

# MINUTES

Regular Meeting  
City Hall Council Chamber

January 4, 2010  
Monday, 6:00 p.m.

**Present:** Mayor W. Ted Alexander, presiding; Council Members Christopher H. (Chris) Mabry, Oliver Stanhope (Stan) Anthony, III, Jeanette D. Patterson, Michael E. (Mike) Putnam, Joel R. Shores, Jr., Andrew L. Hopper, Sr.; City Manager Rick Howell, City Attorney Robert W. (Bob) Yelton, City Clerk Bernadette A. Parduski, CMC, Director of Finance Theodore B. (Ted) Phillips, CPA, Director of Human Resources Deborah (Deb) Jolly, Director of Utilities Brad R. Cornwell, PLS, EI, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, Director of Public Works Daniel C. (Danny) Darst, Jr., Director of Parks and Recreation Charlie Holtzclaw, Director of Planning Services Walter (Walt) Scharer, AICP; and media representatives

Mayor Alexander called the meeting to order at 6:00 p.m., welcomed all who were in attendance, and wished everyone a Happy New Year. The Mayor gave the invocation and Police Sergeant Larry Cox, a veteran of the Air National Guard, led the *Pledge of Allegiance*.

## A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

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

## B. Special Presentations:

- 1) Recognition of the Mayor's Outstanding Volunteer Service Recipient for January 2010: Protégé Social Club

Mayor Alexander deemed to honor the Protégé Social Club led by President Chenita Bowers. He commended this group comprised of members, Bonita Smith, Meta Bell, Bonnie Martin, Lavhonda Merced, Mytricia Phillips, Felicia Camp, Debra Flack, Deeivory Burton, and Debra West, who lends a helping hand to any group, family, or individual in need or going through a hardship. Since April 2004, they have provided food, clothing, and furniture to the needy of this community, and are willing to do whatever is necessary to assist whoever they can.

Mayor Alexander presented a framed certificate to the Protégé Social Club on behalf of the City of Shelby.

- 2) Recognition of LouVerne C. McCray on the occasion of her retirement from employment with the City of Shelby: Resolution No. 75-2009

Mayor Alexander called upon Captain LouVerne McCray. The Mayor formally read and presented framed Resolution No. 75-2009 to Captain McCray. He also presented the key to the City and a City lapel pin to Captain McCray in honor of and with heartfelt appreciation for more than 32 years of her dedicated service to the City of Shelby.

- 3) Recognition of Chief William Palmer Hunt as Chief Fire Officer conferred by the Commission of Professional Credentialing of the Center for Public Safety Excellence, Inc.

Mayor Alexander called upon Fire Chief Hunt, formally read, and presented the framed certificate from the Commission of Professional Credentialing of the Center for Public Safety Excellence, Inc. conferring the title of Chief Fire Officer on him. The Mayor commended this professional designation and congratulated Chief Hunt on his achievement.

Chief Hunt recognized his wife and children in attendance.

- 4) Recognition of Coach David Steeves and the 2009 Shelby High School Golden Lions Soccer Team: Resolution No. 82-2009

Mayor Alexander called upon Coach David Steeves of the Shelby High School Golden Lions Soccer Team, who introduced the team members present as follows: Aaron King, Michael McLaughlin, Benjamin McMurray, Arthur Malheiros, Matthew McCarter, Branson Reid, Sam Stachowicz, David Hill, and Ben Cheaney.

The Mayor formally read and presented framed Resolution No. 82-2009 to Coach Steeves and the Golden Lions as a tribute to Cleveland County's first team to win a State soccer crown.

