

**MINUTES OF THE COMMON COUNCIL  
WORK SESSION  
September 28, 2010  
City Council Chambers – Rouss City Hall**

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

**ABSENT:** None (0)

President Buettner called the meeting to order at 5:30 p.m.

**Presentation:** Job Training/Career Development – Rick Leonard, Superintendent of Schools

Dr. Leonard explained the differences in Vocational Education and Career & Technical Education and the status of the CTE program. The three initiatives brought out by the state include Academic and Career Planning beginning in the 7<sup>th</sup> grade, the new Standard Technical Diploma and Advanced Technical Diploma, and the required Economics and Personal Finance class that every student must take for graduation. Forty-eight percent of JHHS students and 33% of DMMS students are enrolled in a CTE course. WPS would like to expand the career clusters but is limited on staff and other resources.

**Old Business:**

**Motion** to remove R-2009-57 regarding Police Youth Reporting Center from the table. (Tabled on December 22, 2009)

Vice-President Major moved to remove R-2009-57 from the table. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

**R-2009-57:** Resolution – Authorizing the Winchester Police Department to develop a youth center

Police Chief Kevin Sazenbacher presented the proposal for the Youth Reporting Center. He stated the department is hoping to give the youth a safe environment to study, mentor for positive behavior and activities, increase monitoring, provide community service opportunities, and promote positive relationships. Through the grant funding, two teachers will be provided four times a week for homework assistance. The Laurel Center will provide the “In Touch with Teens” program to decrease the acceptance of violent conflict among teens. The center will not be in competition with the Boys and Girls Club for clients. All salaries will be paid through grant funding. The building has been given to the Police Department from Parks and Rec and the utilities cost should be minimal. Confidentiality

issues can be handled through a parent waiver, court order, and police chief privilege. No training will be needed but if there is Parole Officers have agreed to provide the training.

Councilor McInturff moved to forward R-2009-57 to Council. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

**New Business:**

**O-2010-55:** First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-5 OF THE WINCHESTER CITY CODE REGARDING THE “MANNER OF CREDITING PAYMENT”

City Treasurer Mark Garber stated the amendment will keep City Code aligned with the Code of Virginia to allow money paid be put on the most delinquent account.

Councilor Willingham moved to forward O-2010-55 to Council. *The motion was seconded by Councilor Veach then unanimously approved by voice-vote.*

**Discussion:** Communications Project – Status Report

Emergency Management Director Lynn Miller updated Council on the communications project and the project phases involved. The committee has decided on an 800 MHz digital communications trunk system that is compliant with Project 25 to be eligible for grant funding.

**Motion** to forward the consideration to nominate Justin Ferrell, Matt Mintschenko, Doug Watson, and Randy Collins as members of the Local Emergency Planning Committee

Vice-President Major moved to forward the nominations. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

**CU-10-410:** Conditional Use Permit - Request of Omps Funeral Home, Inc. for a conditional use permit for a crematory at 1560 Amherst St (Map Number 150-15-3) zoned Residential Office (RO-1) District.

Planning Director Tim Youmans presented the request for a stand along pet crematory. He stated the Planning Commission sent the proposal forward with one condition.

Mayor Minor moved to forward CU-10-410 to Council. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

**O-2010-56:** First Reading - AN ORDINANCE TO CONDITIONALLY REZONE APPROXIMATELY 0.496 ACRES OF LAND AT 301, 303, 307 AND 309-311 SOUTH CAMERON STREET (Map Numbers 193-01-K-10, 11, 12 & 13) FROM RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO CENTRAL BUSINESS (B-1) DISTRICT WITH HW DISTRICT OVERLAY. RZ-10-454

Mr. Youmans presented the request for conditional rezoning for B-1 district on South Cameron Street. With the new rezoning, the density increases to a potential of 100 units per acre. Currently, the applicant does not have plans for a change in use. The other difference is in the height allowed which can be up to 75 feet with B-1 district. The applicant proffered a 35 foot height restriction and certain uses including adult bookstores, automobile sales and service, nightclubs and dance halls. The Planning Commission recommended approval as proffered.

Vice-President Major moved to forward O-2010-56 to Council. *The motion was seconded by Councilor Veach then unanimously approved by voice-vote.*

**CU-10-485:** Conditional Use Permit - Request of Johnny Lanzetta dba Giovanni's for a conditional use permit for nightclub use at 21 North Loudoun Street (Map Number 193-01-B-7) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

Mr. Youmans presented the request for nightclub use in a proposed restaurant in an existing building. The restaurant would be an over 21 establishment after 9 p.m. on the weekends but a family restaurant at other times. The conditions are consistent with other nightclubs in the downtown area except for the review after 6 months that was placed due to no track record for the new establishment. The Planning Commission sent it forward for approval. The property will be leased to Vincenzo Lanzetta and the establishment will be managed by Johnny Lanzetta. The property ownership remains with the current owner. The applicant has requested an out door café which will not be included in the nightclub use.

