

**CITY OF CHERRYVILLE**  
**REGULAR CITY COUNCIL MEETING**  
**MONDAY FEBRUARY 10, 2014 @ 7:00 PM**  
**CHERRYVILLE COMMUNITY BUILDING**

The Honorable Mayor H.L. Beam call the City Council meeting to order at 7:00 pm. Present was Councilmember Kiser, Councilmember Dalton, Councilmember Puett and Councilmember Parker. Also present was City Manager Ben Blackburn, City Clerk Paige Green, City Attorney Palmer Huffstetler Jr., Public Works Director Brandon Abernathy, Police Chief Chad Hawkins, Fire Chief Jeff Cash, EDC Director Richard Randall, Planning & Zoning Director Richard Elam, and Finance Director Dixie Wall. Michael Powell was present for media coverage.

Pastor Wayne Key of Mt. Zion Baptist Church gave the invocation and it was followed by the Pledge of Allegiance.

**MAYOR'S COMMENTS:**

The Honorable Mayor Beam welcomed everyone to the meeting and thanked them for their interest in the City of Cherryville.

Mayor Beam shared with citizens that there is a scam going around where customers are being called and told that their utility bills must be paid right away to avoid disconnection. Mayor Beam told all citizens that some are using city employee's names when they call but this has nothing to do with the City of Cherryville.

Mayor Beam shared that he was able to complete his tour of city facilities with the tour of the fire department. He thanked the fire department staff.

Mayor Beam shared that he and Councilmember Puett attended a meeting about the widening of Hwy. 150.

Mayor Beam shared that Bonny Alexander will be sentenced on February 28, at 11:00 in Federal Court.

Mayor Beam shared that he has met the new Superintendent of Gaston County Schools at the recent meeting that was held at John Chavis Middle School.

Mayor Beam shared that he attended that Small Town Main Street meeting last Thursday and Andrew West did a great job.

Mayor Beam shared that he and the City Manager toured Fleetnet and they plan on hiring 40 more employees in the near future.

**APPROVAL OF MINUTES:**

Councilmember Dalton made a motion to approve both sets of minutes as written from the January City Council Meeting and the January Work Session Meeting. Councilmember Kiser seconded the motion and the vote was unanimous.

**AGENDA/APPROVAL:**

Councilmember Dalton made a motion to move Citizens to be Heard to item #6. Councilmember Kiser seconded the motion and the vote was unanimous.

**RECOGNITION OF JOHN CHAVIS MIDDLE SCHOOL'S STUDENTS OF THE MONTH, PRINCIPAL BRYAN DENTON:**

Mr. Denton approached the podium and recognized the following students for October, November and December. They were as follows:

November:

6th grade: Brent Walls, Catarina Hampton, Jade Harris

7th grade: Madison Philbeck, Katie Camp, Sarah Hubbard

8th grade: Allison Pratt, Kelsey Willeby, Madison Miller

Teacher: Jeanna Spiker

December:

6th grade: Gracie Jackson, Lane Harrill, Luv Shah

7th grade: Will Gates, Daniel Pitillo, Sydney Narron

8th grade: McKayla Vassey, Damian Garriott, Patience Foster

Teacher: Catherine Pace

January:

6th grade: Mallory England, Sergio Hernandez, Abby Good

7th grade: Laura Perez, Carlie Grace Jackson, Luke Rayfield

8th grade: Jaiden Hunt, Mary Beth Wyatt, Stacy Kostiuk

Teacher: Callie Hahn

**RESOLUTION RECOGNIZING THE 2013 CHERRYVILLE HIGH SCHOOL FOOTBALL TEAM, MAYOR BEAM:**

Mayor Beam recognized the Cherryville High School football team with the following Resolution:

**RESOLUTION  
IN  
APPRECIATION**

**WHEREAS**, Cherryville High School athletics has always been an integral part of the Cherryville community with a long rich history; and

**WHEREAS**, the 2013 Cherryville High School Ironmen Football team achieved the title of Southern Piedmont 1A Conference Champions; and

**WHEREAS**, not since the year 1935 has this feat been accomplished by the Ironmen football squad; and

**WHEREAS**, nine members of the Cherryville High School Ironmen football team were selected to the area's All-Conference Team as well as the Defensive Player of the Year Award; and

**WHEREAS**, the success of the 2013 Ironmen football team is a fitting testimonial and tribute to the former Ironmen of the past; and

**WHEREAS**, the members of the Ironmen football team are excellent representatives of a fine school which produces many fine student-athletes; and

**WHEREAS**, the Ironmen showed tremendous dedication to each other, appreciation to their fans, sportsmanship to their opponents, and respect for the game of football throughout the 2013 season; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council for the City of Cherryville commends the 2013 Cherryville High School Football Team's historic season; and

**FURTHER RESOLVES**, by recognizing the achievements of the players, coaches and support staff who were instrumental in helping Cherryville High School win the Southern Piedmont 1-A Conference Championship Title.

