

**Minutes of the Common  
Council Work Session  
Tuesday, October 26, 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.

President Buettner asked for a motion to add an item regarding Supplemental Appropriations to the Agenda. *The motion was made by Councilor Willingham, seconded by Mayor Minor, and then unanimously approved by voice-vote.*

**Discussion:** Winchester Parking Authority – Bill Bayliss, Chairman

Mr. Bayliss's discussion item stemmed back a year ago regarding the city meters. He gave a timeline of financial projections. He explained there is a challenge when offering free handicap parking in the parking garages without having people in the booths. He had not found that handicap space users had issues with paying, but they did request closer parking spots. In summary, he stated that the plan would be to charge for parking in the garages but allow free handicap parking on the street.

Councilor Clark moved to remove O-2010-34 pertaining to Coin Required and Overtime Parking from the table for the purpose of discussion. *The motion was seconded by Councilor McInturff then unanimously approved by voice-vote.*

After a brief discussion, City Manager Jim O'Connor suggested staff draft an ordinance for consideration that would have handicapped parking on the street that are not metered and paid handicapped parking in the garages.

Vice-President Major asked to have a draft ordinance from the Parking Authority along with the hybrid ordinance from staff for consideration.

Mr. O'Connor stated the ordinances would be ready by the next work session.

**Presentation:** Targeted Business Update – Patrick Barker, Winchester/Frederick County EDC

Mr. Barker gave an overview of evaluated business targets for this community.

**Old Business:**

**Motion** to remove O-2010-45 pertaining to Real Estate Tax Exemption for the Elderly and Disabled from the table (tabled on 9/14/10)

Vice-President Major moved to remove O-2010-45 pertaining to Real Estate Tax Exemption for the Elderly and Disabled from the table. *The motion was seconded by Vice-Mayor Butler then unanimously approved.*

**O-2010-45: Second Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-19 OF THE WINCHESTER CITY CODE REGARDING REAL ESTATE TAX EXEMPTION FOR THE ELDERLY AND DISABLED**

Ann Burkholder, Commissioner of the Revenue, presented the amendment regarding real estate tax exemption for the elderly and disabled. She explained that the chief provision is to include everyone in the household, including the non-relatives of the owner. Deadline for filing for the exemption is the first day of April. She requested that they be able to accept applications up to April 15, provided that they have a sworn affidavit from a doctor licensed to practice in the Commonwealth.

Attorney Williams recommended that Council make an amendment to the Ordinance to include the words '*or other evidence deemed satisfactory by the Commissioner of Revenue*'.

Vice-President Major moved to add the amendment. *The motion was seconded by Mayor Minor then unanimously approved.*

Vice-President Major moved to forward O-2010-45 to Council. *The motion was seconded by Mayor Minor then unanimously approved.*

**Update:** Removal of 4-way stop signs at the intersection of Braddock and Amherst Streets - Perry Eisenach, Utilities and Engineering

Mr. Eisenach presented three (3) options for the 4-way stop: leave it as it is, put the stop signs back or installing a traffic light. He explained that based on traffic count Braddock Street warrants the stop signs but Amherst Street does not. If sight distance is included then it warrants it. A signal light is not warranted, plus the cost would be high, around \$200,000. He recommended that in terms of safety that the stop signs be put back up immediately.

Councilor Willingham asked if there have been any incidents since they were removed. Chief Sanzenbacher stated that they have not but there have been plenty near misses. Councilor Willingham suggested trying to enforce the 2-way stop before the 4-way is put back in place.

President Buettner stated that he drives Braddock Street every day. The 2-way allows traffic to flow. The 4-way causes congestion because the lights are out of sync. He asked

about the corner of Wolfe and Braddock, stating that there are many more pedestrians there.

Police Chief Sanzenbacher pointed out that the left turn onto Braddock Street was the greater issue.

Councilor Hill stated that as a pedestrian he was not able to cross Braddock Street for fear of being hit. He agreed the signs should be replaced immediately.

It was unanimously agreed that the signs would be replaced.