Vice-President Major moved to forward CU-10-485 to Council. *The motion was seconded by Councilor Hill then passed 7/2 with Vice-Mayor Butler and Councilor Veach voting in the negative.*

**O-2010-57:** First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 14-70 OF THE WINCHESTER CITY CODE PERTAINING MOTOR VEHICLES AND TRAFFIC

Old Town Development Director Karen Helm stated the OTDB is seeking exemption from meter feeding during promotional events throughout the calendar year. The Board would like to randomly select vehicles to extend their parking. Currently, it is illegal for someone to feed another persons meter in the City Code to prevent someone from using a parking space all day.

Councilor Veach moved to forward O-2010-57 to Council. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

**R-2010-58:** Resolution – Authorizing the discussion for Visual Link Internet LC to obtain a cable franchise from the City of Winchester

Utilities Director Perry Eisenach stated a request has been received from Visual Link Internet for a franchise to provide cable service. This resolution approves the negotiations and does not approve the franchise.

City Attorney Anthony Williams stated under certain conditions an applicant must be given a franchise but verification that the applicant is a certificated provider is still needed.

Vice-President Major moved to forward R-2010-58 to Council. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

**O-2010-59:** First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 23-3 AND 23-6 FO THE WINCHESTER CITY CODE PERTAINING TO PROHIBITION OF SMOKING

Transit Director Renee Wells stated the request is a coordinated effort between Transit and Parks & Rec to eliminate smoking in bus shelters and in certain areas and events in the park.

Vice-President Major moved to forward O-2010-59 to Council. *The motion was seconded by Mayor Minor then unanimously approved by voice-vote.*

**R-2010-59:** Resolution – Authorization for new City Logo.

Economic Redevelopment Director Jim Deskins presents a proposal for a new City Logo. Mr. Deskins stated the logo was developed by a marketing consultant secured by the EDA and would only be used on letterhead and business cards. The logo will not replace the City Seal. The new logo will be phased in as departments use their current stock of materials.

Councilor Willingham moved to forward R-2010-59 to Council. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

**Motion** to forward the nomination of Cary Brubaker to be re-appointed as a member of the Handley Library Board.

Councilor Veach moved to forward the nomination to Council. *The motion was seconded by Councilor McInturff then unanimously approved by voice-vote.*

**Discussion:** Consent Agenda

After a brief discussion, President Buettner directed staff to remove the first readings from the Consent Agenda but to keep it at a tool for future use.

**Discussion:** Liaison Appointments

President Buettner stated he thinks some of the Council liaison positions may be better served by a staff member unless it is a policy making position. He asked staff to provide a list of the positions and meeting times and dates for future discussion.

**Executive Session:** MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR CONSULTATION WITH LEGAL COUNSEL TO RECEIVE LEGAL ADVICE AND STATUS UPDATE CONCERNING A MATTER IN PENDING OR POTENTIAL LITIGATION.

Councilor Willingham moved to convene into executive session at 7:15 p.m. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Vice-President Major moved to re-convene in open session at 8:02 p.m. The motion was seconded by Councilor Clark 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
Vice-Mayor Butler	Aye
Councilor Clark	Aye
Councilor Hill	Aye
Vice-President Major	Aye
Councilor McInturff	Aye
Mayor Minor	Aye
Councilor Veach	Aye
Councilor Willingham	Aye
President Buettner	Aye

**During the certification, Vice-Mayor Butler and Councilor Willingham stated they could only certify the first part of the executive session.**

Commissioner of the Revenue Ann Burkholder read the following statement:

*Tax questions regarding Valley Health and/or Winchester Medical Center have comprised a significant portion of my workload over the past lively nine months as Commissioner of the Revenue.*

*On January 27, 2010, Tony Williams, staff member Tina Butler and I visited the Wellness Center in response to Valley Health's protest of the personal property and business license taxes of that site. At that time, Todd Way of Valley Health also asked about the questionnaires regarding the initial triennial review of tax exempt properties, any need to apply for exemption of the new Diagnostic Center, and options for minimizing tax discussions regarding future construction and usage changes.*

*Consequently, Valley Health submitted an application for real estate tax exemption for the WMC campus in February 2010, which was scheduled for review at the March 23, 2010, Council Work Session. Upon seeing the recommendation of the Assessor and Commissioner of the Revenue that Valley Health be denied a blanket exemption, Valley Health then withdrew its application. By filing and subsequently withdrawing this application, Valley Health clearly demonstrated its own awareness that no clear and irrefutable tax exemption exists for the WMC campus.*

