

**WINCHESTER COMMON COUNCIL MEETING
TUESDAY, NOVEMBER 12, 2013**

A Regular Meeting of the Winchester Common Council was held on Tuesday, November 12, 2013 in the Council Chambers, Rouss City Hall. President John Willingham called the meeting to order at 7:15 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 members of Council in a moment of silence.

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

APPROVAL OF MINUTES – September 17, 2013 Work Session, October 1, 2013 Work Session, October 8, 2013 Special Meeting, October 8, 2013 Regular Meeting, October 15, 2013 Work Session, October 22, 2013 Special Meeting, October 22, 2013 Work Session, October 29, 2013 Joint Meeting with Winchester School Board, November 5, 2013 Special Meeting, and November 5, 2013 Work Session

Vice-President McInturff moved to approve the minutes as presented. *The motion was seconded by Vice-Mayor Veach then unanimously approved 9/0.*

REPORT OF THE MAYOR

R-2013-44: Resolution – Recognition of Nashawn Cook for the brave, calm and caring manner displayed while getting medical assistance for another

Mayor Minor presented the resolution to Nashawn Cook and recognized his actions as a hero in our community.

Councilor Tagnesi moved to approve R-2013-44. *The motion was seconded by Councilor Weber then unanimously approved 9/0.*

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 O-2013-33:** Second Reading – AN ORDINANCE TO AMEND AND RE-ENACT SECTIONS 26-15 OF THE WINCHESTER CITY CODE PERTAINING TO THE TIME REQUIRED TO REMOVE SNOW AND ICE FROM SIDEWALKS (*Adjusts the time allotted for snow and ice removal from the sidewalks*)

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

Vice-President McInturff moved to adopt O-2013-33. *The motion was seconded by Councilor Weber 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

- 1.2 O-2013-35:** Second Reading –AN ORDINANCE TO REZONE 0.46 ACRES OF LAND AT 317 SOUTH CAMERON STREET (*Map Number 193-01-K-14*) FROM RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO CENTRAL BUSINESS (B-1) DISTRICT WITH HW DISTRICT OVERLAY (*former jail property*)

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:21 p.m.

Vice-President McInturff moved to adopt O-2013-35. *The motion was seconded by Mayor Minor 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

1.3 O-2013-34: Second Reading – AN ORDINANCE TO AMEND THE WINCHESTER CITY CODE, CHAPTER 30. VEGETATION, TO ALLOW FOR THE CREATION OF THE ENVIRONMENTAL SUSTAINABILITY TASKFORCE

No citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:22 p.m.

Vice-President McInturff moved to adopt O-2013-34. *The motion was seconded by Mayor Minor 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 CU-13-495: Conditional Use Permit – Request of Bowman-Turner, LC for conditional use permit for conversion of ground floor nonresidential use to residential use at 118½, 120 and 124 East Cork Street (*Map Numbers 193-01-P-31 and 32*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. (*Residential conversion of ground floor office space*)

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

Mayor Minor moved to adopt CU-13-495. *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