- 5) Annual Audit Report and Comprehensive Annual Financial Report (CAFR) for Fiscal Year ended June 30, 2009 – Dave Kerestes, CPA, Manager, Dixon Hughes, PLLC

Mr. Kerestes introduced himself and stated that he has been involved with the City's audits since 2003. As background information, Mr. Kerestes reviewed the audit process which began in June and July, continued in September and October, and culminated in December with a final report

prepared by Dixon Hughes as presented. Mr. Kerestes added that the Governmental Finance Officers Association (GFOA) has awarded the Certificate of Achievement for Excellence in Financial Reporting to the City of Shelby for its Comprehensive Annual Financial Report (CAFR) for eleven consecutive years. It is believed that the current CAFR continues to meet the Certificate of Achievement Program's requirements and Mr. Phillips has submitted it to the GFOA to determine its eligibility for another certificate.

Next Mr. Kerestes presented the Audit and Financial Statement Summary and highlighted the following items during his presentation:

- Page 3 – Dixon Hughes' report for the 2009 audit expressed an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Mr. Kerestes said that Dixon Hughes also considered the City's internal control over financial reporting as required by Governmental Auditing Standards and added that since the City received and expended more than \$500,000 in federal and state grant monies, the auditors are required to perform a compliance audit as well.
- Page 5 – Mr. Kerestes pointed out that the City adopted the provisions of Governmental Accounting Standards Board Statement No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*. Mr. Kerestes explained that the City pays the full cost of coverage for the healthcare benefits paid to qualified retirees. Postemployment expenditures are made from the General Fund, which is maintained on the modified accrual basis of accounting. No funds are set aside to pay benefits and administration costs. These expenditures are paid as they come due and will continue to increase in the future as more City employees retire.
- Page 6 – Mr. Kerestes stated that Dixon Hughes encountered no difficulties in dealing with management and staff in performing and completing the audit. He further stated that the audit resulted in only minor adjustments effecting revenues and expenditures.
- Page 7 – Mr. Kerestes was pleased to report that no disagreements with management arose during the course of this audit.
- Page 10 – Mr. Kerestes reiterated that Dixon Hughes reported no instances of non-compliance and no material weaknesses in controls.
- Page 11 – The table summarizes fund balance information. The Local Government Commission (LGC) recommends that every governmental

entity maintain their available fund balance in the general fund at the larger of 8 percent (of expenditures and transfers to other funds) or half the group average. The City's available fund balance percentage is at 26.45 percent for 2009 and the group average available fund balance percentage is 38.75 percent.

- Page 12 – The table summarizes property tax collection and collection rates. The City's ratio of taxes collected to net levy is at 95.93 percent. The 2008 group average ratio of taxes collected to net levy is 97.36 percent.
- Page 15 – Dixon Hughes does not consider the observations and recommendations to be significant deficiencies but two suggestions which include a Whistle Blower Policy and Software Reporting Training were presented for consideration to enhance the City's day-to-day operations.

Mr. Kerestes concluded his presentation by encouraging Council to contact him with any questions or concerns about the 2009 audit.

Council received the information, including the referenced reports.

#### 6) Shelby Big Tree Contest

Mr. Scharer reminded Council that the Shelby Appearance Commission (SAC) has been interested in promoting trees as a resource for beautification for many years. He announced that the SAC wishes to celebrate trees in Shelby by conducting a Big Tree Contest. Mr. Scharer explained the Shelby Big Tree Contest is designed to promote awareness of urban trees by searching for the largest tree, by circumference, in the City. The contest will begin January 5, 2010 and end on North Carolina's Arbor Day, March 19, 2010. The winner will be announced at The Arts on the Square Festival on April 24, 2010. Mr. Scharer credited Parks and Recreation Director Charlie Holtzclaw with the idea of the Shelby Big Tree Contest.

Mayor Alexander kicked off the competition by reading the Resolution Proclaiming a Celebration of the City's Largest Trees with the Big Tree Contest.