This the 10<sup>th</sup> day of February, 2014.

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H. L. Beam, III, Mayor

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Paige H. Green, City Clerk

**RECOGNITION OF LT. NEAL GUNTER FOR RECEIVING THE 2014 WESTERN ASSOCIATION OF FIREFIGHTERS, FIRE OFFICER OF THE YEAR AWARD, MAYOR BEAM:**

Mayor Beam recognized Lt. Neal Gunter for receiving the 2014 Western NC Association of Firefighter, Fire Officer of the Year Award. Mayor Beam pointed out that this award represents fire fighters in thirty three counties which is about 14,000 fire fighters. Mayor Beam also pointed out that Cherryville has been back to back winners. Captain Jason Wofford won this same award last year.

Lt. Gunter thanked the Mayor and Council for their support.

**CITIZENS TO BE HEARD:**

Pastor Wayne Key approached the podium and shared that he had looked over the agenda and noticed that item #9 was about having a beer garden at the Cherry Blossom Festival. He shared that he enjoys bringing his family and grandchildren to this festival every year and he would not want his grandchild getting on a ride and people walking around with a beer in their hand. He does feel there are many ways to improve the festival to make money but he does not feel like this is it.

**PUBLIC HEARING: AMENDMENT TO SECTION 5.1 OF THE ZONING ORDINANCE TO INCLUDE A NEW SECTION, 5.1.2 (C) THAT RELATES TO LAWN CARE SERVICES, RICHARD ELAM:**

Mayor Beam asked for a motion to enter into a public hearing. Councilmember Parker made a motion to enter into the hearing and Councilmember Dalton seconded the motion. Vote was unanimous.

Planning & Zoning Director Richard Elam approached the podium and explained the chain of events for the public hearing. He had a hand out for the Mayor and Councilmember's of the time line for those events. Mr. Elam gave a brief description of what all had transpired between Chesley Walls and Mr. and Mrs. Pope both residence of Vista Drive. Mr. Elam explained that the Planning board had voted unanimously that Mr. Walls was in violation of the zoning ordinance as it relates to lawn care. The planning board could not come up with a recommendation for the request that Mr. Walls was making. The request was to add landscaping business as a permitted use in all zoning districts and the extra territorial jurisdiction (ETJ). Because they could not come up with a recommendation they asked that the Attorney's that represent both clients get together and try to come up with a recommendation to amend the zoning ordinance and present it to the City Council. A meeting was held at City Hall and present was Mr. Walls and his Attorney's Doug Authurs and Travis Page, Ben Blackburn and Richard Elam. Mr. Walls Attorneys came up with the following request:

Section 5.1.2 (c): Lawn care services is a Customary Home Occupation subject to the following description and restrictions:

A lawn care business is one that provides services in locations away from the business operator's property. While most of the actual landscaping activity occurs off site, the business owner's property may be utilized for equipment storage, parking, material storage and a building or buildings for storage. In the R-40, R-15, R-12, R-9 and R-0 zoning districts, each

dwelling shall be restricted to a maximum of 2 riding mowers, and no more than 1 employee vehicle shall be parked on the premises at any time. Additionally, in these particular zoning districts, no agricultural products, including but not limited to feed, mulch, lime, or seed, shall be sold or stored on the premises.

Mr. Doug Arthurs approached the podium and shared that he had a copy of the City of Gastonia's Customary Home Occupation Ordinance. He passed out copies to the Mayor and Council. He explained that the City of Gastonia recognized the need for this service and he is recommending that the City of Cherryville also adopt the proposal that has been presented by his client. The only change would be the hours of operating a business. Mr. Arthurs feels like the times should be 7:00 am till 9:00 pm. He shared that it is not unusual to be mowing grass early in the morning or later in the evening especially in the summer months.

Councilmember Dalton asked Mr. Arthurs if he knew what the restrictions were for the City of Gastonia. Mr. Arthurs did not know.

Mr. Arthurs shared that if trailers are part of the issue here, the Pope's have a big trailer parked in their yard and their trailer is not any different than Mr. Walls.

