

MINUTES

Regular Meeting
City Hall Council Chamber

April 16, 2018
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Eric B. Hendrick, David W. White, David Causby, Violet Arth Dukes, Ben Kittrell, Jr., and Dicky Amaya; City Manager Rick Howell, ICMA-CM, City Clerk Bernadette A. Parduski, NCCMC, MMC, City Attorney Robert W. (Bob) Yelton, Director of Human Resources Deborah C. (Deb) Jolly, Police Chief Jeffrey H. (Jeff) Ledford, Assistant Fire Chief – Operations and Personnel David R. Vanhoy, Director of Parks and Recreation Charlie Holtzclaw, Director of Planning and Development Services Walter (Walt) Scharer, AICP; and Director of Cable Programming Greg Tillman of Cleveland Community College and The Video Factory

Mayor Anthony called the meeting to order at 6:00 p.m., welcomed all who were in attendance, and acknowledged former Mayor Mike Philbeck, former Council Member Andrew Hopper, and former Cleveland County Commissioner Willie McIntosh in attendance. The Mayor gave the invocation and Mr. Causby led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

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

B. Special Presentation:

- 1) Recognition of Lawrence Evans Cox, II on the occasion of his retirement from employment with the City of Shelby: Resolution No. 15-2018

Mayor Anthony called upon Lawrence Evans Cox, II, who recognized his mother and his girlfriend in attendance. The Mayor formally read and presented framed Resolution No. 15-2018 to Sergeant Cox. Mayor Anthony then presented a plaque along with 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.

Sergeant Cox was also conferred with the *Order of the Long Leaf Pine*, which is among the most prestigious awards presented by the North Carolina Office

of the Governor. On behalf of Governor Roy Cooper, Mayor Anthony formally read and presented the commendation to Sergeant Cox in recognition of his dedication and outstanding service as an exemplary employee of the State of North Carolina.

Humbled by the recognition, Sergeant Cox expressed his appreciation to all.

C. Public Comment:

- 1) Willie Green who resides at 152 Farmington Road in Shelby, North Carolina outlined his proposal for a public private partnership between his company, 5-Star Athlete, Inc., and the City of Shelby to lease property at Holly Oak Park. He has been in discussions with Mayor Anthony and Mr. Howell over a period of two years regarding his concept, which he developed following the City's Parks and Recreation 10-Year Comprehensive Plan. Mr. Green has purchased more than 16 acres of property located on Earl Road, adjacent to Holly Oak Park and Shelby High School, to build a sports complex. He remains interested in leasing Holly Oak Park for outdoor sports training programs, all in an effort to develop student-athletes for advanced competitions by providing a venue for regional, state, and national sports leagues tournaments and to generate local travel tourism revenue. Mr. Green requested an opportunity to provide a presentation to City Council for their consideration at a later date.
- 2) Andrew L. Hopper Sr. who resides at 505 Monroe Street in Shelby, North Carolina spoke in support of Willie Green's project and proposal. Mr. Hopper believes Holly Oak Park is still somewhat undeveloped and has not kept pace with current recreational activities. He viewed Mr. Green's public private partnership as a great opportunity for the City and for all its citizens. Mr. Hopper requested City Council assist Mr. Green with his endeavor.
- 3) Willie McIntosh who resides at 219 New Bethel Church Road in Lawndale, North Carolina also spoke in support of Willie Green's project and proposal. Mr. McIntosh talked about preserving the history of Holly Oak Park through a partnership with Mr. Green. He urged the City of Shelby and City Council to work together to make Mr. Green's idea and offer for Holly Oak Park another success story for Shelby.

D. Public Hearings:

- 1) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 19-2018

Mr. Scharer introduced this proposed zoning map amendment for the property located at 715 Polkville Road from Residential 20 (R-20) District to the General Business 2 (GB2) District as submitted by the applicant, Cleveland County Water. Utilizing both location and zoning maps, he pointed to the subject property located east of the Walmart Distribution Center and just south of the future US 74 Bypass Interchange with Polkville Road. Mr. Scharer explained the Polkville Road Interchange Small Area Plan, which serves as the Comprehensive Land Use Plan for this area, designates the site as Commercial. The City of Shelby's General Business District zoning classification is an appropriate district for this use area.

Mr. Scharer concluded by stating this proposed zoning map amendment is consistent with the Comprehensive Land Use Plan. The Planning and Zoning Board also recommended this proposed zoning amendment.

Mayor Anthony opened the public hearing at 6:19 p.m. and invited comments from the public:

Brad Cornwell whose business address is 439 Casar Lawndale Road in Lawndale, North Carolina spoke as a representative and in support of the application by Cleveland County Water requesting a zoning map amendment at 715 Polkville Road. Mr. Cornwell stated the property was purchased as the future site of the operations center for Cleveland County Water.