C. Public Comment: None

D. Public Hearings:

- 1) Consideration of an ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 1-2010

**Request to rezone property located at 1215 East Marion Street from the Neighborhood Business Conditional Use (NB-CU) District to the Neighborhood Business (NB) District**

**Parcel ID No. 25887 or Tax Map 6-42, Block 5, Lot No. 55**

**Mr. Scharer presented the staff report. Utilizing a map of the area, he stated that the subject property is approximately a 7.8 acre parcel near the intersection of East Marion Street and Cherryville Road. Land uses in the area are mixed and include a restaurant, dry cleaner, medical office, convenience store, funeral home, single-family dwellings, and multi-family dwellings. This property was zoned NB-CU with a full service restaurant as the conditional use in December 1996. Mr. Scharer further stated that the Comprehensive Land Use Plan also designates the subject property to be in a Neighborhood Retail Commercial Area and identifies the Neighborhood Business Zoning District classification an appropriate district for this use area. Mr. Scharer concluded by stating that the Planning and Zoning Board recommended this zoning change.**

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

**George Farmakis who is one of the owners of 1215 East Marion Street and one of the operators of Fisherman's Feast Seafood Restaurant spoke in support of his rezoning request. Under the existing zoning requirements, he is unable to partially lease or partially sell this property to a third party. Concurrently Mr. Farmakis said that his restaurant only utilizes 25 percent of the building. He cited the expenses to maintain the entire building, the grounds, and the property taxes as a financial hardship. The incurred costs of maintaining unused space with no practicable opportunity for increased profits has been a concern of his for many years and has been exacerbated by the current economic conditions. Due to financial constraints, the owners are unable to fill the space with their own ventures. Mr. Farmakis requested approval of his rezoning request which would allow him to lease or sell portions of his property to third commercial parties thus utilizing the building in its entirety.**

**Margaret Wilson who resides at 1218 East Marion Street in Shelby, North Carolina read her prepared statement strongly opposing this rezoning request. Mrs. Wilson also provided Council with a petition against the rezoning and a packet of support documentation. Mrs. Wilson stated several reasons why this rezoning should not be allowed which included reduced residential property values and increased traffic congestion. She concluded by reiterating that the rezoning would break the conditional use that allowed**

the restaurant to locate at 1215 East Marion Street in the first place. Mrs. Wilson requested Council to enforce the conditional use that allows a restaurant and only a restaurant to operate at said property and deny any request to change the conditional use of this property.

Mayor Alexander closed the public hearing at 6:53 p.m.

Discussion followed and centered on the option of property owners to apply for additional conditional use permits on their sites. Council expressed concerns about striking a balance among property owners, business owners, and residential owners in established neighborhoods.

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Hopper, City Council voted unanimously to deny Ordinance No. 1-2010 entitled, "AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA".

- 2) Consideration of an ordinance amending the Unified Development Ordinance and zoning map of the City of Shelby, North Carolina and granting a Special Use Permit for 740 West Warren Street: Ordinance No. 2-2010

Request to rezone property located at 740 West Warren Street from the Residential 8 (R8) District to the Neighborhood Business Conditional Use (NB-CU) District

Parcel ID No. 22681 or Tax Map S-23, Block 1, Lot No. 19

After taking his oath, Mr. Scharer presented the staff report. Utilizing a map of the area, Mr. Scharer pointed to approximately 13,677 square feet of the existing parcel at 740 West Marion Street. The property owner has requested that the zoning of this property be changed from R8 to NB-CU. The remaining portion of 740 West Marion Street will retain its current zoning classification of R8. The applicant intends to use the rezoned parcel as a parking facility for an existing adjacent business. Mr. Scharer stated that according to the Unified Development Ordinance (UDO), this property may currently be used as a parking lot provided all other regulations found in the UDO are followed. Overnight parking is not permitted as currently zoned. The proposed zoning change would, however, permit overnight parking. The proposed zoning change would also permit limited business activity in the parking area, such as tire changing, which is currently prohibited. Mr. Scharer mentioned the site plan has been modified to include only one location for the means of ingress and egress. He said the site plan as presented is required regardless of the zoning change. Mr. Scharer added