Ms. Nancy Paschall Attorney for the Pope's approached the podium and shared that her clients oppose the proposed amendment. She asked the Mayor and Councilmember's to consider not changing the ordinance at all. She explained that in the past there have been no issues with this ordinance. The Zoning Ordinance is being violated by Mr. Walls because he is operating a business out of his home. She shared that Council is being asked to amend an ordinance only because it is what's best for Mr. Walls and his business. Ms. Paschall explained a lawn service is not a Customary Home Occupation. Ms. Paschall shared that this ordinance protects neighborhoods. She also had copies of ordinances from Gaston County, City of Shelby, City of Belmont, City of Lincolnton, and the Town of Dallas. Ms. Paschall went over each of these pointing out that also do not allow anyone to operate a business in a residential neighborhood. Ms. Paschall expressed that her clients the Pope's are only wanting their neighborhood to be a peaceful place to live. She shared that the best option for both parties is for the Zoning Ordinance to stay just as it is. She went on to say that this is not a city wide problem, no one else is complaining. Ms. Paschall feels like to change the ordinance would make things worse.

Mr. Elam approached the podium and shared staff's recommendations. The recommendations are:

### **STAFF RECOMMENDATION**

#### **Definitions to be added to Part 4, Section 4.1**

#### **Definitions of Specific Terms and Words**

**“Lawn Care Services (small)”** An accessory use business that provides services in locations away from the business operator's residential property. This accessory use business shall only be allowed in **R-40, R-15, R-12, R-9, and R-O Zones**. Parking associated with this use shall only take place in the driveway or garage. An accessory building shall be used for storage of the riding mower and any other hand held equipment such as a leaf blower, push mower, shovel(s), rake(s), and/or weed eater(s). No more than one (1) vehicle, one (1) trailer, one (1) riding mower shall be used in connection with this use at any time. No detached trailer or other equipment shall be parked in the street at any time. No products or equipment,

including but not limited to feed, mulch, lime, or see, shall be sold or stored on the premises. Hours of operation shall be between 8 a.m. & 8 p.m. This use shall not be considered a Customary Home Occupation nor shall any employees be allowed with this accessory use business.

**“Lawn Care Services (large)”**: A business with more than one (1) vehicle, more than one (trailer), more than one (1) riding mower, and one (1) or more employees, that provides lawn care services in locations away from the business operator’s residential property. While the actual services occur off site, the property may be utilized for equipment storage, parking, material storage and an accessory building for storage. This business shall only be allowed to be located on parcels Zoned **GMC** (General Manufacturing and Commercial) and **B-3** (General Business). This service may also be located on parcels Zoned **R-40** (Rural Residential) that are two (2) or more acres in size.

### **STAFF RECOMMENDATION**

#### **PERMITTED USES/SERVICES BY RIGHT TO BE ADDED TO THE FOLLOWING SECTIONS**

##### **Section 7.1 R-40 Rural Residential District**

###### **7.1.1 Permitted Uses:**

**20. Lawn Care Services (large) Parcel must be two (2) acres or larger**

##### **Section 7.10 B-3 General Business District**

###### **7.10.1** The following uses are permitted by right:

###### **Services**

**SS. Lawn Care Services (large)**

##### **Section 7.12 GMC - General Manufacturing and Commerce District**

###### **7.12.1 Permitted Uses:**

The following uses are permitted by right:

B. Agricultural equipment, sales and service

**1. Lawn Care Services (large)**

Travis Walls of 203 S. Elm Street approached the podium and shared that he was bugged by the fact that Mr. Elam stated a person could get out and cut grass on the side to make extra money for such things as medical bills. He felt the need to bring Mr. Elam up to speed on the fact that his sister in law battled cancer for three years and his brothers cost out of pocket was \$50,000. Mr. Walls explained that without his brother’s lawn care business everyone would be paying for her medical bills. Mr. Walls only has one source of income in his household. He went

on to say that there are no jobs in our town and this is how he makes a living. Mr. Walls also stated that he believes the complaint from the Pope's is because of a personal vendetta against his brother. He stated that Ms. Pope complains about things that we would all be in violation of. Some of her complaints have been leaving cars running in the driveway and talking on cell phone to loud. Mr. Travis Walls thanked everyone for their time.

Mayor Beam thanked both sides and asked for a motion to close the public hearing. Councilmember Kiser made a motion to leave the public hearing. Councilmember Dalton seconded the motion and the vote was unanimous.

Mayor Beam called on the Councilmembers one at a time for their opinion on the zoning ordinance.

Councilmember Parker stated that he feels like the zoning ordinance should be left alone and upheld.

Councilmember Puett stated that she feels like the zoning ordinance should be left alone and upheld.

Councilmember Dalton stated that he feels like the zoning ordinance should be left alone and upheld.

