

WINCHESTER COMMON COUNCIL
NOVEMBER 8, 2011
AGENDA
7:00 P.M.

A regular session of the Winchester Common Council was held on Tuesday, November 8, 2011 in the Council Chambers, Rouss City Hall. President Jeff Buettner called the meeting to order at 7:00 p.m.

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

ABSENT: None (0)

INVOCATION – Reverend Dr. Kitty Hahn-Campanella of Highland-Memorial Presbyterian Church delivered the invocation.

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

APPROVAL OF MINUTES – October 11, 2011 Regular Meeting

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

Motion to amend the November 8, 2001 Council Agenda to include R-2011-59 honoring Mayor Elizabeth A. Minor’s 31 years of service on City Council.

Vice-President Major moved to add R-2011-59 to the agenda. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

R-2011-59: Resolution – In honor of Mayor Elizabeth A. Minor’s 31 years of service on City Council.

Vice-President Major moved to approve R-2011-59. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

REPORT OF THE MAYOR

R-2011-58: Resolution – Retirement of Gilbert M. Hough

Due to Mr. Hough’s absence, Vice-President Major moved to table the resolution to next month. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

Mayor Minor stated this week we honor our veterans who have sacrificed so much to serve and protect our country. We are all so thankful for the freedoms we have and the men and women who have served and continue to serve to preserve those freedoms - Thank you.

Mayor Minor stated the Timbrook family and the Winchester Police Department each year sponsor the Annual Rick Timbrook Food/ Toy Drive benefiting Winchester children. Over the past 12 years the drive has provided food and toys for hundreds of Winchester families in need of assistance. We hope that you will consider making a donation to continue supporting this worthy program. Donations can be made to the Sergeant Ricky Timbrook Memorial Foundation and sent to the Winchester Police Department. Toy collection boxes will be placed at City Hall, the War Memorial Building (Jim Barnett Park), the Timbrook Public Safety Building, the Joint Judicial Center, and the Commonwealth Attorney's Office. The food and toys will be hand delivered to the families on December 17th.

Mayor Minor reported 2,800 people visited the Winchester-Frederick County Visitor's Center during the month of October. Plus, the number of visitor's asking about the Patsy Cline slightly exceeded the number of people inquiring about the Civil War and the battlefields.

Mayor Minor presented a proclamation in honor of America Recycles Day.

REPORT OF THE CITY MANAGER

Interim City Manager Craig Gerhart stated there are three spot blight abatement items on the agenda that have some late breaking news and asked that Zoning Administrator Vince Diem be given some time before each item to inform Council of what has happened.

REPORT OF THE CITY ATTORNEY

City Attorney Anthony Williams stated the Zoning Administrator has found a scrivener's error in one of the items on the agenda. He provided Council with a copy of the corrected version and stated the revision was in changing the time from AM to PM.

PUBLIC HEARINGS

O-2011-23: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT THE WINCHESTER CITY CHARTER

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:11 p.m.

Councilor Willingham moved to adopt O-2011-23. The motion was seconded by Councilor Veach.

Councilor Veach moved to insert “at least” back in Section 8 of the Charter. *The motion was seconded by Vice-President Major then unanimously approved 9/0.*

The amended ordinance 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 Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2011-46: Second Reading - AN ORDINANCE AMEND AND RE-ADOPT SECTION 17-6 AND ADD SECTION 17-7.1 OF THE WINCHESTER CITY CODE RELATED TO NOISE CONTROL

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:12 p.m.

Councilor Willingham moved to adopt O-2011-46. The motion was seconded by Vice-President Major.

Vice-President Major moved to amend the O-2011-46 as presented on the sheet distributed tonight. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

The amended ordinance 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 Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2011-47: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 2-37 OF THE WINCHESTER CITY CODE TO CLARIFY THE PARAMETERS FOR PUBLIC HEARINGS AND PUBLIC COMMENTS

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:13 p.m.

Vice-Mayor McInturff moved to adopt O-2011-47. The motion was seconded by Councilor 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 Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2011-48: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 16-8 OF THE WINCHESTER CITY CODE PERTAINING TO DISCHARGE OF AIR GUN, GRAVEL SHOOTER, OR SIMILAR INSTRUMENT

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:14 p.m.

