

CITY OF CHERRYVILLE  
REGULAR CITY COUNCIL MEETING  
MONDAY AUGUST 12, 2013 @ 7:00 PM  
CHERRYVILLE COMMUNITY BUILDING

Present at the meeting, Honorable Mayor Robert Austell, Councilmember's David Kiser, Rick Campbell, Malcolm Parker, and Brian Dalton. Staff that was present, City Manager Ben Blackburn, City Clerk Paige Green, City Attorney Palmer Huffstetler Jr., Finance Director Dixie Wall, Fire Chief Jeff Cash, Police Chief Chad Hawkins, EDC Director Richard Randall, Planning & Zoning Director Richard Elam, and Public Works Director Brandon Abernathy.

The Honorable Mayor Robert Austell called the meeting to order at 7:00 pm. Mayor Austell welcomed everyone and called on Pastor Bob Wise of Northbrook Baptist Church for invocation, followed by the Pledge of Allegiance.

MAYOR'S COMMENTS:

Mayor Austell shared with everyone that Mr. Julius Earwood a former city employee just passed away. He also shared that earlier in the day Beam Construction had an accident at one of their work sites and several were injured. He ask that everyone remember the Earwood family and the employees of Beam Construction.

Mayor Austell also shared that at the previous work session it had been discussed to stop having work session meetings or having them at a different time. It was decided after much discussion meetings will still be held as usual. The Mayor and City Manager will decide what staff members attend the work sessions. The Mayor said if the Council wanted to change the meeting times they could do so under other business.

APPROVAL OF MINUTES:

Councilmember Kiser made a motion to approve both sets of minutes from the previous City Council meeting and the Work Session meeting that were held in July. Councilmember Campbell seconded the motion and the vote was unanimous.

AGENDA APPROVAL/REVISION:

Councilmember Dalton made a motion to approve the agenda as written. Councilmember Kiser seconded the motion and the vote was unanimous.

CONSIDERATION OF MINIMUM HOUSING DEMOLITION ORDINANCE – RE:  
401 E. ACADEMY STREET

Planning and Zoning Administrator Richard Elam approached the podium sharing that many attempts have been made to contact the property owner of 401 E. Academy Street. Sam Leggett with Centralina Council of Government also shared that letters had been sent to the property owner about concerns with the property. A copy of the letter was also posted on the front door of the property. Mr. Leggett explained that he had completed an inspection of the property and found it to be in a state of disrepair and it does not meet the Minimum Housing Codes. City Attorney Palmer Huffstetler Jr. did research the property for any liens and the only lien on the property is with Cherryville Federal

Savings and Loan. Mr. Huffstetler also shared that the outstanding taxes on this property totaled \$4,745.48 for both city and county. It was his recommendation to have the property demolished before any more liens could be put on the property. Mr. Elam has had four bids on demolition of the property and the bid has been awarded to John Jenkins. Mr. Elam asked the Council for permission to demolish the property. Councilmember Parker made a motion to demolish the property and it was seconded by Councilmember Kiser. The vote was unanimous. The property will be demolished as soon as possible.

#### CONSIDERATION OF ADOPTION OF CITY COUNCIL MEETING RULES

Mayor Austell shared a new set of meeting rules were discussed at the previous work session meeting but no vote was taken. Mayor Austell shared that the new rules would be available for the next meeting. Councilmember Dalton shared that the rules are the same but were needed so that citizens would understand that they need to approach the podium stating their name and address before speaking. Councilmember Dalton shared that no one should speak from their seat. Mayor Austell also shared that every agenda item was becoming a public hearing with comments being made on every item. Councilmember Campbell made a motion to approve the City Council Meeting Rules. Councilmember Dalton seconded the motion and the vote was unanimous. The City Council Meeting Rules are as follows: (It was noted the three minutes to speak on agenda items was eliminated at regular meetings and the opportunity for citizens to speak at a work session was eliminated.)

