

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

A regular session of the Winchester Common Council was held on Tuesday, October 14, 2008 in the Council Chambers, Rouss City Hall. President Charles Gaynor called the meeting to order at 6:59 p.m.

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

**ABSENT:** None. (0)

**MOMENT OF SILENCE** - President Gaynor asked for a Moment of Silence for everyone to remember the men and women serving our nation overseas and at home.

**PLEDGE OF ALLEGIANCE** - Mayor Minor led the Councilors and citizens in the Pledge of Allegiance.

**APPROVAL OF MINUTES** – September 9, 2008 Regular Meeting and October 7, 2008 Special Meeting

Councilor Coyne moved to approve the minutes of the September 9, 2008 Regular Meeting and the October 7, 2008 Special Meeting. *The motion was seconded by Vice-President Griffin then unanimously approved by voice-vote.*

**MOTION TO APPROVE AN AMENDMENT TO THE AGENDA** - President Gaynor moved to approve the amendment to agenda. *The motion was seconded then unanimously approved by voice-vote.*

**REPORT OF PRESIDENT**

- Motion to approve a resolution honoring Donald Seabright.

*The motion was seconded by Councilor Butler then unanimously approved by voice-vote.*

Councilor Butler presented the resolution to Mr. Seabright and thanked him for his years of service. Sheriff Lenny Millholland presented Mr. Seabright with a plaque of appreciation from the Sheriff's Office & Staff.

- Recognition of the INSIGHT Academy participants in attendance.

President Gaynor recognized the members in attendance.

- Award Certificates of Recognition for the National Merit Scholar Semifinalist Students.

Councilor Coyne called on Handley High School Principal Doug Joyner to recognize the students for reaching the semifinalist level for the National Merit Scholarship.

- Public Hearing: AN ORDINANCE TO AMEND AND RE-ADOPT CHAPTER 5 OF THE WINCHESTER CITY CODE TO INCLUDE ARTICLE III SECTIONS 5-40, 5-41, 5-42, AND 5-43 CONCERNING MIGRATORY AND NONMIGRATORY WATERFOWL.

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

- Public Hearing: AN ORDINANCE TO ACCEPT THE DONATION OF AND/OR AUTHORIZE THE PURCHASE OF AN EASEMENT ACROSS THE PRIVATELY OWNED LAND OF MT. CARMEL BAPTIST CHURCH, REBA M. BURBACH, AND ROBERT L. HARPER IN FURTHERANCE OF THE GREEN CIRCLE PROJECT.

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

- Public Hearing: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF WATER AND SEWER SYSTEM REVENUE BONDS OF THE CITY OF WINCHESTER, VIRGINIA, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$13,770,000, TO PROVIDE FUNDS FOR CERTAIN IMPROVEMENTS TO THE CITY'S WATER AND SEWER SYSTEMS.

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

- Public Hearing: Request of Fort Loudoun Properties, Inc. for a conditional use permit for conversion of ground floor nonresidential use to residential use at 26A Wolfe Street (Section 193, Double Circle 1, Block C, Lot 8) zoned Central Business, B-1 District with Historic Winchester, HW District overlay. CU-08-12

Vicky Puckett from Ft Loudoun Properties stated she was available to answer any questions Council may have.

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

- Public Hearing to receive citizen comment on modification of fares and operating hours Winchester Transit.

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

- Omar Roya of 372 Valley Mill Road stated he had a question about the financial sector of Winchester. As we all know, we are going through an economic recession right now and people are saying it will never affect a small town like Winchester. You can't help to notice that small businesses are closing and people are losing employment. He wants to know what steps will Council take or have taken to help the City of Winchester go through this problem.

President Gaynor stated we have done everything possible to trim the budget. We have tried to improve the transportation system for the shoppers and the commercial district. We are certainly adhering to a policy of a minimum amount of fees and taxes for people who are already stressed. He then asked the Chairman of the Finance Committee, Vice-Mayor Buettner, if he wanted to add anything.