**New Business:**

**O-2010-62:** First Reading – AN ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR WIRELESS INTERNET AND RELATED SERVICES FRANCHISE

Attorney Anthony Williams explained that this item was previously presented at the September 28<sup>th</sup> worksession. In speaking with the applicant's attorney it was determined that he was not eligible for an ordinance cable franchise. However, based on the business that's being proposed it had appeared that if Council wanted they could grant a negotiated ordinary franchise giving him the ability to use public rights of way for a wireless internet and related service. They would be providing streaming video through a wireless system. In return, he has offered the city a \$5000 franchise fee and free high speed wireless access to all city buildings, post a \$20,000 surety bond and reimburse the city for advertising.

Vice-President Major moved to forward O-2010-62 to council. *The motion was seconded by Councilor Hill.*

Councilor Clark asked if there would be any conflict with the contract that the City has with Comcast. Mr. Williams stated that it stated specifically in their agreement that they will not provide cable services and are not authorized to do so.

*The motion passed unanimously.*

**R-2010-61:** Resolution – Authorize application for Federal Enhancement Grant for the Green Circle Trail

Perry Eisenach, City Engineer stated that they are in the process of coming up with a route that would encompass the whole city. The next section of trail that is scheduled to be built is the portion of Town Run that parallels Kent Street. Grant funds have already been awarded for that construction. The next section of trail to be constructed would be along Jubal Early between Valley Avenue and Harvest Drive to connect to the existing section of trail. He was requesting authorization to apply for those grant funds which have to be submitted by the 1<sup>st</sup> of December.

Vice-President Major moved to forward R-2010-61 to council. *The motion was seconded by Councilor Willingham and unanimously approved.*

**Approval:** Proposed locations for Sidewalk Improvements

Perry Eisenach, City Engineer explained that sidewalks are a high priority. \$500,000 has been approved by the state for repairs; it was his intention to ask Council to match those funds. Potentially next spring into next fall, approximately \$2 million in sidewalk improvements will be made. He stated that it is difficult to prioritize because there are so many places in the city that require repair or that have no sidewalks at all. His suggestions included Valley Avenue between Handley and Bellview; Millwood Avenue between Kent St and Pleasant Valley; South Loudoun between Jubal Early and James Street; Woodstock between Pleasant Valley and Pine Street; and, Purcell to Woodstock Lane.

Councilor McInturff liked the idea of not going too far out with the project commitment. He suggested making 2012 Phase 2.

Councilor Hill moved to approve the sidewalk location list. *The motion was seconded by Vice-Mayor Butler and was unanimously approved.*

**O-2010-60:** First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 16-8 OF THE WINCHESTER CITY CODE REGARDING DISCHARGE OF AIR GUN, GRAVEL SHOOTER OR SIMILAR INSTRUMENT

Police Chief Sanzenbacher answered a question brought forward by a local boy scout working on a badge regarding government. Chief Sanzenbacher also offered to answer any additional questions from Council.

Vice-President Major moved to forward O-2010-60 to council. *The motion was seconded by Councilor Veach and unanimously approved.*

**O-2010-61:** First Reading – AN ORDINANCE TO ADD SECTION 16-33 TO THE WINCHESTER CITY CODE PERTAINING TO SECONDHAND PRECIOUS METAL OR GEM DEALERS RECORDING OF PROPERTY AND REPORTING TO POLICE

Police Chief Sanzenbacher presented the request due to gold and precious metals being at an all-time high which could lead to an increase in breaking and entering. He requested that they mirror state law with a couple additions. First, that the buyer be required to hold the purchase for fifteen (15) days to allow investigators time to go through reports to see if the items match any stolen property. He explained that sometimes a victim of theft does not realize what items are missing for several days. He was also requesting that the jeweler or pawn shop be required to report their items in an electronic format to make it easier to search their database to see if any match.

Vice-Mayor Butler suggested that the dealer have to provide digital pictures to make it easier to match stolen items. The Chief stated that the problem would be searching those pictures. He stated he would look into that.

Attorney Williams stated that Chief Sanzenbacher has worked very hard on this. He recommended that if this item goes forward, it do so under the reservation that he looks into item 1, to be sure that Council is authorized and able to do this under state law.