2.0 PUBLIC COMMENTS

Todd Golding of 1027 Kinzel Drive stated on or about the 15th of September, he received a “survey”, which in reality is nothing more than a short-form application for his disabled real estate tax exemption from the Commissioner of Revenue’s office for the City of Winchester. The form claims the request is authorized pursuant to §27-36 of City Code. He was caught by surprise at this request because he is fully aware of §58.1-31219.6 in Chapter 32 of the Code of Virginia which states “The veteran shall be required to refile the information required by this section only if the veteran’s principal place of residence changes.” He stated he did not want to make assumptions so he reviewed §27-36 of City Code and found that in subsection (a) it reads: “Every organization except the Commonwealth, any political subdivision of the Commonwealth or the United States which owns real and personal property in the City of Winchester previously exempt pursuant to Chapter 36 of Title 58.1 of the Code of Virginia; and every organization exempt pursuant to Section 27-31; shall be required to file triennially an application with the Commissioner of the Revenue on such forms as the Commissioner shall prescribe as a requirement of retention of exempt status of the property.” He stated he again did not want to make assumptions as to what “Organization” meant so he found the following examples in Chapter 36 of Title 58.1 of the Code of Virginia; colleges, churches, 4-H clubs, FFA clubs, Boys and Girls Clubs, and various other non-profits. He then reviewed §27-31 of the City Code and found it to be more general but still defines organizations as “a non-profit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.” Which by the way matches almost exactly the words found in Article X, Section 6, Subsection (a), part 6 of the Constitution of Virginia. He pointed this out because his tax exemption is found in Article X, Section 6-A of the Constitution of Virginia. He stated since he received the re-application form, he has twice reached out to the Commissioner of Revenue’s office by email indicating that he feels this is an unlawful request. Both times, he has been told that this form is not a re-application but rather a “survey” and “a certification that the basis for exemption remains valid in terms of both a qualified owner and qualified use of the property. Indeed this is a simple misunderstanding. You have misinterpreted the request. The letter you received merely asks the recipient to verify that the usage of the property remains consistent with the basis under which the exemption was granted.” He stated the Commissioner of Revenue’s office has also directed him to §27-34 and 27-35 of the City Code. He did not take the time to read these sections specifically to Council but pointed out that both of these sections of the City Code can be found in Chapter 27, titled Taxation, in division 5, titled Property Exempt from Taxation by Designation and Classification. He stated the very first section is 27-31 and is titled Authorized. In subsection (a) of 27-31, it refers back to Article X, Section 6, subsection (a), part 6, which he already mentioned. He stated he was also referred to §58.1-3605 which is found in Chapter 36 of title 58.1 of the Code of Virginia. He pointed that out because his exemption and that of every other disabled veteran who qualifies for the exemption is not authorized in that section of the Constitution of Virginia but in the next section. His tax exemption is not defined in Chapter 36 of title 58.1 of the Code of Virginia but rather in

Chapter 32 of title 58.1 of the Code of Virginia. He stated nothing presented to him by the Commissioner of Revenue's office has indicated that he has a legal obligation to fill out the form. He has contacted his personal attorney, Phillip Griffin II, regarding this issue. Upon research, both Mr. Griffin and Mr. Paul Thompson, a veteran himself, have indicated that they agree with his position. He has asked them to reach out to the Commissioner of Revenue's office to see if they can resolve this issue and he expects them to do so in the very near future. He stated his goal is simple. He wishes to ensure that every disabled veteran who qualifies for this exemption get it and that they will not be harassed by frivolous forms that are unlawful both in Winchester and throughout the Commonwealth. He has reached out to several Veterans advocates both locally and statewide to include Mr. John Lewandowski of the Disabled Veterans Committee on Housing and the Paralyzed Veterans of America. He has also reached out to other Commissioner's of Revenue in the Commonwealth regarding this issue of which four have responded to his request and all have indicated that this is an improper application. He asked Council to try and influence the Commissioner of Revenue's office to carefully review the applicable laws further.

President Willingham asked if there was anyone else wishing to address Council. Seeing none, President Willingham closed the Public Comments at 7:29 p.m.