Vice-Mayor Buettner stated as a local government with a small budget, there are limits to what we can do legally and practically for economic stimulus. We have looked at ways to partner with private enterprise, incentives to create more development downtown, and incentives to create more density downtown to bring more people thus attracting boutique stores and shops. We are looking hard at this budget for any extra expenditure on the city's part to help keep taxes down. As far as being able to put an influx of cash into the system, we can't do that. We don't have the ability. As far as decreasing taxes, we can't do that without cutting services. We are looking very hard at what we are spending and getting back to our core services and supporting those. The biggest thing we can do is create a business friendly environment through incentives and partnerships to bring development into town. That can be done through a number of ways such as retail, tourism, white collar type jobs, plus getting people downtown in the historic district. Other than that, we are open to suggestions.

*No further citizens came forward to address Council concerning this issue and the President declared the public hearing closed at 7:17 p.m.*

**6. REPORTS OF STANDING COMMITTEES**

**6-1 FINANCE AND ADMINISTRATION**

- Second Reading, by title, for adoption: AN ORDINANCE TO AMEND AND RE-ADOPT CHAPTER 5 OF THE WINCHESTER CITY CODE TO INCLUDE ARTICLE III SECTIONS 5-40, 5-41, 5-42, AND 5-43 CONCERNING MIGRATORY AND NONMIGRATORY WATERFOWL.

Councilor Coyne stated he will not support this item and would like to see a more educational approach be taken. He was glad to see the fine changed.

Councilor Butler stated he would also not be supporting the ordinance and agrees with Councilor Coyne that a more educational approach should be taken.

*The motion was approved 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:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Vice-Mayor Buettner	Aye
Councilor Butler	Nay
Councilor Clark	Aye
Councilor Coyne	Nay
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Nay
Councilor Masters	Aye
Mayor Minor	Nay
Councilor Nelson	Nay
President Gaynor	Aye

- Motion to approve a resolution on modification of fares and operating hours of Winchester Transit.

*The motion was seconded by Vice-President Griffin.*

Councilor Coyne moved to strike the language “make the changes in the routes as proposed” in the Therefore Be It Resolved paragraph of the resolution. The motion was seconded by Councilor Major then unanimously approved by voice-vote.

*The motion as amended was then unanimously approved by voice-vote.*

- Motion to confirm the City Manager’s appointee to the Office of Chief of Police in accordance with Section 20-17 of the Winchester City Code.

*The motion was seconded by Councilor Nelson.*

President Gaynor made the announcement that City Attorney Anthony Williams reminded him that there have been many meetings on this matter including an executive session that was continued. As a point of order, he moved to formally come out of executive session. The motion was seconded by Vice-President Griffin then unanimously approved by voice-vote.

Upon returning to the open meeting, 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 Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Aye
President Gaynor	Aye

*The motion to confirm the City Manager’s appointee to the Office of Chief of Police passed 10/1 with Councilor Major voting in the negative.*

**6-2 PLANNING AND DEVELOPMENT**

- Report of the in-house viewers for AN ORDINANCE TO VACATE AND CONVEY TO WINCHESTER MEDICAL CENTER, INC APPROXIMATELY 640 SQUARE FEET OF RIGHT OF WAY IN THE VICINITY OF THE EAST ENTRANCE AT 1840 AMHERST STREET. SV-08-02 (Page 7)

Vice-President Griffin made a motion to accept the viewer’s report. *The motion was seconded by Councilor Butler then unanimously approved by voice-vote.*

- Second Reading, by title, for adoption: AN ORDINANCE TO VACATE AND CONVEY TO WINCHESTER MEDICAL CENTER, INC APPROXIMATELY 640 SQUARE FEET OF RIGHT OF WAY IN THE VICINITY OF THE EAST ENTRANCE AT 1840 AMHERST STREET. SV-08-02