Vice-President Major moved to adopt O-2011-48. The motion was seconded by Councilor 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 Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2010-24: Second Reading – AN ORDINANCE TO APPROVE AND ADOPT A SPOT BLIGHT ABATEMENT PLAN AND ABATE A PUBLIC NUISANCE PURSUANT TO SECTION 6-133 OF THE WINCHESTER CITY CODE, FOR THE STRUCTURE(S) AND PROPERTY LOCATED AT 630 NORTH LOUDOUN STREET

Patrick Smith, an appraiser from Fredericksburg, Virginia, stated Mayor Minor spoke earlier about the proclamation on recycling. He wanted to suggest for these properties and perhaps future properties that the City considers deconstruction rather than demolishing them and sending them to the landfill. He stated deconstruction is taking the house apart piece by piece and donating the used materials that are salvageable to non-profit agencies. It is a green program that allows us to keep some of this out of the waste stream. Right now, 30% of what is in the landfill comes from construction and demolition. By supporting the non-profit agencies, it helps less fortunate individuals. There are incentives for the donor and for the City to do this as well, financial incentives. The act of donation entitles the donor to a tax benefit based upon the fair market value which can be very significant. The property on East Piccadilly Street has a significant amount of personal property on the inside and the structure has value into the six digits. There is more than enough to cover the cost of repairs or demolition or whatever the City wants to do with this building. This can even work on a property that is not fit for human habitation because a lot of these older buildings have old growth wood that is no longer available but highly desirable on the market today. There is quite a bit of material that can be reused and it fits with recycling. He suggested that in the future, the City consider talking to owners about deconstruction over demolition.

Tyson Gilpin of 217 South Loudoun Street stated he is an attorney whose client owns a small interest in this property but has been struggling to maintain and market it. A suit has been filed to clear the title and determine the heirs. The advertisements for this will be completed on November 14th. The purpose is to ascertain all of the heirs and confirm the sale. There is a neighbor that has put about \$2,500 in to maintain the building and is interested in the property because of the building. He asked that demolition be put off for 30-60 days so the sale can possibly be confirmed. If the building is torn down, this buyer will probably not be interested in the property. It is a small, irregular shaped lot so the value is probably the building as this appears to be the only buyer on the horizon. He asked that Council defer this for 30-60 days so this value can be captured by the owners.

No further citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:20 p.m.

Vice-President Major moved to adopt O-2010-24. The motion was seconded by Councilor Willingham.

Zoning Administrator Vince Diem stated staff has been in correspondence with Mr. Gilpin over the last few years as identified in the council packet. Staff does not have objection to delaying demolition for a period of 30 days but because of the public nuisance this property has continued to perpetuate and the continued blighting influences

on a major corridor into the city, a blight and public nuisance declaration by Council is certainly in order. With that being said, Mr. Diem informed Council an amended copy of the ordinance was distributed tonight that would recognize the property as a public nuisance and as a blighted property if that is Council's desire.

Vice-President Major moved to table O-2010-24 for 30 days. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

O-2011-49: Second Reading – AN ORDINANCE TO APPROVE AND ADOPT A SPOT BLIGHT ABATEMENT PLAN AND ABATE A PUBLIC NUISANCE PURSUANT TO SECTION 6-133 OF THE WINCHESTER CITY CODE FOR THE STRUCTURES(S) AND PROPERTY LOCATED AT 386-388 CHARLES STREET

Patrick Smith stated this property is in the process of being rehabbed. When Mr. Smith visited the property, there was a 15 man crew going through and taking it down to the studs. He wanted to be sure Council was aware that was going on.

No further citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:23 p.m.

Councilor Willingham moved to adopt O-2011-49. The motion was seconded by Councilor Veach.

Mr. Diem stated that as recently as this week, he has been in conversation with the property owner. To give some background on this property, staff provided the owner with a preliminary determination of blight to which the owner responded with an outlined proposal for blight abatement. That had gone for an extended period of time without action from the property owner to remedy the blight. In recognizing this would be before Council this evening, the owner has come in this week and obtained a building permit, filed a conditional use permit application to restore the two family use in that zoning district, and submitted a Board of Zoning Appeals variance application. At this point, staff is requesting within the amended ordinance an opportunity for the owner to bring to fruition his efforts. However, if he fails to maintain the timeline schedule indicated in the abatement plan or fails to abate the blight in the period of time set by Council, staff would then ask for the opportunity to immediately demolish the structure. From this week's conversations with the owner, staff is confident he is moving forward although there are unknown steps with the CUP and BZA variance.

Vice-President Major asked if it is better to adopt the plan and monitor it or hold off. Mr. Diem stated in his professional opinion, the ordinance should be adopted so it is declared as blight and has an immediate mechanism to abate the blight in the event the owner ultimately fails in their efforts. The owner is reporting to have it repaired in 3-4 months and staff is proposing a 9 month period to secure the CUP, the variances and complete the building permit work.

Councilor Clark stated for the benefit of those who do not know about the spot blight abatement program, the City has been in communication with this property owner since 2007 about this house and in regular communications for the past 18 months that this was going to happen. On the previous property, we have been in communication with that property owner since 2002 about this very same problem.