- 1) No vote on a particular agenda item shall be taken during any of the City Council's Regular Meeting, Work Session Meeting, or Special Meeting unless the agenda item has been previously discussed between the City Council and City Staff. Exceptions to this rule can be made in the event of time sensitive, unplanned (added), and non-controversial issues (Proclamations, Resolutions, etc.) agenda items which may require prompt attention.
- 2) Any and all actions, voting or otherwise, taken at the work session or special meeting shall be reported at the next Regular Meeting of the City Council.
- 3) Agenda items not specifically addressed such as a statutory required Public Hearing will not be open for public comments during any Regular Meeting, Work Session Meeting, or any Special Meeting of the City Council. Agendas for these meetings may be placed on the city's webpage prior to the meeting as well as being made available for public inspection at City Hall. Anyone wishing to contact the Mayor, a Council Member, or City Manager to express their opinion or seek clarification on any item on the agenda may have the opportunity to do so.
- 4) During the Regular Meeting of the City Council there shall be an agenda item "Citizens To Be Heard", in which any person(s) may address the council on any agenda item or any issue of particular interest relating to the city. Any person(s) wishing to speak must first be recognized by the Mayor and give his/her name and address for the record. Each person may be given up to five (5) minutes to address the council.

- 5) Persons wishing to address the City Council shall only be allowed one (1) time to speak under the agenda item "Citizens To Be Heard". It should be noted that persons may speak more than once during a council meeting when: a) a statutorily required Public Hearing is entered into; and b) recognized by the Mayor.
- 6) In order that the proper operation of City Council meetings is undertaken there shall not be any public talking or disruptive behavior expressed from the floor.

#### CONSIDERATION OF FY 2013-2014 BUDGET AMENDMENT

Finance Director Dixie Wall approached the podium along with Police Chief Chad Hawkins to go over four Budget Amendments. The first was for \$26,127.00 for court awarded drug asset forfeiture. The seconded was for \$2,500.00 from a Wal-Mart donation. The third was for \$5,000.00 from the sale of weapons. The last budget amendment was for \$5,000.00 from Michael and Linda Beam for the purchase of cameras for all police cars. The funds will also help purchase other officer related equipment. Councilmember Kiser made a motion to approve all four budget amendments and Councilmember Parker seconded the motion. The vote was unanimous. Mayor Austell along with Councilmember's thanked Chief Hawkins for the job that he is doing at the police department. Councilmember Dalton shared that Chief Hawkins is bringing our police department into the twenty first century. Chief Hawkins shared that because of this money each of his officers will have a body camera. He thanked Mayor Austell and the Councilmember's. Mayor Austell asked City Manager Ben Blackburn and Police Chief Chad Hawkins to draft a letter for Council to sign thanking those for the contributions.

#### UPDATES FROM PREVIOUS CITY COUNCIL MEETING (JULY 8, 2013)

- A. **STORMWATER RUN-OFF** – City Manager Ben Blackburn gave an update on storm water that was affecting Mr. David Seate on Rudisill Ave. Mr. Blackburn shared that the city had assisted Mr. Seate and helped him with a pipe that was stopped up. The city also put Mr. Seate in contact with the property owner beside his house.  
At another address Mr. Blackburn looked into an issue about storm water. He reported that the property owner would need to pay for curb and guttering. There was no way the city could assist this customer with their storm water issue.
- B. **CMAQ/SIDEWALK PROJECT UPDATE** – Mr. Blackburn introduced Jackie McSwain with NCDOT. Ms. McSwain gave an update on the CMAQ sidewalk project. She shared that grants like this one do take time and it is her job to make sure that the City of Cherryville completes all the proper paper work and has every step completed in order to make this happen. She spoke highly of Cherryville and shared that this city has done everything just as it should and everything is in place for the work to begin. She apologized that it has taken so long but did explain that government works like that. She thanked everyone that has been involved and gave permission from NCDOT to start work. She also shared that if anything about this project were to be changed, the whole process would start over again from the beginning. She also commended the City of

Cherryville for keeping the construction work local and using a Gaston County Contractor.