*The motion was approved 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:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Aye
President Gaynor	Aye

- Report of the in-house viewers for AN ORDINANCE TO VACATE AND CONVEY TO C.H. SCHUTTE, INC. APPROXIMATELY 8.75 SQUARE FEET OF RIGHT OF WAY IN THE VICINITY OF 1000 VALLEY AVENUE. SV-08-03

Vice-President Griffin made a motion to accept the viewer's report. *The motion was seconded by Councilor Coyne then unanimously approved by voice-vote.*

*The motion was approved 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:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Aye
President Gaynor	Aye

- Second Reading, by title, for adoption: AN ORDINANCE TO VACATE AND CONVEY TO C.H. SCHUTTE, INC. APPROXIMATELY 8.75 SQUARE FEET OF RIGHT OF WAY IN THE VICINITY OF 1000 VALLEY AVENUE. SV-08-03

*The motion was approved 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:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Aye
President Gaynor	Aye

- Motion to approve a Request of Fort Loudoun Properties, Inc. for a conditional use permit for conversion of ground floor nonresidential use to residential use at 26A Wolfe Street (Section 193, Double Circle 1, Block C, Lot 8) zoned Central Business, B-1 District with Historic Winchester, HW District overlay. CU-08-12

The motion was seconded by Councilor Nelson.

Vice-Mayor Buettner stated he will not be able to support this. He has always felt that in and around downtown and in the historic area, we wanted some sort of economic generator on the ground floor and residential on the upper floors. This particular building has some retail type boxes now. He would prefer the ground floor to be something other than residential use. He stated it is what we have talked about as our vision for downtown.

Vice-President Griffin asked Planning Director Tim Youmans to break down the layout of the building to include the commercial and residential areas. Mr. Youmans stated the applicant is proposing to have 15 apartments with an average of 1010 square feet per unit. The commercial square footage would be 7,300 square feet out of 24,000 square feet total. He has toured the building and has checked with code enforcement to make sure any issues have been addressed. This is not a ground floor space that fronts out onto Braddock Street which is a

major commercial frontage where this could not be considered. It is on Wolf Street which is considered a lesser property.

Vice-President Griffin asked if this will be the only entrance on Wolf Street that is residential. Mr. Youmans stated it would not be.

Councilor Masters stated he remembers from Planning that we are trying to establish a retail base on the first floors. Even on Indian Alley which is not really a street, the ground floor is required to be business. Along Wolf Street, all of the properties have business enterprises on the ground floor. If he supports this, he will be going against what he thought we are trying to do. He then asked if he is correct. Mr. Youmans stated this is discretionary. As a conditional use permit, City Council needs to decide if this will have a detrimental impact on adjacent residences or commercial properties in the area. The Planning Commission did support this request. The ordinance prohibits this type of ground floor conversion on frontage that is considered major commercial frontages such as Piccadilly Street, Cameron Street, and Braddock Street. Wolf Street is not considered a major commercial frontage. The finding should be based on if there is a detrimental impact on the residences or businesses.

Vice –President Griffin stated she thinks several members of Council are struggling with the fact that Council is trying to promote retail and the building has had its share of problems. She asked if this could be undone once it is approved if something happens in the building. Mr. Youmans stated the Planning Commission conditions require conformity with a submitted 1 bedroom plan and some landscaping improvements on the exterior of the building. Mr. Youmans stated if a zoning issue occurred on the same property, it could be considered for revocation of the CUP.

Councilor Helm stated he wants the project to continue to flourish but he does not see how Wolf Street is not significant in a retail sense. He also does not think the obligation to allow a CUP unless you can see a detriment. He thinks you allow a CUP if you can see an enhancement and he does not see that with this change. He does not see the benefit of having a residence there instead of a business.

