential design. The applicant has offered to double the buffer plantings on the west property line with the existing single family dwellings. Mr. Scharer noted on the site plan the parking for the office function of the use is located at the rear of the property. Parking for the residential uses is at the front of the property. Staff also recommended the dedication of a recreation easement for a potential greenway at the rear of the property, as identified by various City planning documents, as a condition of the permit.

Mr. Scharer concluded by stating the proposed zoning map amendment is inconsistent with the Shelby Comprehensive Land Use Plan; however, staff recommended this proposed amendment and associated Special Use Permit. It was noted the existing home for children and proposed facility are in harmony with the residential character of the neighborhood.

Mayor Anthony opened the public hearing at 7:57 p.m. and sworn testimony was given as follows:

Jay Gragg who resides at 348 Hunting Ridge Lane in Shelby, North Carolina spoke in support of the zoning map amendment and Special Use Permit. Mr. Gragg stated this is a strong project which enhances the neighborhood. He noted the existing facility has been in this area for more than 20 years. Mr. Gragg acknowledged staff and board members in attendance.

Mayor Anthony closed the public hearing at 8:00 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Ordinance No. 14-2016 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA AND GRANTING A SPECIAL USE PERMIT TO CHILDREN'S THERAPEUTIC SERVICES OFFICE AT 1300 GIDNEY STREET".

E. Consent Agenda:

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

- 1) Approval of the Minutes of the Regular Meeting of March 7, 2016
- 2) Approval of the Minutes of the Regular (Recessed) Meeting of March 10, 2016
- 3) Approval of Special Event Permit Application:
 - a. 5th Annual Step One 5K and Fun Run, requested date: August 27, 2016
- 4) Approval a resolution accepting property from Christopher Holcomb: Resolution No. 12-2016
- 5) Approval of a resolution approving a financing agreement authorized by North Carolina General Statute 160A-20: Resolution No. 13-2016
- 6) Adoption of Fiscal Year (FY) 2015-2016 Budget Ordinance Amendment No. 17: Ordinance No. 15-2016

END CONSENT AGENDA

F. Unfinished Business: None

G. New Business: None

H. City Manager's Report:

Mr. Howell provided the following updates:

- The Wastewater Treatment Plant Renovation Project is substantially complete as of March 29, 2016.
- With regard to the Stormwater Infrastructure Assistance Program, seven applications have been received and a budget ordinance amendment will be forthcoming to provide funding to address these projects.
- With regard to the Court Square Infrastructure Improvements Project, the work is ongoing and a firm has been selected to conduct the assessment.

- With regard to the Blanton Center – Phase I, bids are due April 8, 2016 for the interior improvements and Phase II is underway, seeking grant funding for the Communications Center.
- A representative from Retail Strategies of Birmingham, Alabama contracted through ElectriCities of North Carolina will be scheduled for a future Council meeting to present an update regarding its retail strategies research for the Shelby market.
- With regard to the Brushy Creek Sewer Project, the upper portion (Phase I) has been permitted and the lower portion (Phase II) is under design.
- With regard to the Eastside Water Tank Project, on-site work has begun.
- Mr. Howell requested Council’s preference for scheduling the upcoming budget sessions with confirmed dates to be determined.
- Mr. Howell announced the Streetscape and Pedestrian Improvements Open House is scheduled for April 19, 2016 between 5:30 p.m. and 7:30 p.m. at the Earl Scruggs Center.
- Mr. Howell reminded Mayor and Council to attend the City’s Service Awards and Recognition Program on March 24, 2016 beginning at 11:30 a.m. at the Don Gibson Theatre.
- Mr. Howell also reminded Mayor and Council to attend the Parks and Recreation Trust Fund (PARTF) meeting for the City of Shelby Multipurpose Recreation Complex on March 24, 2016 at 6:00 p.m. at the Shelby City Park Gymnasium.

I. Council Announcements and Remarks:

- 1) Council discussed the status of their requested meeting with the Cleveland County manager and commissioners, seeking to reschedule a date in the very near future.

J. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to adjourn the meeting at 8:11 p.m.

Respectfully submitted,

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

**O. Stanhope Anthony III
Mayor**

Minutes of March 21, 2016