

**MINUTES OF THE COMMON COUNCIL
IN REGULAR SESSION
September 10, 2013**

A regular session of the Winchester Common Council was held on Tuesday, September 10, 2013 in the Council Chambers, Rouss City Hall. President John Willingham called the meeting to order at 7:01 p.m.

PRESENT: Councilor Jeff Buettner, Evan Clark, John Hill, John Tagnesi and Ben Weber; Vice-President Milt McInturff; Mayor Elizabeth Minor; Vice-Mayor Les Veach; President John Willingham (9)

ABSENT: None (0)

MOMENT OF SILENCE – President Willingham led the citizens and councilors in a Moment of Silence.

PLEDGE OF ALLEGIANCE – Mayor Minor led the citizens and councilors in the Pledge of Allegiance.

APPROVAL OF MINUTES – August 13, 2013 Regular Meeting, August 20, 2013 Work Session, and August 27, 2013 Work Session

Councilor Clark moved to approve the minutes as presented. *The motion was seconded by Vice-Mayor Veach then unanimously approved by voice-vote.*

REPORT OF THE MAYOR

Mayor Minor stated at the last Work Session, she read the proclamation for the “Fill the Boot” Labor Day campaign for the firemen. The department had a goal to collect \$15,000 and they collected \$20,191 for Muscular Dystrophy. She asked the Chief to thank all of the men and women who were out there over Labor Day and stated they are going to help a lot of people.

REPORT OF THE CITY MANAGER

City Manager Dale Iman stated he did not have a report to present.

REPORT OF THE CITY ATTORNEY

City Attorney Anthony Williams stated he did not have a report to present.

1.0 PUBLIC HEARINGS

1.1 CU-13-372: Conditional Use Permit – Request of Morris & Ritchie Associates on behalf of the City of Winchester for a conditional use permit to construct a telecommunications tower at 700 Jefferson Street (*Map Number 190-01-3*) zoned Education, Institution and Public Use (EIP) District.

Paul Lewis of 633 Tennyson Avenue stated for the process of the tower the intent is good, the technology is there and he thinks everybody in the community agrees it is needed. However, he thinks most would agree that after everything that has gone on there have been several flaws in this process. It is now known that there were 11 sites of only one of which was fully investigated on where to locate a tower. A second one was investigated shortly after the last Work Session meeting. Several senior staff emails also acknowledge that no analysis was done on using any of the existing cell phone towers anywhere in the city of Winchester. He stated that is something that should have been investigated not only to meet potential deadlines but also to potentially save the City and taxpayers' money, a possible reduction in the size of any said towers and also the number of sites. He stated a lot of people must think they get notified by a sign lying down at the site. There have also been several questions about a balloon float over top of the Jefferson Street tower. He stated most people don't know that the balloon float was done on July 3rd approximately between 8:00 a.m. and noon the day before July 4th when probably a large percentage of Winchester was on vacation. On top of that, the balloon float was not done for the benefit of the citizens. It was done so the Cultural Impact Statement people could take their pictures from different parts of the city. He stated he has found no evidence of an Economic Impact Study to the millions of dollars of property that borders that area and feels that is something that should have been done before moving forward. There was also only one radiation or EAV Study done which was done by the contractor who wants the bid. Most people think that is something that should have been done by a disinterested third party environmental consultant. He referred to several pictures that showed towers of various sizes and similar towers. He stated he doesn't think anybody here can think the process was not done correctly. There are deadlines to meet but that is not the fault of the citizens. The tower should be examined to be relocated or use existing multiple tower sites for not only beautification but also for the safety of the citizens. He would submit that if cost is such an issue perhaps something like that should have been investigated before custom stamping Winchester's name and graphics on man-hole covers all over the city. If people want to get into a cost situation, there should have been other things to investigate.

Mark Leonard of 758 Seldon Drive stated he speaks today after previously addressing the Planning Commission and submitting an email to all City Councilors which he entered into the public record earlier tonight. Though he has concerns about viewing the tower from his backyard, he is more concerned that there seems to be a process going on whereby City staff and Council are willing to accept limited, incomplete, and misleading analysis for convenience and expedience. The lack of a more comprehensive analysis upon which to base your decision can only result in a flawed outcome. One in this case which

you will erect a huge tower looming over residential and historic sites as well as the city skyline and ruining the many viewships and bountiful beauty that our city has to offer ultimately a possible constant and visible reminder of an unfortunate decision.