*The motion was defeated 3/8 with President Gaynor, Vice-President Griffin, Mayor Minor, Vice-Mayor Buettner and Councilors Butler, Helm, Major, and Masters voting in the negative.*

- Announce the term expiration of William Aikens as a member of the Board of Building Code Appeals and direct the Clerk of Council to advertise the vacancy. Mr. Aikens is eligible for re-appointment.
- Announce the term expiration of David Shore as a member of the Planning Commission and direct the Clerk of Council to advertise the vacancy. Mr. Shore is eligible for re-appointment.

**6-3 PUBLIC SERVICES**

- Second Reading, by title, for adoption: AN ORDINANCE TO ACCEPT THE DONATION OF AND/OR AUTHORIZE THE PURCHASE OF AN EASEMENT ACROSS THE PRIVATELY OWNED LAND OF MT. CARMEL BAPTIST CHURCH, REBA M. BURBACH, AND ROBERT L. HARPER IN FURTHERANCE OF THE GREEN CIRCLE PROJECT.

*The motion was approved 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:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Aye
Mayor Minor	Aye
Councilor Nelson	Aye
President Gaynor	Aye

- Second Reading, by title, for adoption: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF WATER AND SEWER SYSTEM REVENUE BONDS OF THE CITY OF WINCHESTER, VIRGINIA, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$13,770,000, TO PROVIDE FUNDS FOR CERTAIN IMPROVEMENTS TO THE CITY’S WATER AND SEWER SYSTEMS.

Vive-Mayor Buettner stated one of the components of this that he has issues with is the \$3 million for the study on the expansion of the plant. He wonders if that is necessary at this time.

Councilor Helm stated we are operating above the level the Virginia Department of Health likes us to operate and we are obligated by those thresholds to come up with a plan. This is the design phase of that plan and it would be to the supplies of our water system. Short of that, we would need to provide a plan to the Department of Health on how we are going to curtail our consumption.

Vice-Mayor Buettner asked if the plan could be to replace the water lines to eliminate the water lost and accomplish the same goal for \$3 million less.

Councilor Helm stated it could but we would have to see if it is viewed as a creditable plan or not. He asked Utilities Director Perry Eisenach how much of

the bond is for the expansion. Mr. Eisenach stated \$4.2 million of the bond goes to the Water Treatment Plant. About \$3 million is for the expansion and upgrades of the 50 years old facility. He reminded Council that they past a resolution authorizing the beginning of the expansion about a year ago. Staff has been proceeding with that and the design is about 60% complete. Even if the plant is not expanded right now, it will save the city millions of dollars in construction costs if and when the expansion is done.

Councilor Helm asked if we could carve out the planning budget for the expansion as compared to the enhancements that have to be made. Mr. Eisenach stated we are at a point where we can proceed with just the enhancements and not the 100% drawings for the expansion. He did not think it would more than a million dollars off the bond because we have already progressed the design to the 70% level.

Councilor Coyne asked if this committed us to do the expansion. Mr. Eisenach stated it does not. Councilor Coyne asked if that would satisfy the Department of Health even if we never expanded the plant. Mr. Eisenach stated the only time we would be required to go through with the expansion is if we operated above the 95% level for 3 straight months.

*The motion was approved 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:*

<b><u>MEMBER</u></b>	<b><u>VOTE</u></b>
Vice-Mayor Buettner	Aye
Councilor Butler	Aye
Councilor Clark	Aye
Councilor Coyne	Aye
Vice-President Griffin	Aye
Councilor Helm	Aye
Councilor Major	Aye
Councilor Masters	Nay
Mayor Minor	Aye
Councilor Nelson	Aye
President Gaynor	Aye

- Motion to approve a resolution providing for the issuance, sale and award of a taxable water and sewer system revenue bond, series 2008, of the city of Winchester, Virginia, in a principal amount not to exceed \$13,300,000, heretofore authorized, and providing for the form, details and payment thereof.