Councilor Willingham moved to accept the amended version of O-2011-49. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

The amended ordinance 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 Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

O-2011-50: Second Reading – AN ORDINANCE TO APPROVE AND ADOPT A SPOT BLIGHT ABATEMENT PLAN AND ABATE A PUBLIC NUISANCE PURSUANT TO SECTION 6-133 OF THE WINCHESTER CITY CODE, FOR THE STRUCTURE(S) AND PROPERTY LOCATED AT 31 EAST PICCADILLY STREET

Patrick Smith stated he is not here to be an advocate for the property owners but is suggesting deconstruction can be a way for City Council to interact with the owners to offer them some sort of financial incentive to work closer with the city. There are significant tax benefits that as long as they file their taxes they are eligible for this program. He wanted to offer this as a tool the city could use in these or future discussions with property owners.

No further citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:28 p.m.

Mr. Diem stated the property has changed ownership within the last two weeks through a sale at the courthouse. The new owner is in the process of being notified by city staff that the property is worthy of a preliminary determination of blight. Staff is moving forward with the process starting anew but is encouraged that it is a local developer and property owner. Staff feels there will be some blight remediation and will keep Council posted in the monthly reports. Therefore, a withdrawal is requested.

With no motion to move forward with the adoption, the request was withdrawn.

O-2011-51: Second Reading: AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-39 AND 6-24 OF THE WINCHESTER CITY CODE, REGARDING DERELICT PROPERTY ABATEMENT, TO CORRECT A SCRIVENER'S ERROR

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:29 p.m.

Councilor Clark moved to adopt O-2011-51. *The motion was seconded by Vice-President Major 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 Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

CU-11-537: Conditional Use Permit – Request of Terrace Club, Inc. for a conditional use permit for a private club at 2215 Valor Dr (*Map Number 270-06-4A*) zoned Highway Commercial (B-2) District.

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:30 p.m.

Councilor Veach moved to approve CU-11-537. *The motion was seconded by Councilor Willingham then approved 8/1 with Councilor Hill voting in the negative.*

PUBLIC COMMENTS

Carolyn Duff of 218 South Braddock Street stated she lives directly behind Sweet Caroline's and wanted to address some noise issues. The bass level is high and asked if there was a periodic monitoring of night clubs or is the decibel level monitored only when there is a complaint. She also stated when people are leaving the night clubs at night; there are a lot of yelling and other noise issues when the clubs close down. She asked if a police presence when the clubs close down would be possible to help. When she bought downtown, she knew she was buying in a business district and understands these are night clubs but would like the noise issue to be addressed. Ms. Duff stated her

property goes from Braddock Street to Indian Alley and they are experiencing a lot of vandalism and noise late at night along Indian Alley. When her neighbor discussed the issue with the police, the officer suggested a street light be installed. She did speak to someone in the zoning department a few days ago and would like to get these issues addressed.

President Buettner asked Mr. Gerhart to address the issues with the zoning and police departments.

Harry Gormas of Winchester stated he understands there is a contract in place on the Taylor Hotel. He spent several months in negotiations with Denver Quinnley of Lafayette Plaza before coming down to a price. The contract was written and Mr. Quinnley said his lender liked the deal but they wanted to have a meeting with the city first. It was at that point; they decided to go with the City instead. He is willing to offer the City a contract to redo the Taylor Hotel.

President Buettner suggested Mr. Gormas discuss this with Mr. Gerhart and the Economic Development Authority.

Cecile Lescs of 306 North Kent Street stated she thought this meeting was going to be about the proposals to list certain houses as blighted. President Buettner explained the house at 630 North Loudoun Street was tabled for 30 days to give the owners a chance to move forward, the house at 386-388 Charles Street had an amended plan approved, and the request of 31 West Piccadilly Street was withdrawn.

Ms. Lescs asked what the authority Council has to do this is. City Attorney Anthony Williams stated the code section is cited within the ordinances that have been adopted in the State Code Spot Blight Abatement. The City is not taking away any properties. None of the ordinances are proposing any type of taking.

Ms. Lescs stated by listing them as blighted, she thought that gave the City the authority to demolish or take possession of them and turn them over to a buyer. President Buettner stated there are a variety of options available to the city. None of the ordinances adopted today were to demolish immediately.

Ms. Lescs asked if it has ever been thought to have a Winchester Conservation Board that would help people who live in their homes but can't afford to fix the blight. Middle and high schools students can do the labor and receive credit and local businesses could donate the materials. President Buettner stated the City has multiple ways right now to help do that. Ms. Lescs stated she has not heard of any attempts to help the people fix their homes to stay in them even though they can't afford to pay for these services. President Buettner stated this body has not evicted anyone from their home and stated there are ways to help through organizations such as Habitat for Humanity. Ms. Lescs stated she would like to see some creative thinking done to help these people and get what the City wants done to preserve Historic Winchester.