*Since then, the City and Valley Health have gone back and forth on the matter, accelerated by recent meetings between the two parties. In a letter dated September 2, 2010, Mr. James Daniel, attorney for Valley Health, wrote, "we understand that it is not in dispute that charitable, nonprofit, Virginia hospitals are exempt by classification from local real estate and personal property tax." I do not agree with this statement; rather, whether Valley Health/Winchester Medical Center qualifies for exemption under that section of the Code of Virginia is specifically what is in question. It is the position of this Office that the entity is subject to taxation unless City Council enacts a classification or designation otherwise.*

*It is likely that the City of Winchester considered the original Winchester Memorial Hospital, on the Stewart Street site, and the naissent Winchester Medical Center to be tax exempt under liberal interpretation of the language of the 1902 Virginia Constitution. While post-1971 updates to the Code of Virginia include stricter guidelines, nothing has been found which clearly establishes WMC's entitlement to tax exemption under either the current or earlier version of the Constitution. While correspondence from prior administrations suggests that the issue was examined, by all parties' accounts, the mission and business of today's Winchester Medical Center have substantially evolved from the*

*hospital of yore. As a result, the Commissioner has little basis on which to conclude that ownership, use of the property, and in fact, the property itself, are the same as when the exemption initially came into use.*

*On September 23, 2010 Valley Health officials held a press conference at the Wellness Center to discuss their 2009 Community Benefit Report. As stated by the Valley Health Board Chair, the point was to show what Valley Health gives to the community in lieu of paying taxes. Of the \$71.3 million in benefits claimed, over 63% consists of bad debt expense and Medicare Reimbursement Shortfall, both of which more accurately fall under the cost of doing business. Valley Health avers its not-for-profit status and charitable contributions undermine any claim of ineligibility for exemption, yet neither point is relevant to the matter at hand. Not-for-profit does not automatically equate to non-taxable. Moreover, while the City of Winchester is very appreciative of the generosity and community benefits provided by Valley Health, these are not a substitute for the benefits provided by tax revenue. Here in the City, we are blessed with many citizens and businesses that willingly donate goods, money and services to designated charities, yet also pay their fair share of local taxes for the common good.*

*Assisted by the City Attorney, City Assessor and my staff, I have reviewed applicable State and Local Code, local records of Council action, numerous legal opinions and proceedings, and information provided by Valley Health.*

*Considerations in evaluating tax exempt status have included:*

- *Categories of taxation, to include real estate, gross receipts business license and personal property taxes*
- *Usage of real property, including undeveloped land, property leased to outside entities, and property used for personal and professional services*
- *Variety of business units operating under Valley Health, including traditional hospital functions, as well as those in direct competition with fully-taxable entities, such as the Wellness Center and physician office practices under Valley Physician Enterprise*
- *Fair and equitable distribution of local taxpaying responsibility, recognizing that Valley Health will continue to expand its vision, mission and revenue stream*
- *The role of Valley Health as a valuable community partner*

*At this point, my findings indicate the property and activities of the WMC Campus do not meet any qualifying exemption by classification or by designation and thus are taxable. Within the next two weeks, absent compelling evidence to the contrary, my Office will begin preparing the current year real estate tax bills for the WMC Campus and will proceed with other applicable billings.*

Councilor McInturff moved to accept and endorse Ms. Burkholder's report. The motion was seconded by Councilor Veach.

Councilor Willingham stated in accordance with the requirements of §2.2-3112 of the Code of Virginia, he hereby announces his disqualification from participation in the matters related to Valley Health and the Winchester Medical Center insofar as his business interests are such that a potential conflict may exist which would preclude his ability to maintain appropriate impartiality regarding this issue. Accordingly, as required by the foregoing code provisions, he will refrain from involvement by (1) recusing himself from voting in any manner or acting on behalf of the City or Common Council in this matter; (2) refraining from attendance in any portion of a closed meeting wherein the matter is being discussed; and (3) refrain from discussing the matter with other governmental officers.

Vice-Mayor Butler stated in accordance with the requirements of §2.2-3112 of the Code of Virginia, he hereby announces his disqualification from participation in the matters related to Valley Health and the Winchester Medical Center insofar as his business interests are such that a potential conflict may exist which would preclude his ability to maintain appropriate impartiality regarding this issue. Accordingly, as required by the foregoing code provisions, he will refrain from involvement by (1) recusing himself from voting in any manner or acting on behalf of the City or Common Council in this matter; (2) refraining from attendance in any portion of a closed meeting wherein the matter is being discussed; and (3) refrain from discussing the matter with other governmental officers.

*Councilor McInturff's motion to accept and endorse the report was approved 7/0.*

### **Adjournment**

President Buettner moved to adjourn the meeting at 8:11 p.m. The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.