*The motion was seconded by Vice-President Griffin SECONDED then unanimously approved by voice-vote.*

- First Reading, by title: An Ordinance to Approve the Transfer of Property between the City of Winchester, the Frederick County School Board, and/or Frederick County in furtherance of the Hope Drive extension project.
- Motion to approve the removal of a stop sign at the Chelsea/Sterling intersection.

*The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

- Announce the term expirations of Patrick Farris, Nancy Mitchell, and Susan Carney as members of the Tree Commission and direct the Clerk of Council to advertise the vacancies. Mr. Farris, Ms. Mitchell, and Ms. Carney are eligible for re-appointment.

#### **6-4 COMMUNITY SAFETY**

- First Reading, by title: An Ordinance to Amend and Re-Adopt Sections 10-17, 10-30, 10-32, 10-46 and 10-48 of the Winchester City Code Pertaining to Fire Prevention and Protection.
- Motion to re-appoint Elizabeth Minor as a member of the Regional Jail Authority for a four year term expiring October 31, 2012.

*The motion was seconded by Vice-President Griffin then unanimously approved by voice-vote.*

- Motion to appoint Jon D. Henschel to the Lord Fairfax EMS Council Board of Directors.

*The motion was seconded by Councilor Major then unanimously approved by voice-vote.*

#### **6-5 HEALTH, EDUCATION AND WELFARE**

- Motion to re-appoint Jim Riley, Sandra Armstrong, and Veerle Foreman as members of the Handley Library Board to a four year term expiring November 30, 2012.

*The motion was seconded by Councilor Major then unanimously approved by voice-vote.*

- Announce the term expirations of Dr. Bernard Lewis and Robert Geiser Jr. as members of the Northwestern Community Services Board (Chapter 10) and direct the Clerk of Council to advertise the vacancies. Dr. Lewis and Mr. Geiser are eligible for re-appointment.

- Announce the term expiration of Dr. Bernard Lewis as a member of the Northern Shenandoah Valley Disability Services Board and direct the Clerk of Council to advertise the vacancy. Dr. Lewis is eligible for re-appointment.
- Announce the term expirations of David Spence, Doug Toan, Sonny Shiley, and Harry Smith as members of the Community Development Committee and direct the Clerk of Council to advertise the vacancies. Mr. Spence, Mr. Toan, Mr. Shiley, and Mr. Smith are eligible for re-appointment.

## 7. **NEW BUSINESS**

### 1. Report of the Mayor.

Mayor Minor stated because misunderstandings exist about many mental illnesses and our social culture often wrongly imposes stigma on them, I proudly endorsed proclaiming October 5 through October 11, 2008 as Mental Illness Awareness Week to increase public awareness of mental illness.

Mayor Minor announced October is also Domestic Violence and Sexual Assault Awareness month. The 16th Annual Candlelight Vigil will be held on Thursday, October 23rd from 7:00 to 8:00 p.m. on the steps of the Joint Judicial Center.

Mayor Minor stated that earlier this month, she was honored to participate in celebrating National Fruit Product Company/White House Foods 100 years in business and the 120<sup>th</sup> anniversary of Jno. S. Solenberger True Value. We are proud for these businesses to be Virginia based and look for to many more years here in Winchester!

Mayor Minor stated the Northeast Infrastructure Project is progressing nicely along Cork Street. Hopefully, the work on Cork Street will be complete by the end of the month. We thank all the citizens, business owners and the public who utilize these important roadways for their patience and cooperation.

Mayor Minor announced the completion of the Active Living and Recreation Center project should be about the 23<sup>rd</sup> of October with a formal dedication in November. The public will be informed when we have the official opening.

President Gaynor announced a Work Session will be held on October 28, 2008 at 5:30 p.m. in Council Chambers.

**8. ADJOURNMENT**

With no further business to discuss, President Gaynor moved to adjourn the meeting at 8:30 p.m. *The motion was seconded by Councilor Nelson then unanimously approved by voice-vote.*

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Kari J. Van Diest  
Deputy Clerk of the Common Council