

**MINUTES OF THE COMMON COUNCIL
WORK SESSION
March 23, 2010
City Council Chambers – Rouss City Hall**

PRESENT: Vice-Mayor Michael Butler; Councilor John Hill, Milt McInturff and Les Veach; Vice-President Art Major; Mayor Elizabeth Minor (6)

ABSENT: President Jeff Buettner; Councilor Evan Clark and John Willingham (3)

Vice President Major called the meeting to order at 5:29 p.m.

Announcement: Proclamation honoring National Multiple Sclerosis Week signed by Mayor Minor.

Vice-President Major acknowledged the proclamation signed earlier this month by Mayor Minor.

New Business:

Presentation: Social Services Advisory Board Annual Report

Carla Taylor presented the annual report on behalf of the Social Services Advisory Board. She stated due to the economy, many of the numbers in the primary safety net programs have increased. Seventy percent of the funding for these programs is from federal and state dollars.

Councilor Clark arrived at 5:35 p.m.

O-2010-10: Ordinance – AN ORDINANCE TO ADD SECTION 2-112 TO THE WINCHESTER CITY CODE PERTAINING TO ASSISTANT CITY ATTORNEYS, SPECIAL COUNSEL, OUTSIDE COUNSEL, AND SUPPORT STAFF TO THE OFFICE OF THE CITY ATTORNEY

City Manager Jim O'Connor stated the workload in the City Attorney's office has increased and the City is looking to save some of the money being spent on outside attorneys.

Vice-Mayor Butler moved to send O-2010-10 forward to Council. *The motion was seconded by Councilor McInturff then unanimously approved by voice-vote.*

R-2010-15: Resolution – Authorization to accept \$47,399.25 in DUI Grant Funds

Chief Kevin Sanzenbacher stated this grant occurs annually and covers expenses for overtime pay to man the road blocks, DUI checks, and equipment replacement.

Councilor Veach moved to send R-2010-15 forward to Council. *The motion was seconded by Vice-Mayor Butler then unanimously approved by voice-vote.*

O-2010-12: Ordinance - AN ORDINANCE TO DENY THE APPLICATION OF WINCHESTER MEDICAL CENTER FOR TAX EXEMPT STATUS BY CHARITABLE ORGANIZATION PURSUANT TO 27-33 OF THE WINCHESTER CITY CODE

City Assessor Will Rice stated Winchester Medical Center amended their application to include the Diagnostic Center and the Wellness Center. Based on some of the entities included, staff recommendation is to deny the request.

Mayor Minor moved to forward O-2010-12 to Council. *The motion was seconded by Councilor Veach then approved 5/0. Vice-Mayor Butler recused himself based on advice from legal counsel.*

Discussion: Proposed new positions in Utilities and Proposed FY11 Operating Budget at OWRF

Utilities Director Perry Eisenach stated the City operates the OWRF on East Rte. 7 and the plant is going under major renovations. Because of this, staff is requesting 3 new positions – 1 electrician to help with the work at all locations and two operators for the plant.

Don Riggleman, OWRF Manager, presented options and the reasons for the additional operating personnel. The new personnel would help with the additional work caused by the increased size of the facility during the 3 p.m.-11 p.m. shift and the 11 p.m.-7 a.m. shift.

Vice-President Major stated the Service Authority questions whether all three personnel are needed right now since the new facilities will be phased in over time. Mr. Riggleman stated although the work load will increase when everything is complete, the load increases even more when the facilities are turned off and on.

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

O-2010-13: Ordinance – Proposed Utility Rate Increase

Mr. Eisenach stated the City has undertaken some significant utility projects with the wastewater plant, the water treatment plant, the downtown infrastructure, and the northeast infrastructure. Two more infrastructure projects will begin this summer and fall. These projects are needed to guarantee service in the future. Staff is recommending a 15% increase effective June 1, 2010 based on the budget and the projects. Another 15% increase will be effective June 1, 2011. Application will be made this fall for a significant loan in the amount of approximately \$22,000,000.00 for these projects. The rate increases have to be in place for the approval of this loan. The percentage increase is higher than originally thought due to a decrease in water consumption particularly in the county. If you approve any amount lower than the 15% increase, it would have a significant impact on the reserves.

Vice-President Major asked what percentage is directly from the required plant renovations compared to the infrastructure projects. Mr. Eisenach stated he did not have that figure. Vice-President Major stated a lot of this is required from Federal and State unfunded mandates.