- C. **RIGHT-A-WAY/STREET CURBING UPDATE** – Mayor Austell shared that the City of Cherryville does have a policy for over grown grass. That policy states that the customer is responsible for grass to the back of the curb. Mayor Austell also stated that the city will be enforcing this for everyone. The City will try to maintain the entrance ways of Hwy. 150, 274 and 279 as well as Main Street. Councilmember Kiser stated that North Mountain Street looked great since the inmates and city staff has worked on it. Mayor Austell stated the staff must be very selective in the property they weed eat to avoid claims of favoritism.
- D. **LIABILITY INSURANCE AND BOND RE-IMBURSEMENTS** – Mayor Austell shared that at the last meeting there was major discussion about the bond money that the city received for the embezzlement and where those funds were deposited. Mayor Austell stated that there was a speaker, Walter Ballard, at the last meeting that felt like the money should have gone in the electric fund. Mayor Austell explained that on 5/16/2013 \$50,000 was put in the electric fund journal #667. On 5/24/2013 \$50,000 was placed in the electric fund journal #681. On 10/09/2012 \$50,000 was placed in the general fund journal #201. Mayor Austell shared that this information is available in the City Manager’s office if anyone would like to see it. He also stated that hopefully this will clarify the previous erroneous comments.
- E. **ELECTRIC FUND TRANSFERS TO GENERAL FUND AND ELECTRIC CUSTOMERS** – Mayor Austell addressed the citizens of Cherryville and shared the following. “Walter Ballard made comments as it relates to the City’s electric transfers to the general fund and electric customers verses overall utility customers. And the fact that those citizens that are on Electricity power is actually doing some funding for the citizens that are not on city power. And Mr. Ballard was correct in that assessment and I don’t think anybody argued with that point that night; however he stated that most of the money embezzled from the city came out of the electric fund, it did not. It did not. Mr. Ballard stated that money received from the insurance company due to embezzlement went back into the general fund, it did not. Finance Director Dixie Wall was called to the podium and she said she believes she deposited \$100,000 went into the general fund and \$50,000 in the electric fund. She said she did discuss where the money should be deposited with the State Treasurers Office. After getting back to the office and checking it was determined that \$50,000 was deposited in the general fund and \$100,000 was deposited in the electric fund. Its procedure for the director of finance to discuss the deposit of any large unbudgeted revenue that we receive with the State Treasurer’s Office especially when the revenue is connected to more than one fund. This was done and \$100,000 was deposited in the electric fund and \$50,000 was deposited into the general fund. I applaud Mrs. Wall for her work with the State because they could have objected to this based on the revenue and where the embezzlement was taken place, but the electric fund did need the

revenue worse than the general fund and she was able to encourage the State to allow her to place \$100,000 in the electric and only \$50,000 in the general fund. So my comment's here is to correct the erroneous by Mr. Ballard so the records will properly reflect the facts. Number three Walter Ballard stated that 1/3 of the city does not have city power. This is grossly wrong. We have 2,916 connections to electricity in our city, 2,916. One third or 33.33% of those 2,916 would represent 972 connections not on electric power using Mr. Ballard's numbers. The accurate number of those 2,916 connected electric customers in our city is that 90.65% 2,642 is on city power. Connections not on city power of the 2,916 is 274 or 9.35%. The inaccurate statement by Mr. Ballard exaggerated by 698 connections or 24% of the total connections or 3 1/2 times the accurate number of 274 and I think it's important that you know that. Mr. Ballard stated that in three years the city had transferred one million dollars from the electric fund to the general fund. He stated that he had the budgets at home and had them highlighted. In another forum he stated these million dollars of electric fund transfers was from 2007, 2008, and 2009. This statement is wrong. I do not make these comments, there's not anyone setting up here tonight that agrees that anything should be transferred from one fund to another. The only way you could stop the transfer was to either cut cost big time or raise taxes. And this Council two years ago bit the bullet and they cut cost, and we were able to stop the transfers. This Council is working not only to see that's there not future transfers from any of the accounts, they are also working to have three separate bank accounts for all three of them. And our Audit Committee is working on that too and they believe that concept, that we should have three checking accounts and they should be self supporting and there should not be between funds. We've had two years of that and going forward it's going to be even better. The State allows City's to transfer money from the electric fund to the general fund at a rate of 5% per year. The years of 2007, 2008, and 2009 the city transfer \$730,999 out of the electric fund to the general fund. Not one million, \$730,999. That is an average of \$243,666 per year. Is anyone proud that was done, no. Is there anything illegal about it, no. But it needed to be changed; this Council has addressed it and changed it. One of the arguments was the City's 2/3 or 1,944 Electricities connections was funding the other 1/3 or 972 connections who didn't participate in these electric funds but was receiving the benefit from the transfer from the electric fund to the general fund. He is right in saying that those people that are not on the City's electric did benefit from it. But let's keep that in perspective and not get it confused with the erroneous million dollars over three years. You are right in saying that but the accurate numbers are 90.65% of electricity customers or 2,642 is funding 9.35% not 33% of other power sources or 274 connections when a transfer is made. If we determine the degree of benefits that the 274 other power sources received due to these transfer you would see that 9.35% of the connections that are not on Electricities into the average of three years at 243,666 a year you come up with \$22,783.00 that the non electricity customers benefited from the city electricity customers. Should we have that, no? Did they benefit, they did \$22,783.00 a year. Not a million dollars over three years, \$22,783.00 a year. If you divide the 2,642 electric customers into the average of 22,783 per year that other power sources