the Planning and Zoning Board recommended this zoning change by a split vote; however, the proposed zoning map amendment is inconsistent with the Comprehensive Land Use Plan, the Center City Master Plan, the Neighborhood Action Plan, and the Strategic Growth Plan and may damage the integrity of the newly created West Warren Street Historic District. He concluded by explaining that a certified, qualified protest petition has been filed against this zoning map amendment at 740 West Warren Street and that amendment shall not become effective except by favorable vote of three-fourths of all the members of the City Council or five (5) affirmative votes, a supermajority.

Prior to the public hearing, Mayor Alexander provided instructions as to the quasi-judicial process. A public hearing is conducted by City Council for sworn testimony concerning facts related to the Special Use Permit. City Council either approves or disapproves the Special Use Permit based on staff recommendations and sworn testimony by the public and/or the applicant.

Mayor Alexander opened the public hearing at 7:17 p.m. and sworn testimony was given as follows:

Ben Hubbard who resides at 116 Woodcove Lane in Shelby, North Carolina is a member of the Historic Shelby Foundation Board of Directors. Mr. Hubbard spoke in opposition to the rezoning on behalf of the Foundation and read an excerpt from the comment letter signed by Chair Tommy Forney. Mr. Hubbard concluded by stating revitalization of neighborhoods that surround historic districts such as the West Warren Street Historic District, as cited in the Strategic Growth Plan, dictates that the City protect the edges of historic districts. The Foundation needs the City's assistance to protect and enhance the value of this historic district and promote development that will contribute to the architectural integrity of this neighborhood. Mr. Hubbard requested Council deny the request for a parking lot and/or vehicle storage at 740 West Warren Street.

Dennis Bailey who resides at 703 West Marion Street in Shelby, North Carolina spoke against the proposed rezoning as an impacted homeowner and real estate broker. Mr. Bailey stated several concerns about the rezoning which included the potential decline of the historic district, the decline of a major corridor into Uptown Shelby with economic development impact, the current zoning violations by the business owner, and the increased mosquito infestation. He requested Council deny any rezoning request that has a potential to damage the gentrification process that has begun in the West Warren/West Marion area neighborhood.

**Matt Albinger who resides at 801 West Warren Street in Shelby, North Carolina spoke in opposition to the proposed rezoning and reiterated the same concerns of the previous speakers. Mr. Albinger further stated that the conditional use for a parking lot would be used primarily for business vehicles which would expand a business based usage into not only a residential area but a historic district. He mentioned the property has the potential to become an eyesore and presents safety and security issues for the neighborhood as well.**

**David Teddy who resides at 139 Westfield Road in Shelby, North Carolina spoke on behalf of Mr. Canipe as his attorney and in support of the rezoning request. Mr. Teddy stated that Mr. Canipe is currently working with City staff to bring his parking lot into compliance. The site plan which will be presented by landscape architect, Dennis Terry, represents a substantial investment by Mr. Canipe. Mr. Teddy mentioned by name all the other businesses in the area and said the only difference in the conditional use of the parking lot will be to accommodate overnight parking of customer and company service vehicles. He requested Council's approval of Mr. Canipe's Special Use Permit Application.**

**Dennis Terry who resides at 160 Wesleyan Drive in McAdenville, North Carolina is the landscape architect who prepared the site plan of the parking lot for Mr. Canipe. Mr. Terry illustrated what is required and explained the proposed physical changes planned for the lot to bring it into compliance, including 20 parking spaces, 19 large maturing trees, 16 small maturing trees, and 91 evergreen shrubs. He referred to this West Warren Street corridor as a commercial/retail node and stated that the site plan is in harmony with the property uses in this area.**

**Mayor Alexander closed the public hearing at 7:31 p.m.**

**Having heard all of the evidence and arguments presented at the public hearing, Council found and determined that the application of the Oakie Canipe for Oakie's Tire and Recapping, Inc. is complete, and the following conclusions were made:**