Vice-Mayor Butler moved to forward O-2010-13 to Council. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

O-2010-14: Ordinance – Proposed increase for Utility Deposit and Fee for Service Disconnection

Mr. Eisenach stated all new customers are required to pay a \$90.00 deposit if they do not have a good payment record established with the City. This amount has not been increased since 2003. Staff is recommending an increase to \$135.00 effective June 1, 2010 and an additional increase to \$155.00 effective June 1, 2011.

Vice-President Major suggested looking at a way to phase in the deposit to help those who may not be able to pay that large amount at one time. Mr. Eisenach stated staff would look at it and suggested they could also look at running the individuals credit report and link the deposit requirement to that.

Mr. Eisenach stated a \$20.00 disconnect fee is charged when staff turns off the water at the property for lack of payment. This amount does not recoup the City's cost. Staff recommends increasing the discount fee to \$55.00.

Councilor Clark moved to forward O-2010-14 Council. *The motion was seconded by Vice-President Major then unanimously approved by voice-vote.*

Discussion: Proposed improvements on Berryville Avenue between Ross Street and Interstate 81

Mr. Eisenach stated as part of the water main replacement project on Berryville Avenue, part of a raised median was removed and needs to be replaced at a minimum. However, in an effort to improve the area, an MPO study recommended the left turn lane leading to southbound I-81 be extended all the way past Ross Avenue cutting off the entrances into the shopping centers. Staff recommends increasing the turn lane but it would impact the gas stations by cutting off access from Berryville Avenue. The gas station owners have expressed their concerns. The recommendation is based on traffic safety but he admits the property owners concerns need to be taken into consideration.

Councilor McInturff suggested removing all the medians on Berryville Avenue and creating a center left turn lane. Mr. Eisenach stated that option would decrease safety and recommended option 1 over that.

Councilor Clark stated he travels that corridor daily and it is broken now. The left turn lane needs to be extended somehow but still allow access into the gas stations.

Mr. Eisenach stated from the consensus of Council, staff will move forward with option 1 of reinstalling the removed median.

Discussion: Traffic Study for intersection of N. Loudoun and N. Cameron

Mr. Eisenach stated Council decided to leave the last block of North Cameron one way and directed staff to get a study to look at alternatives for the North Loudoun/North Cameron intersection. The cost of the study is \$31,000.00. Mr. Eisenach stated staff can proceed with the study but recommended trying to get the MPO to fund the study instead.

Vice-President Major stated unless accidents occur at the intersection, he does not see the need to spend money on the study.

Discussion: Radio System Report

Chief Sanzenbacher presented a summary of the current radio system that is 17 years old. The system does not cover the entire city especially in the southern part and some of the larger buildings including the hospital and Handley High School. The system does not have the ability to transfer data and lacks interoperability to communicate with other departments and agencies. The tower sites are old and inadequate. There are not enough channels for emergencies or room for other departments to use the system. Certain repairs to the system cannot be made and the Fire Department's radios can no longer be repaired. The city will need to narrow band by the FCC 2013 deadline.

Chief Sanzenbacher stated there were a lot of questions regarding the Kimball contract. Kimball was the lowest bidder in 2006 and the contract is valid through 2013. The scope included a needs analysis, system capability and conceptual design. The recommendations from Kimball made in 2007 were to abandon the VHS channels and look for room in the 700-800 MHz range. In August 2009, Kimball made a presentation for conducting a 4 phase study to include system design, site acquisition, education, and community outreach. The \$245,000.00 price quoted at that time was reduced to \$204,000.00.

Chief Sanzenbacher stated staff looked into the Virginia State Police STARS system and research showed there would be no cost savings. The system would cost approximately \$3.6 million for public safety. The system is designed for troopers not for urban policing or fire fighting and may not be feasible due to the tower locations, the unknown cost of maintenance, and the cost sharing formulas.

Chief Sanzenbacher stated staff recommends moving forward to meet the FCC deadline of 2013 with the help of experts. Staff believes Kimball is the best choice with the lowest bid and they are the best qualified in the area. Kimball understands our issues and already has a contract with the City.

Vice-Mayor Butler asked if this included the work for the consolidation of the communications center. Chief Sanzenbacher stated that is a separate RFP. Vice-Mayor Butler stated it would be best to work together.

Chief Sanzenbacher expressed his concern that it will come down to a time issue and thinks the items should be de-linked. Vice-Mayor Butler stated he is in favor of upgrading the system and agrees it is critical but he also thinks the ECC issue has a direct bearing on this. He wants to make sure as one moved forward the other is not left behind. It was abandoned in 1996 and should be not abandoned now.

Chief Sanzenbacher asked the Frederick County Sheriff if they can look at similar systems and was told no because they are 80% finished. The two issues can move forward together but he doesn't want to see this bogged down because of it.