benefited from, you will see that it averages out to \$8.72 per year per Electricity customer. Of course the average is a high number because of businesses like Wal-Mart, Modern Polymers and Peak Resources are in there. So that penalty to our citizens that are on Electricities power were penalty less than eight dollars a year. Should they be penalized any, no? Has it been taken care of, yes? A change of need for transfer of the revenue status has been alter by either raising taxes or cutting cost as I mentioned before. The four Council seated before you took the action two years ago to cut cost and this transfer has not been in the last two budgets. The three years where \$730,999 was transferred by a 4-0 Council vote. All three budgets were voted 4-0 Council votes. No of those votes are seated before you today. None of the people voting these budgets represents the City as a Councilmember today. It serves no meaningful benefit to discuss what a Council did or did not do seven years ago. And I am sure not going to get into what Council has done over the last thirty years. My purpose is not to justify any transfers cause everybody here that knows that we all didn't like the transfers and wanted it changed. The current Council has already accomplished this in the last two budgets and is focused on having three different checking accounts. My purpose here is to put people's perception of penalty of these transfers to rest. It is less than \$8.00 a household annually. Was the \$730 transferred over three years and average of 243,000 a year good? No it wasn't. Our city customers were penalized less than eight dollars a year for the Council voting that. My closing comments on Walter Ballard's remarks is anytime the chair wants clarification on a comment or disputes the accuracy of the comments he will interrupt the person at his pleasure. Also I dispute Mr. Ballard's comments that I Bob Austell just not care. I care very much and continue to be motivated by citizens that give of their time in a positive way to make our city a better place. Due to past false statements by Mr. Ballard, which is a matter of record as well as his continued false statements, it is hard for me to read the platform he has chosen. I have no other comments to make on that and I will not be making any other comments. It has been explained, you do understand it, and it is what it is and nothing is going to change it. Going forward if you want to look forward we can do something about the future. That is what we are trying to do up here. This will be a part of the minutes in the meeting on the web site as Mr. Ballard's comments in the last meetings are on the web site that he made. Does Council want to make any comments as it relates to these remarks?"

Councilmember Dalton agreed with the Mayor in saying that we cannot focus on prior Council and the decisions that they made. It is up to this Council to get the City in the right direction. Councilmember Dalton shared that this Council has had the easy job of making decisions for the city. He shared that city staff has been the ones on the front lines to implement the changes and it has not been easy. He commended staff for the work that has been done with less. Councilmember Dalton was very concerned last year at this time. He encouraged everyone including himself to stay positive. The work that city staff is doing is being noticed. He commented that nothing can be done about the past and it is time to move on. Mayor Austell shared that it is hard to judge the past when you were not a part of it. He stated that he has served with a couple Councilmember's that are

deceased and he has yet to serve with a single Councilmember that did not love Cherryville. He spoke of Davis Browne and how he was in a position to be a big benefit to the city prior to his untimely death.

- F. CITY WILDLIFE CONCERNS – Mayor Austell addressed Mr. Ned Costner who lives on the corner of S. Pink Street and E. Academy Street. At last months meeting Mr. Costner thanked the city for the wildlife that he has as well as the pool from storm water that he has. Mayor Austell apologized to Mr. Costner for the storm water and told him that if we have to we will call the turtle man in for help with his wild life issues.

#### CHERRYVILLE CHAMBER OF COMMERCE REPORT:

Chamber President Pete Craft approached the podium and shared with everyone what a privilege it is to serve Cherryville. He recognized the current members of the Chamber as well as past members that were present. Mr. Craft shared what the benefits of the Chamber of Commerce are as well as the purpose of the organization. Richard Randall EDC Director handed out information on the Chamber. Mayor Austell asked for a list of the Chamber members and he thanked Mr. Craft for coming to the meeting. Councilmember Parker asked about funding and asked Mr. Randall if the Chamber did anything to support business's that are struggling to make it. Mr. Randall shared that the Chamber does assist in advertising and helping business's to promote their business. Mr. Randall also recognized Diana Beam who will be retiring at the end of the month.

#### CHERRYVILLE ECONOMICS DEVELOPMENT REPORT:

Mayor Austell shared that the City of Cherryville tries to make all business's feel welcomed. Mayor Austell has spent countless hours trying to get jobs into our community. In order to get jobs in this community we have got to get possession of property. Our community needs property that is certified and we need to be competitive. We need to try to develop another Sunbeam Industrial Park so that we have something to offer. Councilmember Dalton asked if we had a short or long term plan in place. Mr. Randall shared that we do have a plan in place and it is updated every five years. Mayor Austell shared that currently the city has two manufacturing buildings to market. One of these has been shown many times over the years without any interest at all.

