

**MINUTES OF THE COMMON COUNCIL  
IN SPECIAL SESSION  
October 14, 2008**

A special session of the Winchester Common Council was held on Tuesday, October 14, 2008 in the Council Chambers, Rouss City Hall. President Gaynor called the meeting to order at 8:31 p.m.

**PRESENT:** Vice-Mayor Jeff Buettner; Councilor Michael Butler, Evan Clark, Tim Coyne, Richard Helm, Art Major, Stewart Masters and L.D. "Rick" Nelson; President Charles Gaynor; Vice-President Carolyn Griffin; Mayor Elizabeth Minor. (11)

**ABSENT:** None. (0)

**REPORT OF PRESIDENT**

- **Public Hearing:** Request of City Council for the revocation of a previously granted Conditional Use Permit (CU-07-10) to operate a nightclub at Goodfellow's, LLC, located at 821 North Loudoun Street (*Section 134, Double Circle 5, Lot 6*), which is zoned Highway Commercial (B-2) District.

City Attorney Anthony Williams stated Zoning Administrator Vince Diem brought it to his attention that there had been a violation with a previously granted Conditional Use Permit regarding Goodfellow's restaurant. The law requires that only the legislative body that issued the Conditional Use Permit has the authority to revoke it. He has placed them on notice of violation and it is up to this body to determine whether or not they have violated it. He stated specifically condition number 5 - strictly obeying all state and local laws especially those pertaining to ABC licensing and payment of meals taxes. He has reviewed this with Mr. Diem and concurs with his finding. He believes he can support that if this body chooses to do so and even beyond if the applicant chooses to appeal in court.

Mr. Diem gave a summary of the events and actions taken by Deputy Zoning Administrator Aaron Grisdale in this case. It has also been brought to his attention that there are outstanding issues pertaining to ABC Licensing Laws and Regulations. Mr. Diem stated Mr. Grisdale and ABC Special Agent Kevin Weatherholtz are available to answer any questions tonight.

Mark Stivers, representative for the applicant, stated it is important for Council to remember this is a relatively new business. Their CUP was approved in December but they did not open until 3 months later. The May 15<sup>th</sup> letter sent from Jay Russell was not received at his client's address and was signed for by another person at a different location. His client voluntarily paid the meals tax on July 22 making that violation mute today. The business is in compliance as of now. Any issues created from the outdoor seating area are being handled through the site plan process eliminating the need to address the Board of Zoning Appeals. He reminded Council this is a growing business that lost revenue from not operating as a night club from July 23<sup>rd</sup> to September 11<sup>th</sup>. His client has learned his lesson and is operating in compliance now.

Councilor Helm stated that ignorance of the law does not get them off the hook. He is sensitive to a learning curve for a young business but they were given a check list in December 2007 of the things we expected them to do. They didn't do it until somebody came in and said we are going to close you. He doesn't care what time the mail got there, the list was given to them in December. They knew they had to have a business license, pay the meals tax and to stay in with the ABC. The list was there and was proactive. We told them what we wanted them to do. They did not turn the first screw until somebody said they were in trouble. He is very sympathetic to young businesses starting. He knows these guys and enjoys the place but how can we look at other businesses that struggle and comply and forgive this kind of stuff. This is October and they have given up three months of being a night club since December. He is having a hard time building up sympathy. It is not mute. It was six months late and they had a check list in their hand when they walked out of here in December of 2007.

Councilor Coyne asked Special Agent Weatherholz to explain the violations with the ABC and what the status of it is.

Special Agent Weatherholz stated there are seven charges at this time and gave a description of the violations. The items are tentatively set for a hearing on October 31<sup>st</sup> in Staunton.

Councilor Coyne asked what current status of their ABC license. SA Weatherholtz stated the license is in effect until the hearing or any appeals that may happen.

Councilor Butler asked to confirm the owner is at least part owner of other establishments in the Valley. Mr. Stivers stated his client is. Councilor Butler asked if he is aware of his responsibilities through these other establishments. Mr. Stivers stated his client was not present at the meeting to answer questions.

President Gaynor stated two things upset him. The first is that Mr. Russell explained in the May 15<sup>th</sup> letter that a business license application had not yet been received. Then, Mr. Russell states the meals tax application had not even been applied for. He doesn't understand it all.

Vice-President Griffin stated the point is one of the principles in the business has establishments elsewhere and knows that business licenses and meals tax forms are required. The damage was done back in March and April. They had a list.

Mr. Williams spoke with Mr. Stivers before the Council meeting and he thinks we all agree it comes down to the facts of the case. He would reiterate Mr. Diem's position in regards to the revocation and ask Council to support it.

With no further citizens to address Council, President Gaynor closed the public hearing at 8:33 p.m.

### **3. REPORTS OF STANDING COMMITTEE**

#### **3-1 PLANNING AND DEVELOPMENT**

- Motion to uphold or reverse the Notice of Revocation of Conditional Use Permit that was issued on July 21, 2008 of a previously granted Conditional Use Permit (CU-07-10) to operate a nightclub at Goodfellow's, LLC, located at 821 North Loudoun Street (*Section 134, Double Circle 5, Lot 6*), which is zoned Highway Commercial (B-2) District.

Councilor Coyne made a motion to uphold the notice of revocation. The motion was seconded by Councilor Butler.

Vice-Mayor Buettner stated he understands why we are here but he can't image it is the first place in Winchester that has done this. We do have some ABC issues and he suggested tabling the issue until the ABC issues are resolved.

Mr. Williams reminded Council the CUP is up for renewal in December.

Vice-Mayor Buettner made a motion to table the issue until the December meeting. The motion was seconded by Councilor Nelson then passed 9/2 with Councilors Butler and Coyne voting in the negative.

#### **4. ADJOURNMENT**

Councilor Coyne made a motion to adjourn at 8:37 p.m. The motion was seconded by Councilor Nelson then unanimously approved by voice-vote.

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Kari J. Van Diest  
Deputy Clerk of the Common Council