Mr. O'Connor stated several firms have sent in proposals for the consolidation and Kimball is one of them. The two firms will be working together as we move forward.

Vice-President Major stated the delay has been that staff has not been able to answer questions in the past until now. He believes the scope was never put out to bid.

Councilor Veach asked the City Attorney to go through the contract and the RFP on this item.

Fire & Rescue Chief Frank Wright stated from his department's perspective, the radios need to be replaced soon regardless of this deadline or they will have to change operations including not sending people into burning buildings. Their system is broken and needs to be updated.

Mr. O'Connor stated the item will be brought back as a discussion item on the next agenda.

CU-10-37: Conditional Use Permit - Request of Petrona Argueta dba Mi Ranchito Restaurant LLC for a conditional use permit for nightclub use at 2018 South Loudoun Street (Map Number 252-01-13) zoned Highway Commercial (B-2) District.

Zoning Administrator Vince Diem stated the request is to add or incorporate night club use at the establishment on South Loudoun Street. The location is surrounded by commercial establishments. The limitation of sound condition has been removed because of the lack of proximity to residential areas. The applicant has voluntarily offered to hire 2 security personnel. The text amendment approved in October eliminated the need to reevaluate parking. Three police calls have been made to the establishment in the past year. Staff and the Planning Commission recommend approval.

Councilor Willingham arrived at 7:01 p.m.

O-2010-15: Ordinance - AN ORDINANCE TO CONDITIONALLY REZONE 2.762 ACRES OF LAND AT 812, 830, 844 AND 918 AMHERST STREET (Map Numbers 171-01-16, 15A, 10 & 8) FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH HISTORIC WINCHESTER (HW) DISTRICT OVERLAY TO RO-1 DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY; AND 0.222 ACRES AT 825 WHITTIER AVENUE (Map Number 171-01-16A) FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT WITH HW DISTRICT OVERLAY TO RO-1 DISTRICT WITH CE DISTRICT OVERLAY; AND 0.413 ACRES AT 829 WHITTIER AVENUE (Map Number 171-01-15B) FROM LR DISTRICT WITH HW DISTRICT OVERLAY TO RO-1 DISTRICT; AND 0.062 ACRES AT 835 WHITTIER AVENUE (Map Number 171-05-B) FROM LR DISTRICT WITH HW DISTRICT OVERLAY TO LR DISTRICT. The Comprehensive Plan calls for design control using the CE overlay District with expansion of RO-1 areas along Amherst Street. RZ-10-48

Planning Director Tim Youmans stated this is a very complex rezoning. The request includes 4 properties on Amherst including the Calvary Baptist Church but not the 3 parcels closest to Amherst and Whittier Avenue. It also includes two parcels on Whittier and one smaller one adjacent to them. Across the street are the Glen Burnie property and the Museum of the Shenandoah Valley. The RO-1 zoning on Amherst is not proposed to change. The properties on Whittier are currently LR zoning and are proposed to be brought into the RO-1 district except for 835 Whittier. The proposal is to remove the overlying Historic

Winchester (HW) district and replace it with the Corridor Enhancement (CE) overlay. The HW overlay will still be on 829 Whittier because the property owner did not want to be included in the application. This is the local HW district and not the national district. The applicant submitted the request as a conditional rezoning with proffers that must be done if the rezoning is approved. The proffers include a shared driveway and shared parking between 812 and 830 Amherst. The proffers are being offered only if Council approves the rezoning request as is. The Planning Commission did not support the changes in the overlay districts.

Mr. Diem stated a Historical District Guideline Committee has been meeting and one of the issues discussed is the incongruity between the national and local historical districts. David Edwards, Regional Coordinator of the Virginia Department of Historical Resources, suggested a change in the district be made and funding for a study could be available through a grant.

Mr. Youmans stated the Comprehensive Plan does call for the expansion of the RO-1 zoning and staff feels this conditional rezoning request is a good proposal for that.

Mayor Minor thanked Mr. Youmans and Mr. Diem and stated she respects their opinions but finds it hard to over look the Planning Commission who voted unanimously not to eliminate the HW district. She feels this will be the first step in whittling away the historic district and needs time to study the issue.

Vice-Mayor Butler asked what conversations have occurred with Calvary Baptist Church. Mr. Youmans stated he spoke with a member of the church and their concerns were on the shared parking. They are supportive of the removal of the HW overlay but had concerns regarding the legal obligations of shared parking.

In response to several questions from Councilor Willingham, Mr. Youmans stated a site plan will come back to Council for the CUP approval required for the parking layout. The office building is by-right in the CE overlay and will not require a site plan approval by Council. The structures at 812 and 830 Amherst were built around 1900 but staff does not have the 1976 inventory sheets on them to determine if they are contributing or not. The historic survey that is proposed by Mr. Diem will help with that determination.