Laurie Bridgeforth of 601 Jefferson Street stated her husband, Scott, and she are the landowners most directly affected by the placement of the proposed EMS tower at 700 Jefferson Street. Their first personal notification of this issue was a letter informing them of an August Planning Commission meeting which they attended. They then attended the Council Work Session two weeks ago to hear the presentation to Council about the tower. There on display was a diagram that specifically showed a fall zone for the proposed tower. In examining that document closely, they discovered that said fall zone specifically crossed their property line. She is curious why no one from the City in the time the Jefferson Street site has been on everyone's radar has ever contacted them, the landowners and taxpayers affected over such a serious issue. She asked if the City thought they would not notice or they would not care or that they would just take one for the team. She stated they noticed, they do care, and they are not taking one for the team. Feeling very betrayed by their hometown, alone and backed into a corner on an issue not of their creation, they have no choice but to retain an attorney to protect their own interests. After all, they have future plans to develop their land but the time was not right as the economy took a nose dive so they were biding their time. In researching this issue with their attorneys, they discovered our City ordinance within our City Code, the set of rules by which Council runs our fair city and are sworn to uphold, states in Section 18.2.1 "any new tower is separated by property lines in a residential district by not less than the height of the tower" which means you need 237 feet in all directions on your EIP zoned land which you do not have. To coin a phrase from the movie *Apollo 13* "Houston, we have a problem." She stated the City can build the tower on land zoned EIP but the fall zone is in Low Density Residential. Perhaps it is zoned that way on multiple sides too so now what. They have been told by City staff that there is no required fall zone but she does not believe that. The diagram, the details, and the tower placement provided by your one lone contractor who responded to the bid clearly shows a circle that is labeled fall zone. Speaking of the one lone contractor, she stated the City put out a 382 page request for proposal and collected exactly one bid and are now trying to convince taxpayers that was competitive. She stated she is not convinced either. The City has been known to reopen the bidding process before for lesser amounts and for far vital issues but now the City is trying to convince the taxpayers that one bid for \$3.5 million is really, truly a competitive bid. She stated we all agree that EMS communications are vital and that fire and law enforcement personnel need better equipment. The real question here is will the City break its own laws to do it.

Scott Bridgeworth of 601 Jefferson Street stated the number he has tonight is \$787,000 which is the cost to place the tower over near Valley Health. That is also the amount that they are evidently not worth, those who live close to this proximity. This amount compared to the Handley High School construction of \$72 million done about 10 years ago which is probably closer to \$100 million now is about 1%. Compared to the sidewalk improvements which were passed

overnight with virtually nobody informed is about 7/10 of 1%. He asked what they are worth and stated they don't know. The citizens have landscaped this city with beautiful houses that have been built or bought, have remained survivors of one of the worst financial markets in history, and have paid their taxes on the same homes. He stated all they ask for in return is quiet enjoyment. He is not sure about Council but seeing a 237 foot tower everyday does not seem like quiet enjoyment to him. If they are not worth \$787,000, he asked what they are worth. He stated that is the \$64,000 question but maybe they are not worth that. Using the analogy of football, the coaches have a tool they can use when a call is made on the field that could adversely affect the game but also the team's season and ultimately the coach's employment. Coaches also have a very limited time to challenge the plays as the game moves pretty fast so there is a narrow amount of time to challenge a call or not. He asked if that sounded familiar. He also asked what a coach does when a play viewed by the human eye at normal speed appears one way and is ruled that way but he wants to slow it down to break it down for a full exam in efforts to overturn the call and stated the answer is he throws in the red challenge flag. Mr. Bridgeforth stated he also has a red challenge flag. The City is breaking its own ordinances if this tower gets passed tonight.

Dana Hand Evans, Director of the Museum of the Shenandoah Valley at 901 Amherst Street, stated after reviewing the minutes of the Planning Commission's August 20th meeting and the additional considerations and adjustments to the Jefferson Street site that are listed on the supplemental staff report updated on September 5th and included in tonight's City Council agenda, the museum would like to go on record with some concerns about the proposed location. Their understanding is that at 239 feet the proposed tower is the minimum height needed to accomplish required coverage. Further from what she can see, there is no maximum height limitation for the EIP District provided in the Zoning Ordinance. So it is unclear to her if future needs will require the tower be taller than is currently proposed. While the visual affects survey of the proposed tower took into account current structures and current entrances on the museum's property, it does not take into account future growth and a planned new entrance across from Wood Avenue for the property. From which, the tower would be quite visible and have a significant aesthetic impact. The supplemental report notes that the proposed Jefferson Street location may be located 75 feet to the north of the selected site to provide a reduced impact to properties to the south should a collapse of the tower occur. This relocation north brings it closer to their biking, hiking, and walking trails that have been planned for the museum's property for which they spent the last 2 years and \$250,000 on master planning. It is unclear to them where exactly this proposed tower will now be located and as such, she asked Council to table the request for a Conditional Use Permit until the exact location of the proposed tower on Jefferson Street has been identified and the confirmation of the maximum height of the tower is clarified.