Mayor Anthony closed the public hearing at 6:21 p.m.

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted unanimously to approve and adopt Ordinance No. 19-2018 entitled, "A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

2) Consideration of a resolution and order permanently closing an unopened right-of-way at the south end of Woodside Drive: Resolution No. 17-2018

Mr. Scharer introduced Resolution No. 17-2018 for Council's consideration. He explained a portion of the Woodside Drive right-of-way was never officially closed when the current US 74 Bypass was built in the 1960s. In order to get clear title to the entire property, the property owner adjacent to this unopened right-of-way at the south end of Woodside Drive has requested the City close the right-of-way. Utilizing both a location map and the plat entitled proposed street/closing abandonment for the City of Shelby, Mr. Scharer pointed to the subject site. He noted a permanent utilities easement as shown on the plat will be maintained.

Mayor Anthony opened the public hearing at 6:23 p.m. and invited comments from the public.

The public offered no comments and Mayor Anthony closed the public hearing at 6:24 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 17-2018 entitled, “A RESOLUTION AND ORDER PERMANENTLY CLOSING AN UNOPENED RIGHT-OF-WAY AT THE SOUTH END OF WOODSIDE DRIVE”.

3) Consideration of a resolution granting a Special Use Permit to Zimmerman Properties SE, LLC for 1016 Sue Lane: Resolution No. 18-2018

Mayor Anthony provided instructions as to the quasi-judicial process. 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. Scharer within the agenda packet is to be considered evidence to be factored in as part of the decision-making policy.

Mayor Anthony opened the public hearing at 6:25 p.m. and sworn testimony was given as follows:

Mr. Scharer introduced Resolution No. 18-2018 and the Special Use Permit request by Zimmerman Properties SE, LLC. He stated the applicant is proposing a 60-unit multi-family development on Sue Lane. The subject property is currently vacant and zoned General Business (GB) District. Mr. Scharer added for multi-family developments located within the GB District with 25 or more units, a Special Use Permit is required. Utilizing a zoning map of the area, he stated the Shelby Comprehensive Land Use Plan designates this property as a Corridor Revitalization Area and the proposed Special Use Permit application is consistent with this plan. Mr. Scharer added a condition of the permit includes stormwater detention above Phase II Stormwater requirements due to historical downstream flooding in the area.

Mike Philbeck who resides at 1805 Arbor Way in Shelby, North Carolina spoke in support of the Special Use Permit application. Mr. Philbeck was the real estate broker for the previous Sue Lane projects. He explained the North Carolina Housing Finance Agency did not approve the proposed site

during previously application cycles and he is currently working with a new developer, Zimmerman Properties. Mr. Philbeck noted City staff has testified and recommended the approval of Special Use Permit as proposed. If deemed necessary by City Council, he offered to be qualified as an expert witness based on his extensive background and experience in both residential and commercial real estate.

Timothy (Tab) Bullard who is a representative of Zimmerman Properties located at 4691 South Atlanta Road in Atlanta, Georgia spoke in support of the Special Use Permit application. Mr. Bullard provided extensive background information about his company and their developments.

Mayor Anthony closed the public hearing at 6:35 p.m.

Having heard all of the evidence and arguments presented at the hearing, Council found and determined the application is complete. Council was presented with no evidence as to the following findings as read by Mr. Amaya:

- The development will materially endanger the public health or safety
- The development will substantially injure the value of adjoining or abutting property
- Will not be in harmony with the area in which it is to be located
- Will not be in general conformity with the Comprehensive Land Use Plan or other plans officially adopted by Council

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 18-2018 entitled, “A RESOLUTION GRANTING A SPECIAL USE PERMIT TO ZIMMERMAN PROPERTIES SE, LLC FOR 1016 SUE LANE”.

4) Consideration of a resolution granting a Special Use Permit to KRP Investments, LLC for 600 Earl Road: Resolution No. 19-2018

Mayor Anthony provided instructions as to the quasi-judicial process. 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. Scharer within the agenda packet is to be considered evidence to be factored in as part of the decision-making policy.

Mayor Anthony opened the public hearing at 6:37 p.m. and sworn testimony was given as follows:

Mr. Scharer introduced Resolution No. 19-2018 and the Special Use Permit request by KRP Investments LLC. He stated the applicant is proposing a 60-unit multi-family development on Earl Road near Holly Oak Park. The subject property is currently vacant, approximately 7 acres in size, and zoned General Business (GB) District. Mr. Scharer added for multi-family developments located within the GB District with 25 or more units, a Special Use Permit is required. Utilizing a zoning map of the area, he stated the Shelby Comprehensive Land Use Plan designates this property as a Corridor Revitalization Area and the proposed Special Use Permit application is consistent with this plan. Mr. Scharer added conditions of the permit include:

- The development shall provide a paved greenway or sidewalk to the existing trail system at Holly Oak Park
- A Transportation Impact Analysis (TIA) must be performed prior to site plan approval. Any recommended transportation improvements recommended by the TIA are the responsibility of the applicant.