Councilmember Kiser stated that he feels like the zoning ordinance should be left alone and upheld.

Councilmember Parker made a motion to leave the Zoning Ordinance as is making no changes to it. Councilmember Dalton seconded the motion and the vote was unanimous.

**ZONING MAP AMENDMENT FROM R-9 (SINGLE & TWO FAMILY RESIDENTIAL) TO GMC (GENERAL MANUFACTURING & COMMERCIAL) FOR A VACANT LOT AT 101 HICKS STREET (GASTON COUNTY PID #129120) RICHARD ELAM:**

Mayor Beam asked for a motion to enter into a public hearing. Councilmember Parker made a motion to enter into a public hearing. Councilmember Dalton seconded the motion and the vote was unanimous.

Mr. Elam approached the podium and explained that Mr. Hershel Fowler has applied for the rezoning of the property located at 101 Hicks Street. Mr. Fowler plans on using the parcel for a storage business for campers and boats. Mr. Fowler has already cleaned up the parking lot by removing tall grass and trash.

Mr. Fowler approached the podium and shared that he may be able to attract some people to our area and while they are here they may visit downtown or restaurants in our area. He plans on doing more work to the lot by putting privacy slats in the fence on one side to block the view from neighbors. He plans on putting up more security lights and a security system for his customers.

Mayor Beam asked for a motion to close the public hearing. Councilmember Puett made a motion to close the public hearing. Councilmember Kiser seconded the motion and the vote was unanimous.

Mr. Elam approached the podium and explained the steps that needed to be taken for the rezoning. The City Council did discuss the consistency of the rezoning request and they also discussed and agreed to allow for the request to rezone the parcel. The Council went over the statement of consistency and agreed on it unanimously. Councilmember Puett made a motion

to adopt the statement of consistency and it was seconded by Councilmember Kiser. The vote was unanimous.

**CONDITIONAL USE PERMIT FOR OUTDOOR STORAGE OF BOATS & RECREATIONAL VEHICLES ON A VACANT LOT AT 101 HICKS STREET (GASTON COUNTY PID # 129120) RICHARD ELAM:**

Mayor Beam asked for a motion to enter into a public hearing. Councilmember Kiser made a motion to enter into a public hearing. Councilmember Dalton seconded the motion and the vote was unanimous.

Mr. Elam approached the podium and explained that Mr. Hershel Fowler has applied for a Conditional Use Permit for the parcel located at 101 Hicks Street. The Mayor and Councilmembers went over the Conditional Use Permit and answered yes to all four facts. Councilmember Dalton made a motion to approve the Conditional Use Permit for Mr. Fowler. Councilmember Parker seconded the motion and the vote was unanimous.

**CONSIDERATION TO SET A PUBLIC HEARING REGARDING AN AMENDMENT TO THE CITY OF CHERRYVILLE'S ZONING ORDINANCE TO PART 15, BOARD OF ADJUSTMENT, RICHARD ELAM:**

Richard Elam explained to Mayor Beam and the Councilmember's that he is requesting a Public Hearing needed to be set to amend the City of Cherryville's Zoning Ordinance to make changes to the provisions regarding the Board of Adjustment. Mr. Elam went on to say that the NC State Legislature recently enacted Session Law 2013-126, (House Bill 276), An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustments." The bill originated as a proposal from The NC Bar Association and provides for uniform notice requirements for hearing on quasi-judicial matters, changes the standards for granting a variance, updates the provisions for judicial review of decisions and makes other changes designed to simplify or clarify the statutes.

Councilmember Dalton made a motion to set a Public Hearing on March 10, 2014. Councilmember Kiser seconded the motion and the vote was unanimous.

**CONSIDERATION OF APPROVAL TO ESTABLISH THE SALE OF ALCOHOL AT THE CHERRY BLOSSOM FESTIVAL, RICHARD RANDALL:**

Mr. Richard Randall approached the podium and shared that ideas have been bounced around for ways of enhancing the Cherry Blossom Festival. Having looked at other festivals around us the Cherry Blossom Committee has recommended a beer garden. Also in the past the Cherry Blossom has always ended on Saturday at 4:00 pm. They are wanting to extend this time till 8:00 pm. Mr. Randall explained that only a small amount of money is being made off of the festival. Councilmember Parker wanted to know who was going to profit off the beer garden. Mr. Randall shared that the Chamber would be the one to collect from the beer garden and the funds that are made will be put back into the festival. Mr. Randall explained that the beer garden would be away from the kid's rides and in a section by itself possibly close to the band. The Chamber will get the necessary permits for the beer garden. Councilmember Parker wanted to know who would be responsible for paying for the extra police protection. The

Chamber pay the extra for Public Works employees and the City pays the police salary. Councilmember Parker wanted to hear from the Police Chief about the salaries.