Councilor Willingham moved to forward O-2010-61 to council. *The motion was seconded by Vice-Mayor Butler then approved 7/1 with Vice-President Major voting in the negative.*

**R-2010-64:** Resolution – Authorize funding to the Regional Inebriate Center

Chief Sanzenbacher explained that Frederick County is in the process from moving the center from Cameron Street to Smithfield Avenue. They are requesting that the city pay a fee of \$92 per person sent to the center. He stated that it is advantageous to use the center based on cost and time it takes to process them into the jail.

Attorney Williams added that the City had a title examination done on that property that showed the City as half owner. Since then he has been in talks with the County Attorney asking that they in some way account for the City's contribution to that property. He has asked that they come to an agreement for the City commits to moving the center and paying a fee on a building that it is part owner.

Councilor McInturff stated that he had no confidence in the information that has been provided based on the amount of conflicting data. A number of the councilors agreed.

Vice-Mayor Butler moved to forward R-2010-64 to council. *The motion was seconded by Councilor Clark and then defeated 4/5.*

**O-2010-63:** First Reading – AN ORDINANCE TO AMEND AND RE-ENACT ARTICLES 1 AND 15.1 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO DEFINITIONS AND USE PROVISIONS FOR WELLNESS & FITNESS CENTERS AND RECREATIONAL FACILITIES

Zoning Administrator Vince Diem explained that he had issued a zoning violation stating that the Wellness & Fitness Center was advertising to the public-at-large. An appeal was requested but the Board of Zoning Appeals upheld his decision. The Board gave the Wellness Center four (4) months to get a text amendment adopted to correct the issue and this was their attempt to do so.

Attorney Williams stated that Mr. Diem left out that there has been an appeal filed to circuit court that holds this matter in abeyance. Whether the Conditional Use Permit will be necessary is a chicken and egg argument. He did state that they can proceed on parallel tracks.

President Buettner asked if this amendment was filed to allow them to continue to advertise. Mr. Diem stated that it would speak to the use and occupancy of the Wellness Center.

Mayor Minor moved to forward O-2010-63 to council. *The motion was seconded by Vice-President Major.*

**Vice-Mayor Butler and Councilor Willingham recused themselves.**

President Buettner stated that most private fitness centers offer some of the same amenities that the Wellness Center offers. He stated that it reads as though council is being asked to allow all the same advantages of the private sector without the associated freight that goes along with it.

*The motion passed unanimously with concerns.*

**CU-10-573:** Conditional Use Permit – Request to upgrade an existing telecommunications tower with additional antennas at 799 Fairmont Avenue

Mr. Youmans presented the request to replace six (6) antennas on the telecommunications tower located at 799 Fairmont Avenue with twelve (12) new ones.

Vice-President Major moved to forward CU-10-573 to council. *The motion was seconded by Councilor Willingham and passed unanimously.*

**O-2010-66:** First Reading – AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-31 OF THE WINCHESTER CITY CODE PERTAINING TO TRUCK ROUTES

Mr. Youmans presented the request to eliminate through trucks in the downtown area.

Councilor Willingham wanted to know if there was some way to update GPS systems in order to alert the drivers before they get to town. Mr. Youmans explained the intent to contact some of the major companies in and around the city to educate them on the amendment if approved. Also, VDOT maintains a website that makes these types of changes in order to get maps and the like updated.

Vice-President Major moved to forward to forward O-2010-66 to council. *The motion was seconded by Councilor Clark and passed unanimously.*

**O-2010-64:** First Reading – AN ORDINANCE TO APPROVE THE APPLICATION OF THE EAGLE HEIGHTS PRESBYTERIAN CHURCH FOR TAX EXEMPT STATUS BY RELIGIOUS ORGANIZATION PURSUANT TO 27-33 OF THE WINCHESTER CITY CODE

Will Rice stated that the Eagle Heights Presbyterian Church purchased 403 S Loudoun this year and are now requesting tax exempt status as a religious organization.

Councilor Clark moved to forward O-2010-64 to council. *The motion was seconded by Mayor Minor and passed unanimously.*

**R-2010-62:** Resolution – Authorization for the issuance of Economic Development Revenue Bonds in the amount of \$2,300,000

Jim Deskins presented the request for authorization to issue \$2.3 million in bonds to fund the acquisition on Shawnee Drive.