3.0 CONSENT AGENDA

- 3.1 O-2013-37:** First Reading – AN ORDINANCE TO AMEND AND REENACT SECTION 22-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO REFERRAL TO AND ACTION BY THE PLANNING COMMISSION ON REZONINGS AND ZONING TEXT AMENDMENTS TA-13-488 (*Defines Referral and extends time limit to 100 days*)
- 3.2 O-2013-38:** First Reading – AN ORDINANCE TO AMEND AND REENACT SECTIONS 30-49, 30-51, 30-52 AND 11-38 OF THE WINCHESTER CITY CODE PERTAINING TO NOTICE REQUIREMENTS FOR GRASS, WEEDS, AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY AND FEES FOR ABATEMENT OF TRASH AND TALL GRASS AND WEEDS BY THE CITY. (*Changes notice requirements for tall grass violations to once per growing season and creation of abatement fee*)
- 3.3 O-2013-39:** First Reading – AN ORDINANCE TO AMEND AND REENACT SECTIONS 6-8, 6-9, AND 6-144 OF THE WINCHESTER CITY CODE PERTAINING TO VACANT BUILDING REGISTRATIONS, FEES AND PENALTIES, AND CIVIL PENALTIES FOR VIOLATIONS OF THE VIRGINIA MAINTENANCE CODE. (*Vacant buildings required to be registered must also be derelict and increases registration fee and penalty*)
- 3.4 R-2013-58:** Resolution – Acceptance of the Detailed Time Schedule and Detailed Gateway Enhancement Plan prepared by Shenandoah University for the Millwood Avenue Project

3.5 Motion to authorize the adoption of the Juvenile Detention Center agreement

Vice-President McInturff moved to remove item 3.5 from the Consent Agenda. *The motion was seconded by Vice-Mayor Veach then unanimously approved 9/0.*

Councilor Buettner moved to approve the Consent Agenda as amended. *The motion was seconded by Vice-President McInturff then unanimously approved 9/0.*

Vice-President McInturff moved to table item 3.5 regarding the Juvenile Detention Center agreement until the next Council meeting. *The motion was seconded by Councilor Weber then unanimously approved 9/0.*

4.0 AGENDA

4.1 O-2013-36: First Reading – AN ORDINANCE TO CONDITIONALLY REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE (*Map Number 249-01-2*) FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY RZ-13-500 (*PUD Rezoning for Cedar Creek Place*)

4.2 R-2013-57: Resolution – Authorization for the issuance of Hospital Revenue Bonds Series 2013A for a new facility in Page County in an amount not to exceed \$115,000,000 and Hospital Revenue Refunding Bonds Series B to refund the outstanding IDA of Clarke County Hospital Facility Revenue Bonds

Councilor Clark moved to approve R-2013-57. *The motion was seconded 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	Abstain

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 AND PURSUANT TO §2.2-3711(A)(3) AND (6) FOR THE PURPOSE OF DISCUSSION OR CONSIDERATION OF THE SUBJECT OF the ACQUISITION OF AN INTEREST IN REAL PROPERTY AND FOR THE PURPOSE OF DISCUSSION OF THE SUBJECT OF INVESTMENT OF PUBLIC FUNDS WHERE BARGAINING IS INVOLVED, AND WHERE IF MADE PUBLIC, THE BARGAINING POSITION OR FINANCIAL INTEREST OF THE CITY WOULD BE ADVERSELY AFFECTED, AND PURSUANT TO §2.2-3711(a) (40) AND (29) FOR THE PURPOSE OF DISCUSSION OF THE AWARD OF A PUBLIC CONTRACT INVOLVING THE EXPENDITURE OF PUBLIC FUNDS, INCLUDING INTERVIEWS OF BIDDERS OR OFFERORS, AND DISCUSSION OF THE TERMS AND SCOPE OF SUCH CONTRACT, WHERE DISCUSSION IN AN OPEN SESSION WOULD ADVERSELY AFFECT THE BARGAINING POSITION OR NEGOTIATING STRATEGY OF THE CITY, AND PURSUANT TO §2.2-3711(A) (7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, APPOINTMENT, AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER INCLUDING THE APPOINTMENT OF OR PROSPECTIVE APPOINTMENT OF MEMBERS TO CERTAIN BOARDS AND COMMISSIONS.

Vice-President McInturff moved to convene into executive session at 7:39 p.m. *The motion was seconded by Councilor Buettner then unanimously approved 9/0.*

Vice-President McInturff moved to reconvene in open session at 8:58 p.m. *The motion was seconded by Vice-Mayor Veach then unanimously approved 9/0.*

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 Clark moved to adjourn the meeting at 8:59 p.m. *The motion was seconded by Councilor Weber then unanimously approved 9/0.*

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