#### CONSIDERATION OF RESOLUTION OF AGREEMENT TO CONTINUE PARTICIPATION IN THE NORTH CAROLINA SMALL TOWN MAIN STREET PROGRAM:

Councilmember Kiser addressed the Small Town Main Street program saying that he wanted to update everyone on the program. He gave an over all view of the program and how it got started. He explained that the purpose of this program is to restore our downtown with unique businesses. A lot of progress had been made by this committee. The last meeting was held in May where the committee was recognized for the progress they have made. Meetings will start back in September. Councilmember Kiser recognized Richard Randall for all of the work he has put into the program. Councilmember Kiser thanked citizens for there involvement and the business's that have provided lunch during the meetings. Mr. Randall introduced some committee members that were present. Mr.

John Rudasill spoke about promotions for this committee, Jean Skibo spoke about design, and Andy West who is EDC Chairman for downtown also spoke. He shared that this program is tried, tested and proven. It has been in existence for thirty two years and is successful. Letters were sent out to downtown merchants as well as an online survey that had a response of 80%. Suggestion were made to business's about their store fronts like cleaning up windows, repairing lights, pulling weeds, and providing parking to customers if possible. Some businesses have responded by putting planters out front. After much discussion Councilmember Kiser made a motion to approve the resolution to adopt the Small Town Main Street Program again for the 2013-2014 year. Councilmember Campbell seconded the motion and the vote was unanimous.

CONSIDERATION OF ADOPTION OF CITY OF CHERRYVILLE AUDIT COMMITTEE CHARTER:

Councilmember Dalton shared that the Audit Committee is a new committee that has been formed to help provide accountability and install public confidence in the City's management and governance. Mr. Andy West is the chairman of this committee and has done an outstanding job on putting together a charter for the Council to adopt. Councilmember Dalton made a motion to approve this charter and Councilmember Kiser seconded the motion. The vote was unanimous. Mayor Austell thanked Mr. West for all the work that he had put into this committee.

CONSIDERATION OF ADOPTION RENEWABLE ENERGY PORTFOLIO STANDARDS (REPS) CHARGE:

Mrs. Dixie Wall finance director for the city approached the podium and asked Council to approve the Renewable Energy Portfolio Standards Charge. (REPS) This is a charge that is required by the general assembly. The residential charge will increase four cents, commercial will increase one dollar and seventy eight cents, and the industrial charge will increase twenty three cents. Councilmember Kiser made a motion to approve the REPS charge and it was seconded by Councilmember Parker. The vote was unanimous.

CONSIDERATION OF ESTABLISHING A NO SOFTBALL PLAYING PROHIBITION AT AARON MOSS FIELD:

Chief Chad Hawkins approached the podium and asked Councilmember's to approve a sign being erected at Aaron Moss field for softball playing. Currently some are playing softball on the upper field and it is causing issues with residence. Balls are being hit over the fence in residence yards and some homes have been hit. The property owners have asked the players to stay off their property but it is not working. Chief Hawkins believes that a sign will help so that everyone will know that softball is only permitted on the lower field. Councilmember Dalton made a motion to approve a sign being erected. Councilmember Campbell seconded the motion and the vote was unanimous.

CITIZENS TO BE HEARD:

There were none.

OTHER BUSINESS:

Councilmember Dalton thanked staff for all the hard work they have done for the City of Cherryville.

Councilmember Kiser asked if we would be getting four more inmates. Yes we will, we are waiting on them to be approved in Raleigh.

City Manager Ben Blackburn shared that on September 6, 2013 the utility office will be updating the software and will be closed from noon until 5:00 pm. Customers can place payments in the drop box in the drive thru if they would like. This will be publicized.

Councilmember Parker recognized H.L. Beam in the crowd and asked him if he had a status on the BB&T building. Mr. Beam shared that they are in the process of talking to a contractor and he would know more by the end of the week.

ADJOURNMENT:

Mayor Austell asked for a motion to adjourn the City Council meeting. Councilmember Parker made a motion to adjourn the meeting. Councilmember Campbell seconded the motion and the vote was unanimous. The meeting adjourned at 9:25 PM.

Adopted this 9<sup>th</sup> day of September, 2013.

Robert D. Austell  
Honorable Mayor, Robert Austell

Paige H. Green  
City Clerk, Paige Green

(SEAL.)