Sam Leinbach of 317 Fairmont Avenue stated this system being put in is a mandate from President George W. Bush and President Obama. It occurred after 9/11 when they found the communication systems in the United States and most cities were not good. They have mostly gone to this 800 Mhz system and

in many cities, the federal government has banked some or all of the cost of the systems. Who know how much they are paying here as it has not been said. But, we can see from this tower and from what Mr. Miller, the Chief of Police and the Fire Chief has said this may not communicate with all city sections. If he has a fire in his neighborhood, he would like the fire people to know about it so they can fight it. If there was a tornado, he would like to know that they were going to fight it. If there was a terrorist attack, we should all be covered under Public Safety or Public Alert but he would like to know about it. A couple of months ago, a little town in Iowa was hit on a Friday afternoon by not one tornado but three tornados that went in different directions. Somewhere down the road for communications, we are going to have to put in the city with global warming a Tornado Alert. There will need to be 8-12 sirens to notify people a tornado is coming. In Iowa, they had a siren going so most people got into their basements or whatever. The fact is with these towers, they can use low power instead of just one huge tower on top of the hill on Jefferson and it could cover not only tornados but public health disasters. Many cities are putting them in and it is just a matter of time. He asked Council to go to more towers with the idea that we go to sirens somewhere down the road and not have to use that huge tower on top of Jefferson.

J.T. Kremer, Jr., of 705 Mahone Drive invited everyone to come by and stand in his back yard and try to impose the beautiful tower that he is going to have to look at the rest of his life. He stated he has two questions he would like to ask that he is sure Council has the answers to. First, at any time, for any reason, can fallout of emissions from the tower contaminate any land around the tower or more particularly, any land not owned by the City of Winchester which could result in legal action directed at the City of Winchester? Second, with the erection of the tower at any point of time and for any reason can the property owned by the Handley Board of Trustees and entrusted to the Winchester School Board be condemned and taken out of consideration as a possible site for the construction of the new John Kerr Elementary School by legal means or any other means? He stated those are the two questions he would like to have answered.

Linda Ross of 529 Jefferson Street stated she lives across from John Kerr Elementary School and next to Scott and Laurie Bridgeforth. She has known about this tower for about a year but never thought it would come to fruition. Now that it is very serious, she decided to go door to door on Sunday to see what her immediate neighbors on Jefferson Street thought and most of them did not know. She is sorry to say they are not reading the Star or what have you. A lot of the points have been covered but she wanted to say a few more things. She does not believe this tower should be in any residential area. It is a lifelong thing and there are other options. She is very respectful of the work Lynn Miller has done. She has contacted her councilman, Les Veach. She thinks the city should take some time and look at those other options very seriously. She also has 3.5 acres where she lives and has the good fortune of taking good care of it to beautify the city and would like to invite everybody around. She does believe the real estate values could go down which she doesn't like. There is also 15 acres across the street from her which is the John Kerr School. It is a great little parcel of property. The jury is out on whether it will be a school or

not so she will not get into that debate. She will say people have come to her and have said that would be an ideal place to develop homes. She can't deny that money could be made doing so and it seems like a perfect fit but that could be ruined by putting this tower there. She stated only once in the 18 years she has been there has she been blocked on Jefferson Street from a tree that has fallen on the street. But yes, she was blocked and it was for about $\frac{3}{4}$ of the day. She wants the city to realize that if they put the tower at the top of Jefferson Street, there is only one way up to that tower. If something happened and there was a malfunction, the city could be blocked. Emergency vehicles can be blocked. It is already a terribly busy street up at the top as it is.

Patricia S. Zontine of 1218 Rodes Circle stated she wishes there had been some publicity in the paper about the balloon or the paper had at least taken a photo of that. She saw when they were thinking about putting very tall electric towers in Frederick County and into Faquier and Clark. They did that along I-66 and you got a very good sense of what something was going to look like at that height. The other reason she came this evening is she believes Dale Barley who is the president of her homeowners association sent an email but she wanted to read it so it would get into the record.

The Board of the Downs at Meadow Branch Homeowners Association representing 40 homes in the Downs are requesting that you explore other options of erecting the tower that would be less intrusive to so many residents of Winchester. Respectively submitted, Dale Barley .