- 1. Oakie Canipe for Oakie's Tire and Recapping, Inc. has submitted the required application and conceptual site plan for a Special Use Permit.**
- 2. Currently surface parking in a residential district is allowed under the following conditions:**
  - The property must be under the same ownership or subject to a parking encumbrance agreement.**
  - Parking shall be used only during daylight hours.**



- Parking shall be used by customers, patrons, employees, guests, or residents of the use that the parking serves.
  - No parking shall be located more than 120 feet into the residential zoning district.
  - No parking shall be permitted closer than 150 feet to any public street right-of-way upon which the principle use would not be permitted driveway access.
  - Long-term or dead storage, loading, sales, repair work, or servicing of vehicles is prohibited.
3. The subject parcel of .314 acres lies within the City of Shelby on the western most side of the property located at 740 West Warren Street.
  4. No non-conformities currently exist on the property and none will be created by the requested Special Use Permit.
  5. The use may materially endanger the public health or safety if located where proposed and developed according to plan.
  6. The use may substantially injure the value of adjoining or abutting property.
  7. The location and character of the use, if developed according to the plan as submitted and approved, will not be in harmony with the area in which it is to be located and will not be in conformity with the City of Shelby's Comprehensive Land Use Plan, the Center City Master Plan, the Neighborhood Action Plan, and the Strategic Growth Plan.

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Anthony, City Council voted unanimously to deny Ordinance No. 2-2010 entitled, "AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AND ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA AND GRANTING A SPECIAL USE PERMIT FOR 740 WEST WARREN STREET".

**E. Consent Agenda:**

**ACTION TAKEN:** Mayor Alexander presented the consent agenda. Mr. Hopper made a motion to approve the consent agenda and each item as presented. After a second from Mrs. Patterson, the consent agenda and following items were unanimously approved:

- 1) Approval of the Minutes of the Regular Meeting of December 7, 2009

- 2) Approval of the Notice of Cancellation in the Regular Meeting Schedule of Shelby City Council
- 3) Adoption of an ordinance granting permission by the City Council of the City of Shelby, North Carolina to use the 10%/70% development option available in the City's Unified Development Ordinance: Ordinance No. 3-2010
- 4) Adoption of an ordinance of the City of Shelby, amending Section 36-72 of Article III of Chapter 36 of the City of Shelby Code of Ordinances: Ordinance No. 4-2010
- 5) Approval of a resolution proclaiming a celebration of the City's largest trees with the Big Tree Contest: Resolution No. 1-2010
- 6) Approval of a resolution authorizing an agreement between the County of Cleveland and the City of Shelby for the services of Tax Management Associates, Incorporated: Resolution No. 2-2010
- 7) Approval of a resolution establishing Standards for Interconnecting Small Generator Systems (renewable as well as non-renewable systems less than 10 MV): Resolution No. 3-2010

#### **END CONSENT AGENDA**

#### **F. Unfinished Business:**

- 1) Consideration of appointments to City Advisory Boards and Commissions:
  - a. Shelby-Cleveland County Regional Airport Advisory Board

Mrs. Parduski reported that the terms of three incumbents, Dicky Amaya, Dr. Robert Jones, and Dennis Sessom, are set to conclude February 2010. All three incumbents wish to continue their service.

Mr. Shores nominated Dicky Amaya, Dr. Robert Jones, and Dennis Sessom.

**ACTION TAKEN:** Upon a motion by Mr. Hopper, second by Mr. Putnam, City Council voted unanimously to close the nominations.

By unanimous vote, Council reappointed incumbents, Dicky Amaya, Dr. Robert Jones, and Dennis Sessom, to the Shelby-Cleveland County Regional Airport Advisory Board for new terms concluding February 2012.