Vice-Mayor Butler moved to forward O-2010-15 to Council. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

Council took a 5 minute break at 7:41 p.m.

R-2010-16: Resolution – Application for grant funding through the Virginia Department of Historic Resources to complete the Historic Winchester District architectural and historic survey

Mr. Diem stated staff recognizes that Historical Architectural Survey is outdated. The City has partnered with Preservation of Historic Winchester and the Northern Regional Office of the Virginia Department of Historic Resources to update that survey. The first phase of the project was completed in 2008 but stopped due to lack of funding. Staff is requesting approval to apply for a grant for a total of \$25,000.00. This grant does require a minimum of a 30% match. The proposal is to do a dollar for dollar match to optimize the chances of approval. This grant would reimburse the City for expenses after they are paid.

Councilor Veach moved to forward R-2010-16 to Council. *The motion was seconded by Vice-Mayor Butler then unanimously approved by voice-vote.*

Discussion: Response to the Google Fiber for Communities Request for Information

Information Technology Director Tom Lloyd stated Google put out a request to see if localities would be interested in high speed internet to households. The only cost is about 10 hours of staff time to prepare the application. Unless there is objection, the City Manager intends to send off the application at the end of the week.

R-2010-17: Resolution – Providing for the issuance and sale of General Obligation Public Improvement Refunding Bonds, Series 2010, of the City of Winchester, Virginia, in a maximum principal amount of \$65,000,000, providing for the form, details and payment thereof and providing for the refunding of certain General Obligation Public Improvement Bonds of the City

Finance Director Mary Blowe stated the bond rates are so low that we can refund some of the bonds to get money back. The maturity would stay the same.

Vice-Mayor Butler moved to forward R-2010-17 to Council. *The motion was seconded by Councilor Veach then unanimously approved by voice-vote.*

O-2010-16: Ordinance – AN ORDINANCE TO REVISE WINCHESTER CITY CODE §14-55 VOLUNTARY PAYMENT OF PARKING FINE

Assistant City Manager Anne Lewis stated at the January meeting of the Winchester Parking Authority, the authority voted to increase the fine to \$10.00 effective July 1, 2010. Chief Sanzenbacher completed a survey of fines in different localities for comparison. The ordinance also simplifies the language for the penalties.

Councilor Willingham moved to forward O-2010-16 to Council. *The motion was seconded by Councilor Clark then approved 7/1 with Vice-Mayor Butler voting in the negative.*

O-2010-17: Ordinance – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-171 OF THE WINCHESTER CITY CODE REGARDING CIGARETTE TAXES

Ms. Blowe stated at the last Budget Committee meeting, staff was asked to look at the cigarette tax. After doing so, staff recommends increasing the tax from 10 cents to 25 cents.

Councilor Clark asked what the tax rate in Frederick County is. Ms. Blowe stated Frederick County is grandfathered by code and does not have a cigarette tax. However, Stephens City is at 25 cents.

Councilor Willingham stated one proposal was to increase the cigarette tax to alleviate some taxes on the Old Town. Mr. O'Connor stated this money would go to equipment repair and replacement. Historically, the City could expect to see a dip in taxes but it does recover. The increase would only be on cigarettes and not other tobacco.

Councilor Veach asked if it would need to be in the ordinance to designate for funds to equipment repair. City Attorney Anthony Williams stated it would need to be in a separate document but he would like to research it.

Councilor Evan Clark moved to forward O-2010-17 to Council. *The motion was seconded by Councilor Veach then unanimously approved by voice-vote.*

Executive Session: Motion to convene in executive session pursuant to §2.2-3711(a)(7) of the Code of Virginia for briefings by staff members and advice of legal counsel pertaining to a matter in probable litigation involving privately owned real property where discussion and consultation in an open meeting would adversely affect the negotiating position of the City and require the disclosure of materials otherwise protected as attorney work product and/or attorney client privilege.

-AND-

Motion to convene in Executive Session pursuant to §2.2-3711(A)(3) to discuss or consider available options regarding the disposition of publicly held real property through sale, lease, franchise, or public-private partnership where discussion in open session would adversely affect the bargaining position of the City.

Councilor Willingham moved to convene into executive session. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Councilor Veach moved to reconvene in open session at 9:12 p.m. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

Upon returning, council members approved a motion to return to open meeting and 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
President Buettner	Absent
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

Adjournment

Councilor Willingham moved to adjourn the meeting at 9:12 p.m. *The motion was seconded by Councilor Veach then unanimously approved by voice-vote.*