Scott Patton of 609 Tennyson stated that it seems this has rolled over the community pretty quickly and he is a little disturbed about how it came to pass. His concern is he is in a job of "what if" and he recognizes that the city needs this system. His fear is that this design is for a single point of failure. The plan is for one tower and if it wasn't a single point of failure, there would not be a fall zone. When it falls, there will not be a tower at all and instead of being at 95/95, it will be at zero. With that in mind and he recognizes geography cannot be overcome, the position of where it is is optimum for this community as far as reaching out and touching as many people as possible. It seems relatively simple to come up with something just on the top of the water tower that gets 85% and with another tower somewhere else that covers the rest so then you have a back up. Not only do you have 85/85 but if one fails, you have something. The only purpose for this thing is not for days like today but the city is one derecho away from being without any service and that is when we really need it. He recognizes that a second transmitter creates more cost but he also realizes it is the "what ifs." He asked what if our Chief of Police actually needs it that day. He stated he recognizes that one tower would be a lucrative target if he really thought Winchester was a target for transnational criminal organizations or violent organizations but Winchester is not that target. He does see it for weather events that come through or a significant geological event. The 100/1 chance event and now you are one tower away from being without any system. It seems like the obvious solution is to find something a little shorter that modifies all of these people's concerns and then you have another tower as a backup that covers the areas that can't quite be reached. It seems like it would be so much simpler than just going forward with a single point of failure.

Henry Buettner of 1626 Meadow Branch Avenue stated he has listened to a lot of the comments and he agrees with the point of view of the citizens. It would be something to consider that if the city puts one tower location up at the site being spoken about, the property values will go down. If you look at a 25 year projection, there would be less revenue generated for the city because the property values would go down and the taxes would go down accordingly. His suggestion would be to explore in more detail the opportunity to put multiple sites up that would be smaller in locations that would not affect the residents that this tower will affect. He thinks you would find from doing a cross projection that over that time period you will spend more money doing it this way but save more money in the long run. He encouraged Council to spend more time to check that out and more time in getting another opinion on other sites that would be suitable.

President Willingham asked if anyone else would like to address Council on this issue. Seeing none, the President declared the public hearing closed at 7:32 p.m.

Councilor Buettner stated traditionally Council respects everyone's ability to speak on a subject before tabling it. Every time he has asked a question on this project, it has led to multiple other questions as well as frustration for him as this is something Council does not deal with everyday. He respectfully asked that CU-13-372 be tabled today and that Council submits any questions they may have in writing to Mr. Iman by Friday so he may have the answers for discussion at the first October Work Session. He also asked the citizens to submit their questions by Friday as well.

Councilor Buettner moved to table CU-13-372 with those stipulations. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

1.2 O-2013-25: Second Reading – AN ORDINANCE TO REZONE 8.523 ACRES OF LAND AT 1900 VALLEY AVENUE, 211 AND 301 WEST JUBAL EARLY DRIVE FROM LIMITED INDUSTRIAL (M-1), HIGH DENSITY RESIDENTIAL (HR), AND HIGHWAY COMMERCIAL (B-2) DISTRICTS TO B-2 DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) OVERLAY RZ-13-196 (*Proposed Jubal Square Development Plan*)

Rick Till stated he is the Director of Human Resources for O'Sullivan Films located at 1944 Valley Avenue and is also a city resident at 404 South Washington Street. O'Sullivan has 400 employees currently and sits on 40 acres off Valley Avenue with about 500,000 square feet under roof and a payroll of about \$25,000,000 annually. They just completed a \$28,000,000 expansion at their facility. The facility is adjacent to the property that is in discussion. He stated O'Sullivan is a good corporate citizen and has been involved in the community for over 75 years. He stated O'Sullivan has shared their concerns with the Planning Commission and has been engaged in the process all along. They believe 140 apartments right next to their plant is inconsistent and incompatible to a 24/7/363 day operation that is O'Sullivan Films. They are concerned it could lead to tenant complaints regarding noise

and activity. It could be likely that by them doing nothing different they could be perceived as going from a good neighbor to a bad neighbor. He has spoke with some Councilors who do not believe that is going to be a problem but O'Sullivan feels it is a high probability that it could occur. If the plant is approved, he asked that the apartment lease contains a statement notifying folks that it is next to an industrial site or include a proffer from the developer that they will ensure they use noise attenuation construction practices. He stated the other piece they are concerned about is possible future restrictions on their land regarding any setbacks or buffers for future expansion. There could be a case made in the future that once the apartments are there enhanced residential offsets might be required really restricting the land they are on now and limiting possible expansion. He stated that should the zoning be approved tonight they ask for a letter from Zoning Administration or Council action clarifying that setbacks for future expansion would not affect their ability to grow and expand on their current land. He stated they have sufficient land for expansion and do not want to block the development of that property. They are supportive of redevelopment that is truly mixed use but this is a high density residential project that relies on possible future commercial. They believe placing a high density residential next to their site is inconsistent and incompatible and do not understand how this project is a good idea for them, the future tenants or the city. It may be the right project for the city by certainly in the wrong spot. He asked Council to deny the rezoning request and work with the property owner to find a more compatible development that is truly mixed use.