Chief Hawkins stated that he does not have the extra in his budget. If the Chamber can police this garden themselves and keep everyone located in a certain area and they are not allowed to leave the area we may not have to have additional officers. Chief Hawkins concern was the overtime that has not been budgeted for the extended hours of the festival.

Gary Dellinger of Dellinger's Electric addressed Mayor Beam and the City Council and explained to them that the Chamber is proposing the alcohol sales from 5:00 pm till 9:00 pm on Friday night and 4:00 pm till 8:00 on Saturday night.

Mr. Randall shared that a band is booked for Friday night.

Councilmember Dalton shared that some of the money that is made off the beer garden should go to paying the off duty officers. Councilmember Parker agreed.

Mr. Randall responded by saying that there may not be profits, then what?

Councilmember Dalton shared that he would find it hard to believe there would be no profits from the beer garden.

Mayor Beam commented that the area will be contained and should require less policing.

Chief Hawkins shared that he feels sure the committee can police themselves and be fine.

Mr. Randall shared that he needs approved from Council so he can get permits in order and also approval to sale on City property.

City Manager Ben Blackburn shared that City Clerk Paige Green had checked with the NCLM (North Carolina League of Municipalities) the City's insurance carrier and for less than \$200.00 annually, the City can get a rider for coverage of this event. The primary coverage would be on the Chamber of Commerce.

Councilmember Parker shared that the City would have the cost of the overtime for police officers for two days as well as the cost of additional insurance.

Councilmember Dalton stated that he did not understand why the Chamber would not want to pay for some of this expense with the money being made off the beer garden.

Mr. Randall shared that for several years now this issues has been brought up but never brought before the Council. He shared that he has checked with other Cities and Towns and they have had very little if any problems with the sale of alcohol.

Mayor Beam shared that he has talked with the Mayor of Bessemer and it has been successful for them.

Gary Dellinger shared that the quote for the event insurance will cost between \$800.00 and \$1,000.00 dollars. It will take a lot of beer just to cover that insurance.

Councilmember Parker asked how much the vendors were being charged.

Gary Dellinger responded to Councilmember Parker sharing that vendors pay \$100.00 to \$150.00 depending on what type of vendor it is.

Councilmember Parker shared it will only take eight vendors to pay for the insurance.

Gary Dellinger went on to explain that the festival also has other expenses.

Mr. Randall explained that you have marketing, cost of the bands which are at least four figures and they plan on having two bands this year.

Gary Dellinger also shared that the rides alone are \$7,000.00, and the stage is \$1,500.00.

Mr. Randall stated that he would be glad to show the revenues and expenses from previous Cherry Blossom Festival if they would like to see them.

Councilmember Dalton made a motion to approve the sale of alcohol at the Cherry Blossom Festival on City property. Councilmember Puett seconded the motion and the vote was unanimous.

**CONSIDERATION OF TWO MEMBERS TO THE CHAMBER OF COMMERCE BOARD OF DIRECTORS AS PER THE CHAMBER'S BY-LAWS, RICHARD RANDALL:**

Richard Randall approached the podium and asked the Mayor and Councilmember's to accept the Nominations Committee's recommendation by reappointing to new three year terms (2014-2016) the following Council-appointed Board members whose terms ended at the end of December, 2013 The nominees are Deborah Brown and Pete Craft. Councilmember Dalton made a motion to accept the nominees and Councilmember Parker seconded the motion. Vote was unanimous.

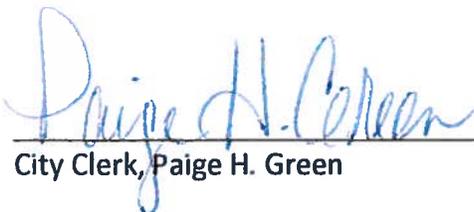
**OTHER BUSINESS:**

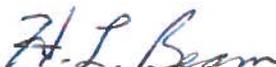
Councilmember Parker thanked Richard Elam for all the hard work he has been doing.

**ADJOURNMENT:**

Mayor Beam asked for a motion to adjourn the meeting. Councilmember Kiser made a motion and it was seconded by Councilmember Dalton. Vote was unanimous. The meeting adjourned at 9:02 pm.

Adopted this 10<sup>th</sup> day of March, 2014

  
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City Clerk, Paige H. Green

  
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Mayor, H.L. Beam