#### **G. New Business:**

**1) Consideration of a resolution authorizing exchange of property:  
Resolution No. 4-2010**

**Mr. Howell introduced Resolution No. 4-2010 for Council's consideration. He stated that as required by statute, notice has been provided to the public of Council's intent to conduct this property exchange with PPG Industries Fiber Glass Products, Inc. If approved, it would simply allow the City to trade the current water tank site located on the PPG campus for another piece of property adjacent to Washburn Switch road for construction of a new natural gas regulator station.**

**Mr. Cornwell provided background information dating back to January 2009 when City staff approached PPG Industries about acquiring a small piece of property on which the City could locate a new gas meter and regulator station. At the time, the City had the Westside Water project underway. As part of this water project, the City would be removing an existing elevated water storage tank. This tank sits on property owned by the City; however, it cannot be accessed directly from Washburn Switch Road. Mr. Cornwell said instead City staff must first pass through PPG Industries security to access the tank site. In addition, the tank site sits on a large knoll and would not be suitable for the new gas meter and regulator station. As such, City staff approached PPG Industries about a property transaction. PPG Industries had an interest in acquiring the tank site, which reaches into their property at a considerable depth. It was proposed to PPG Industries that the City acquire a small piece of property along Washburn Switch Road from them to construct the new gas meter and regulator station, and that PPG Industries assume ownership of the tank site for their use as they see fit. After nearly a year of working with PPG Industries and this idea making its way through their corporate structure, all parties have agreed that this is a fair and reasonable transaction. Staff recommended Council's approval of the transaction at no cost for the property itself, which will provide mutually beneficial property rights to both the City of Shelby and PPG Industries.**

**ACTION TAKEN: Upon a motion by Mrs. Patterson, second by Mr. Shores, City Council voted unanimously to approve and adopt Resolution No. 4-2010 entitled, "A RESOLUTION AUTHORIZING EXCHANGE OF PROPERTY".**

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

- 1) Mr. Howell updated Council on the construction status of the fueling station and anticipated the fueling tanks to be placed in the ground shortly.**
- 2) Mr. Howell mentioned that staff continues to work with Norfolk Southern**

and the North Carolina Department of Transportation on the clean-up of railroad crossings.

- 3) Mr. Howell anticipated bringing the final bids for the custom fire pumper truck to Council for consideration and award in the near future.
- 4) Mr. Howell expressed appreciation to Mayor Alexander and Council for their attendance at the grassroots meeting held by North Carolina League of Municipalities on December 16, 2009.
- 5) Mr. Howell mentioned that the Golden Leaf Foundation's grant application process continues and the next meeting is scheduled for January 25, 2010. The City will submit a proposal related to the Foothills Commerce Center.
- 6) Mr. Howell advised Council on the progress and submittal of the site plan for the Airport Solar Farm Project.
- 7) At Mr. Howell's request, Council discussed and tentatively scheduled their retreat for February 19 and 20, 2010.
- 8) Mr. Howell encouraged Mayor Alexander and Council to consider attending the Essentials of Municipal Government course sponsored by the School of Government.
- 9) Mr. Howell said the City has received statements of qualifications from firms that are interested in the Shelby City Park Improvement Project – Phase I and they are in the process of being evaluated.
- 10) Mr. Howell anticipated the scheduling of budget workshops after the presentation by ElectriCities staff on February 1, 2010.

**I. Council Announcements and Remarks:**

- 1) Mr. Hopper mentioned that he received a Christmas greeting card from the President and Mrs. Obama.

**J. Adjournment:**

- 1) Motion to adjourn

**ACTION TAKEN:** Upon a motion by Mr. Shores, second by Mr. Mabry, City Council voted unanimously to adjourn the meeting at 8:00 p.m.

**Respectfully submitted,**

**Bernadette A. Parduski, CMC  
City Clerk**

**W. Ted Alexander  
Mayor**

**Minutes of January 4, A. D. 2010**