Richard Pifer 601 Merrimans Lane stated he is one of the owners of the property that is before you for PUD rezoning. Something some on Council may not be aware of is that he has a 2 acre parcel across Jubal Early directly across from this parcel that just had a right in/right out installed to serve City National Bank. He has a site plan that has gone through staff approval with the City for an 18,000 square foot strip center called Roberts Street Plaza. In order for that site plan to get to the point it is and sell off a portion of land to accommodate City National, they abandoned 16 townhouse lots. Additionally, there used to be 30 townhouse lots on one of the parcels across the street that are in this PUD zoning so there are 46 townhouses that have disappeared because of the action they have taken in the area. He stated the Roberts Street Plaza is strictly a commercial project that has no residential component to it at all. The obvious benefit in this economy to have high end professional people living across the street is pretty obvious to him and he thinks the demand would give them impetuous for that project to move forward. He asked Council to keep in mind that they have to have people with disposable incomes in order for businesses to start up and to prosper and grow. He sincerely thanked Council for the very candid dialogue they have had through this whole process. He thinks Council has seen the passion he has for Winchester and he understands the issues Council has had to keep in the forefront. He stated he can honestly say that they have a project before Council that is in the best interest of Winchester. Those in real estate development create how the community presents itself. Some of Council is familiar with the other efforts he and his sons have made to improve properties that are blighted or needed attention through the years. His efforts have been to do projects of which he could be proud. He stated he and his partner own the strip center that Buffalo Wild Wings is in. There is not a lot

you can do with linear strip centers but they spent 5% more on that building in order to take brick details and make it a little nicer. He stated someone recently told him that you could legislate quantity but not quality. We all know too well how the process works to vet out these issues. The integrity of the owners is paramount to delivering a positive impact for Winchester. For him, the Jubal Square Apartments and its owners fulfill these goals and provide tremendous benefits for this Jubal Valley area and he hopes Council can see that as well.

William Park of 1821 Avon Street in Charlottesville, Virginia stated he has been doing this for a number of years and can honestly say this is one of the projects that has been more vetted than any project he has dealt with. He commends not only Council but the Planning Commission and staff also. Along the way there have been questions and he thinks Council has seen they are doing their best effort to bring a Class A project to the city. One of the things this process has done is for somebody who did not know a whole lot about Winchester it has reinforced that they are doing the right thing. When he looks at the questions and answers, one of the points he wants to make is that it is located in a redevelopment area. That is one of the things that attracted them when they saw there was a demand for this particular type of product in the city and it encouraged them that Council had already targeted the site as a site for redevelopment. He stated it is a mixed use project contrary to what a speaker said a minute ago. This is the mixed to the mixed use of this whole area by putting residential in all of this commercial that is there now. Additionally, it meets a number of the areas in the comprehensive plan – the objectives for housing, future development, geographic planning and implementation. He stated it is designed to meet the needs of professionals, students and empty nesters called out for in your comprehensive plan. He thinks one of the important things to note too is in the comprehensive plan it talks about converting single family homes into rental housing and the reason for that is simply supply and demand. There is a significant demand here. There is not enough supply especially in this upper end. He thinks this will help to stem the tide of this conversion of single family homes. They have also included construction of the Green Circle Trail on the property along Jubal Early. They did perform a fiscal impact study by a third party which was positive. They have numerous letters of support in directly from the university itself and from local businesses in the area. When you look at the product they are bringing to the market, it is clear that this will be the highest end product in the market. None of the units in the current market have the size they have. They don't have garages. They don't have 9 foot ceilings or a loft unit so they are bringing a product to the market that is currently not here. In summary, they strongly believe this is the right project at the right place at the right time. He stated he hopes Council upholds the recommendation of the Planning Commission and move forward with supporting this project.

President Willingham asked if anyone else would like to address Council on this issue. Seeing none, the President declared the public hearing closed at 7:48 p.m.

Vice-President McInturff moved to approve O-2013-25. The motion was seconded by Councilor Tagnesi.

President Willingham stated it is easy for us to address issues now but it is 10-15 years from now when a resident or Mr. Park sells the property and it raises the concern of living next to a pretty intense manufacturing facility. He does not think there is any way for Council to mitigate that risk 100% for O’Sullivan. As much as Council would like to protect them, there is nothing they can do or say to bind future Councils. He asked the City Attorney if there was a way to craft a resolution that at least gives credence to the issues that potentially could be raised in the future and states that we don’t want to see O’Sullivan impacted because we are potentially going to rezone a property that may be of a different use or that we have a great business partner in our community and don’t want to see them impacted today or 15 years from now.