Craig Stone who is a representative of KRP Investments who resides at 5614 Riverdale Drive in Jamestown, North Carolina spoke in support of the Special Use Permit application. Mr. Stone provided extensive background information about his company and their developments.

Mayor Anthony closed the public hearing at 6:39 p.m.

Having heard all of the evidence and arguments presented at the hearing, Council found and determined the application is complete. Council was presented with no evidence as to the following findings as read by Mr. Amaya:

- The development will materially endanger the public health or safety
- The development will substantially injure the value of adjoining or abutting property
- Will not be in harmony with the area in which it is to be located
- Will not be in general conformity with the Comprehensive Land Use Plan or other plans officially adopted by Council

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 19-2018 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO KRP INVESTMENTS, LLC FOR 600 EARL ROAD".

E. Consent Agenda:

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

- 1) Approval of the Minutes of the Regular Meeting of April 2, 2018
- 2) Adoption of Fiscal Year (FY) 2017-2018 Budget Ordinance Amendment No. 15: Ordinance No. 20-2018
- 3) Adoption of Fiscal Year (FY) 2017-2018 Budget Ordinance Amendment No. 16: Ordinance No. 21-2018
- 4) Adoption of an ordinance authorizing the demolition of a dwelling: Ordinance No. 22-2018
- 5) Approval of a resolution supporting the City of Shelby's application for trail construction funds for the Carolina Thread Trail: Resolution No. 20-2018
- 6) Approval of a resolution supporting the City of Shelby's application for North Carolina Department of Transportation (NCDOT) State Planning and Research Program Funds: Resolution No. 21-2018

END CONSENT AGENDA

F. Unfinished Business: None

G. New Business: None

H. City Manager's Report:

- 1) Mr. Howell informed Council he has met with the owner of Buckeye Bridge, the contractor for the Uptown Shelby Water and Sewer Project, to discuss the construction delays and the contracted substantial completion date of July 3, 2018. Several issues were reviewed including those related to labor supply, rain dates, documentation etc. Council requested a staff report on the status of this project.
- 2) Mr. Howell updated Council on the Hanna Park Project, which has also been delayed by weather issues. It is getting back on track with a completion date anticipated for late September 2018.

- 3) Mr. Howell reported the construction activities related to replacing stormwater, sewer, and water infrastructure on Mark Drive located near Optimist Park are substantially complete.
- 4) Mr. Howell reminded Council of the land donation made by Boyce Hanna and his family for park and recreational purposes in 2007. At that time, it was specified any park on or using the property would be named to reflect and acknowledge the contributions of the Hanna family. With the construction well underway and the establishment of this park moving toward fruition, Mr. Howell will draft a resolution with the recommendation to name this park in recognition of the Hanna family contribution.
- 5) Mr. Howell proposed the date of May 29, 2018 for the joint meeting with the Cleveland County Commissioners. If the date is available to Council, a mutual time will be scheduled and properly noticed.
- 6) Mr. Howell reminded Council that special meetings have been scheduled to conduct budget sessions as follows:
 - April 20, 2018 at 4:00 p.m., City Hall Council Chamber
 - April 27, 2018 at 4:00 p.m., City Hall Council Chamber

I. Council Announcements and Remarks:

- 1) Mr. White said he visited the Hanna Park construction site and revisited the newly opened All Aboard Playground at City Park. He was impressed by the progress and activity, commending all those involved who brought these projects to life.
- 2) Mr. Amaya inquired as to the status of the Rail-Trail Project and Mr. Howell responded that negotiations are ongoing with Norfolk Southern Corporation. He also reminded Council this has been a matter discussed in closed session.
- 3) Mayor Anthony reminded all to attend the Foothills Merry-Go-Round Festival on April 28 and 29, 2018 at Shelby City Park. The Mayor also reminded Council members to attend the Foothills Merry-Go-Round Honors Awards reception and presentations on April 26, 2018 at 6:15 p.m., Don Gibson Theatre.

J. Adjournment:

- 1) Motion to adjourn

ACTION TAKEN: Upon a motion made by Mr. White, City Council voted

unanimously to adjourn the meeting at 6:56 p.m.

Respectfully submitted,

Bernadette A. Parduski, NCCMC, MMC
City Clerk

O. Stanhope Anthony III
Mayor

Minutes of April 16, 2018