Vice-President Major asked Mr. Diem how many houses were declared blighted that were inhabited. Mr. Diem stated to date there have been no formal declarations of blight for an occupied residence. A number of these properties have been owned by absentee landlords that have been nonresponsive to multiple years of attempts to obtain their cooperation. In every case brought before City Council, there is an apparent unwillingness to bring the property in compliance even with minor issues that continue to perpetuate and become much larger issues and thus a blighting influence in the surrounding community.

President Buettner asked how many homes have been demolished and how many restored over the course of the program. Mr. Diem guessed that less than half a dozen structures have been demolished under the blight abatement program. The overwhelming majority of what we see is property owners come forward at the last minute and take the necessary steps to remediate the blight. Other cases have been resolved before they even come to City Council under the blight abatement program after the owner receives a letter of preliminary determination of blight.

No further citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:50 p.m.

CONSENT AGENDA

AGENDA

O-2011-52: First Reading – AN ORDINANCE TO CONDITIONALLY REZONE 3.57 ACRES OF LAND AT 1705 AMHERST STREET (*Map Number 150-01-11*) FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CE DISTRICT OVERLAY. The Comprehensive Plan calls for medical and general office uses on the periphery of the Medical Center District and identifies this property as a redevelopment site. **RZ-11-529**

O-2011-53: First Reading – AN ORDINANCE TO AUTHORIZE AND ACCEPT THE CONVEYANCE OF REAL PROPERTY LOCATED AT 209 E. CORK STREET, IN FURTHERANCE OF THE GREEN CIRCLE PROJECT.

R-2011-53: Resolution – Authorization to Accept Funding Awarded from the 2011 Assistance to Firefighter Grant and Approval to use General Fund Money for the Funding Match

Councilor Veach moved to approve R-2011-53. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

R-2011-54: Resolution – Approval of Amendments to the Housing Choice Voucher Program Administrative Plan

Vice-President Major moved to approve R-2011-54. *The motion was seconded by Councilor Hill then approved 8/0 with Councilor Willingham abstaining.*

R-2011-55: Resolution – Approval of Legislative Agenda for the 2012 General Assembly session

Vice-President Major moved to approve R-2011-55. The motion was seconded by Councilor Tagnesi.

Vice-President Major moved to amend R-2011-55 as presented. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

The amended resolution was unanimously approved by voice-vote.

R-2011-56: Resolution - Establishment of Assessment analyst position classification and reclassification of vacant Account Clerk II position

Councilor Clark moved to approve R-2011-56. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

R-2011-57: Resolution – Approval of Amherst Street Improvements Project

Councilor Veach moved to approve R-2011-57. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

Motion to direct the Clerk of Council to prepare a certificate of appreciation for Conrad Koneczny for his service on the Board of Zoning Appeals

Vice-President Major moved to approve the certificate of appreciation for Mr. Koneczny. *The motion was seconded by Councilor Tagnesi then unanimously approved by voice-vote.*

Announce the resignation of Perry McAlister as a member of the Lord Fairfax EMS Council effective October 8, 2011 and direct the Clerk to advertise the vacancy. Ms. McAlister was serving a three year term to expire on June 30, 2012.

EXECUTIVE SESSION

MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO 2.2-3711(A)(1) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION, EVALUATION, AND CONSIDERATION REGARDING THE SUBJECT OF APPOINTMENT AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS AND APPOINTEES OF THE GOVERNING BODY INCLUDING BUT NOT LIMITED TO COUNCIL-APPOINTED BOARDS AND COMMISSIONS WHERE SUCH ACTION WILL NECESSARILY INVOLVE THE DISCUSSION OF THE PERFORMANCE OF SPECIFIC INDIVIDUALS AND PURSUANT TO §2.2-3711(A)(3) OF THE CODE OF VIRGINIA FOR PURPOSE OF CONSULTATION WITH LEGAL COUNSEL

REGARDING SPECIFIC LEGAL MATTERS AND TO RECEIVE LEGAL ADVICE
AND STATUS UPDATE ON MATTERS OF PROBABLE AND PENDING
LITIGATION

Vice-President Major moved to convene into executive session at 7:54 p.m. *The motion was seconded by Councilor Veach then unanimously approved by voice-vote.*

Vice-Mayor McInturff moved to reconvene in open session at 8:14 p.m. *The motion was seconded by Councilor Willingham 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:

MEMBER	VOTE
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Vice-Mayor McInturff	Aye
Mayor Minor	Aye
John Tagnesi	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

ADJOURNMENT

Councilor Willingham moved to adjourn at 8:15 p.m. *The motion was seconded by Councilor Tagnesi then unanimously approved by voice-vote.*

Kari J. Van Diest
Deputy Clerk of the Common Council