City Attorney Anthony Williams stated Mr. Till has made a reasonable proposal but unfortunately with regard to what the court would call contract zoning or essentially spot zoning, municipalities are prohibited from entering into agreements in furtherance of any private interests in regard to zoning. Municipalities must be free to zone and rezone in furtherance of the public interest. However, a resolution by definition is an expression of the intent of the governing body. He thinks a resolution could be crafted that says in moving forward with this matter, it is the intention of this body that future rezonings not occur that would negatively impact O’Sullivan with a recognition within that document that this is not a binding document by any means of this or any future Councils should public interests be served by such a rezoning. He thinks staff could craft something to give O’Sullivan a comfort level that this Council does not have intentions of doing that but realizing that it is not something that could be binding.

President Willingham asked that a resolution in that regard be put on the next Work Session agenda.

The motion was adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:

<u>MEMBER</u>	<u>VOTE</u>
Councilor Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Mayor Minor	Aye
Councilor Tagnesi	Aye
Vice-Mayor Veach	Aye
Councilor Weber	Nay
President Willingham	Aye

- 1.3 CU-13-422:** Conditional Use Permit – Request of Daniel T. Knight, Jr. for a conditional use permit for motor vehicle painting, upholstery, and body and fender work at 427 North Cameron Street (*Map Number 173-01-K-1*) zoned Commercial Industrial (CM-1) District.

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 8:13 p.m.

Mayor Minor moved to adopt CU-13-422. *The motion was seconded by Councilor Clark then adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Councilor Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Mayor Minor	Aye
Councilor Tagnesi	Aye
Vice-Mayor Veach	Aye
Councilor Weber	Aye
President Willingham	Aye

- 1.4 O-2013-22:** Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 10-51 OF THE CITY CODE TO INCLUDE AN EXCEPTION FOR BLASTING OPERATIONS RELATED TO CEMETERY BURIAL OF DECEASED HUMAN REMAINS (*Reduction of insurance requirement for blasting at cemeteries*)

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 8:14 p.m.

Councilor Clark moved to adopt O-2013-22. *The motion was seconded by Councilor Buettner then adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Councilor Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Mayor Minor	Aye
Councilor Tagnesi	Aye
Vice-Mayor Veach	Aye
Councilor Weber	Aye
President Willingham	Aye

- 1.5 O-2013-24:** Second Reading – AN ORDINANCE TO REZONE 44.44 ACRES AT 2410 AND 2416 PAPERMILL ROAD (*Map Numbers 272-01-8 AND 291-02-A-B*) FROM INTENSIVE INDUSTRIAL (M-2) DISTRICT TO HIGHWAY COMMERCIAL (B-2) DISTRICT RZ-13-289 (*Proposed rezoning for the former Federal Mogul property*)

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 8:14 p.m.

Vice-President McInturff moved to adopt O-2013-24. *The motion was seconded by Councilor Hill then adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Councilor Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Mayor Minor	Aye
Councilor Tagnesi	Aye
Vice-Mayor Veach	Aye
Councilor Weber	Aye
President Willingham	Aye

- 1.6 O-2013-23:** Second Reading – AN ORDINANCE TO REPEAL SECTION 26-7 OF THE WINCHESTER CITY CODE WHICH WOULD ELIMINATE THE REQUIREMENT FOR THE PROPERTY OWNER OR OCCUPIER TO BE RESPONSIBLE FOR THE MAINTENANCE OF THE PUBLIC SIDEWALK ADJACENT TO THEIR PROPERTY (*with the exception of snow removal*)

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 8:16 p.m.

Councilor Weber moved to adopt O-2013-23. *The motion was seconded by Vice-President McInturff then adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Councilor Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Mayor Minor	Aye
Councilor Tagnesi	Aye
Vice-Mayor Veach	Aye
Councilor Weber	Aye
President Willingham	Aye

- 1.7 CU-13-361:** Conditional Use Permit – Request of Shenandoah Mobile, LLC for a conditional use permit to construct a telecommunications tower at 2633 Papermill Road (*Map Number 291-01-7*) zoned Commercial Industrial (CM-1) District.

Lynn Koerner of 3126 South Ox Road in Edinburg, Virginia, stated he is the site acquisition contractor for the applicant. He thanked the Winchester staff for being very professional and stated it is always a pleasure to work in Winchester. He stated the proposal is for a 100 foot monopole tower to be constructed on the property owned by Anderson Roofing. Currently, Shentel has a telecommunication facility at this location that is on a very small guide tower. That tower is not capable of holding the panel antennas and remote radio heads needed to upgrade the Sprint network with the Network Vision or 4G service so there was no alternative but to seek another location to place these antennas. He stated these upgrades require the additional antennas which allow for the multiband frequencies throughout the network. They looked at other possible solutions in the area including the water tank at Federal Mogul but they were not interested with the property in the process of being up for sale and closing the plant. He stated the electromagnetic fields at this site will not exceed the emission standards that are established by the American National Standards Institute and the federal government and they will not affect the health and well being of the citizens in the neighborhood around the proposed site. He stated he feels the approval of this site will be to the benefit of the citizens of Winchester, to those visiting and shopping, and those doing business in this area. This site will allow Shentel to continue to provide the fourth generation of service to the area and be compatible with the surrounding network. He offered to answer any questions Council may have and requested the approval of CU-13-361.

Garwin Anderson of 2633 Papermill Road stated he is in favor of retaining the existing tower. The tower was built in the early 1960's and has been used for communications through the time period from two way radios to the current Shentel usage. He stated he has two wireless carriers that he has Letters of Intent from to go on that tower. There is a comment from one of them that there is a shortage in that area to provide to commercial users as well as residential users of that region wireless service. He asked to be able to leave the tower in place for that use.

President Willingham asked if anyone else would like to address Council on this issue. Seeing none, the President declared the public hearing closed at 8:21 p.m.

Councilor Buettner moved to amend CU-13-361 to leave the existing pole. *The motion was seconded by Mayor Minor than approved 8/1 with Council Clark voting in the negative.*

Councilor Buettner moved to adopt O-2013-23. *The motion was seconded by Vice-Mayor Veach then adopted by the affirmative roll-call vote of a majority of all members of the Common Council, the ayes and nays being recorded as shown below:*

<u>MEMBER</u>	<u>VOTE</u>
Councilor Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Mayor Minor	Aye

Councilor Tagnesi	Aye
Vice-Mayor Veach	Aye
Councilor Weber	Aye
President Willingham	Aye

1.8 R-2013-42: Resolution – Approval of Consolidated Annual Performance and Evaluation Report

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 8:16 p.m.

Councilor Weber moved to approve R-2013-42. *The motion was seconded by Vice-President McInturff then unanimously approved by voice-vote.*

2.0 PUBLIC COMMENTS

Todd Golding of 1027 Kinzel Drive stated he has several concerns tonight. The first is the new raised crosswalk on Jefferson Avenue near Handley High School. He is concerned the counter slope exceeds the allowable limits set by the 2010 ADA Standards in Section 406.2 which states that the counter slope of the adjoining gutter and road surfaces immediately adjacent to the curb ramp shall not be steeper than 1:20 (1 inch rise for 20 inches in length). This equals out to be 2.86 degrees. When he measured the counter slope this morning, the south side counter slope ranged from 7.0-7.8 degrees and the north side counter slope ranged from 6.4-7.1 degrees. Not only is this a civil rights violation under the ADA but it is a severe safety hazard for our citizens. An example of the safety hazard would be a person in a wheel chair coming down the curb ramp at 7.7 degrees and hitting the abrupt incline going in the opposite direction at 7.0 degrees which could cause the person to tip over in the middle of the street. He could also see this happening with a child in a stroller. There is also an issue with someone who has mobility or balancing concerns going down and up the incline. He requested that City Council have the crosswalk reviewed and be corrected or removed immediately if it is in violation of this section of the ADA. He stated although this is the first time he has brought an ADA concern to a Council meeting, it is not the first time he has brought ADA issues to the City's attention. At one point, he understood there was discussion from this body to form an ADA Advisory Committee. He asked that it be considered further and implemented involving community stakeholders to be tasked with studying the current ADA compliance and review future projects to ensure they meet the ADA requirements. He stated his next concern is the sidewalks and streets in his neighborhood of Kinzel Drive just north of Daniel Morgan Middle School. Each day during the school year, he watches about 100 students walk to school on extremely dangerous sidewalks. His neighborhood sidewalks are in such poor shape that the neighbors who walk for exercise do so in the street. In fact, until he passed away recently, there was a neighbor who was in a wheel chair that had to go in the street to take a stroll around the block with his caretaker. He stated he prefers to drive to the park and walk the exercise course simply because with his mobility and balance issues he can and will trip on the sidewalks in front of his house. This also makes snow removal very difficult for him. He has a snow blower and will often remove snow for the neighbors but the 4 inch raised sidewalks make it very difficult. He stated he has noticed the City has been paving a lot of streets lately and he is thankful for this as he thinks it is long overdue. While some people have been critical of the way City staff has selected the roads get paved, he would

like to know how to get pot holes filled. It doesn't happen by calling because he has done that 3 times in the last 9 months and there are still pot holes on Christopher Drive. It amazes him that this has not been reported when there is a City Transit bus whose route is on Christopher Drive several times a day.

President Willingham asked Mr. Iman to look into the raised sidewalk concerns and let Mr. Golding know who to contact for the pot holes.

President Willingham asked if anyone else would like to address Council. Seeing none, the President declared the public comments closed at 8:30 p.m.

3.0 CONSENT AGENDA

- 3.1 O-2013-27:** First Reading: ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION PUBLIC IMPROVEMENT BONDS OF THE CITY OF WINCHESTER, VIRGINIA, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$27,000,000, TO FINANCE THE COSTS OF CERTAIN CAPITAL IMPROVEMENT PROJECTS
- 3.2 O-2013-28:** First Reading – AN ORDINANCE TO AMEND AND RE-ENACT ARTICLES 1, 8, 9, 10, AND 13 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO RESTAURANTS AND ENTERTAINMENT ESTABLISHMENTS. TA-13-146
- 3.3 O-2013-29:** First Reading - AN ORDINANCE TO REZONE APPROXIMATELY 41.5 ACRES OF LAND CONTAINING APPROXIMATELY 86 PARCELS, EITHER IN FULL OR IN PART, TO BE INCLUDED IN THE CORRIDOR ENHANCEMENT (CE) DISTRICT; SUBJECT PARCELS ARE ADJACENT TO, OR WITHIN 400 FEET OF, THE BERRYVILLE AVENUE RIGHT-OF-WAY RZ-13-380 (*Establishes a Corridor Enhancement District along Berryville Avenue*)
- 3.4 O-2013-30:** First Reading – AN ORDINANCE TO REZONE 1.295 ACRES OF LAND AT 1720 VALLEY AVENUE (*Map Number 231-04-K-8A*) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO B-2 DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) AND CE DISTRICT OVERLAY. RZ-13-292 (*Redevelopment plan for the former Coca-Cola plant*)
- 3.5 O-2013-14:** First Reading – AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT TA-13-138 (*Revision to temporary sign provisions and permit requirements*)
- 3.6 R-2013-39:** Resolution – Adoption of the Street Maintenance Master Plan to be used as the City's guide for future street maintenance program

- 3.7 R-2013-40:** Resolution – Approval to create a formal policy for Council review and approval of grant applications
- 3.8 R-2013-43:** Resolution – Request for submission of application for the SAFER Grant

Councilor Buettner moved to adopt the Consent Agenda as presented. *The motion was seconded by Councilor Weber then unanimously approved by voice-vote.*

4.0 AGENDA

- 4.1** Motion to appoint _____ and _____ as members of the Handley Board of Trustees each to a six year term expiring June 30, 2019

Councilor Buettner moved to appoint Nate Adams and Dennis McLoughlin as members of the Handley Board of Trustees. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

- 4.2** Motion to appoint _____ as the parent representative to the Community Policy and Management Team

Vice-President McInturff moved to appoint Lyda Kiser as the parent representative of the Community Policy and Management Team. *The motion was seconded by Councilor Weber then unanimously approved by voice-vote.*

- 4.3** Motion to appoint _____ as a member of the Board of Zoning Appeals to an unexpired term ending July 31, 2014

Councilor Buettner moved to appoint Richard Ridgell as a member of the Board of Zoning Appeals. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

- 4.4** Motion to appoint _____ as a member of the Social Services Advisory Board for an unexpired four year term ending March 31, 2015

Vice-President McInturff moved to appoint Rex Marshall as a member of the Social Services Advisory Board. *The motion was seconded by Councilor Hill then unanimously approved by voice-vote.*

5.0 EXECUTIVE SESSION

- 5.1** MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE AND STATUS UPDATE FROM THE CITY ATTORNEY AND LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION

Vice-President McInturff moved to convene in executive session at 8:32 p.m. *The motion was seconded by Vice-Mayor Veach then unanimously approved by voice-vote.*

Vice-President McInturff moved to reconvene in open session at 8:54 p.m. *The motion was seconded by Vice-Mayor Veach then unanimously approved by voice-vote.*

Upon returning, each member certified that only public business matters lawfully exempted from open meeting requirements of the Virginia Freedom of Information Act were discussed during the closed meeting, and that only those public business matters identified in the motion which convened the closed meeting were heard, discussed, or considered during the closed meeting.

A roll call vote was taken, the ayes and nays being recorded as shown below:

<u>MEMBER</u>	<u>VOTE</u>
Councilor Buettner	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Vice-Mayor Veach	Aye
Councilor Weber	Aye
President Willingham	Aye

6.0 ADJOURNMENT

Councilor Buettner moved to adjourn the meeting at 8:55 p.m. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Kari J. Van Diest, CMC
Deputy Clerk of the Common Council