Councilor Clark moved to forward R-2010-62 to council. *The motion was seconded by Vice-President Major.*

Councilor Veach stated that in the memo it states that they agree to continue to pay property taxes on the underdeveloped part. Councilor Veach moved to amend the motion for that portion to be included in the resolution as well. *The motion to amend was seconded by Councilor Butler.*

President Buettner suggested leaving this document alone and issue a Memorandum of Understanding instead.

*The motion to amend was defeated unanimously.*

*A motion to forward R-2010-62 to council was passed unanimously.*

**R-2010-63:** Resolution – Utilization of the EDA's disposition procedures in the disposition of any property conveyed to the authority

Jim Deskins presented the request to put a procedure in place that would allow the EDA to execute a contract without having to come before council for approval beforehand. Council will still have veto power over the transaction.

Vice-President Major moved to forward R-2010-63 to council. *The motion was seconded by Councilor Willingham.*

President Buettner stated that in today's market he wanted to give much as much latitude as possible but he was concerned that this would create more potential problems.

Mr. Deskins was sure that it would be brought to the board before any significant time or money was spent brokering a deal.

*The motion passed unanimously.*

**O-2010-65:** First Reading – AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO SIGN A PERFORMANCE AGREEMENT BY AND BETWEEN THE CITY OF WINCHESTER, THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF

WINCHESTER AND O'SULLIVAN FILMS INC. AND TO APPROPRIATE \$300,000 TO PROVIDE THE LOCAL MATCH TO THE GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND GRANT

Jim Deskins presented the request to appropriate \$300,000 to provide the local match to the Governor's Development Fund.

Vice-President Major moved to forward O-2010-65 to council. *The motion was seconded by Councilor Willingham and passed unanimously.*

**R-2010-65:** Resolution – Approval of 2010 CDBG Administration Services Contract with NSVRC

Carla Taylor presented R-2010-65 and R-2010-66 together as an extension of the administrative services provided by the NSVRC.

Vice-President Major moved to forward R-2010-65 to council. *The motion was seconded by Councilor Willingham and passed unanimously.*

**R-2010-66:** Resolution – Approval of 2010 HOME Administration Services Contract with NSVRC

Vice-President Major moved to forward R-2010-66 to council. *The motion was seconded by Councilor Willingham and passed unanimously.*

**O-2010-67:** First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTIONS 28-24 THROUGH 28-38 OF THE WINCHESTER CITY CODE REGARDING LICENSE FEES AND TAX RATES FOR BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSES

Ann Burkholder, Commissioner of the Revenue, stated that basically, this ordinance would bring the fees up to date with state code. She went through several of the fees giving examples of what needed to be increased due to state code and which did not.

Councilor Clark moved to forward O-2010-67 to council. *The motion was seconded by Councilor Veach.*

Vice-President Major stated that some of the increases are substantial. He did not think that this was the right time to double fees on businesses.

Vice-President Major moved to amend the resolution to keep all fees as they are but make the one change that pertains to annual gross receipts. *The motion was seconded by Councilor Clark and passed 9/1, Council McInturff opposed.*

President Buettner agreed with Vice-President Major; it was a difficult time to up the fees. He asked that a schedule be drawn up to show how they can be implemented over time.

*The motion to forward the ordinance as amended was approved 9/1 with Councilor McInturff voting in the negative.*

**R-2010-67:** Resolution – Request to the State of Virginia to be contacted before changes to the BPOL taxes

Vice-President Major motioned to forward the resolution to Council. *The motion was seconded by Councilor Willingham then unanimously approved by voice-vote.*

**O-2010-68:** First Reading – AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2011

Vice-President Major motioned to forward the ordinance to Council. *The motion was seconded by Councilor Willingham 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 CONSULTATION WITH LEGAL COUNSEL TO RECEIVE CONFIDENTIAL AND PRIVILEGED LEGAL ADVICE AND COMMUNICATIONS AND TO DISCUSS THE STATUS AND LEGAL STRATEGY REGARDING A MATTER IN PROBABLE LITIGATION WHERE SUCH CONSULTATION IN AN OPEN MEETING WOULD ADVERSELY AFFECT THE LITIGATING POSTURE OF THE PUBLIC BODY AND PURSUANT TO §2.2-3711(A)(3) OF THE CODE OF VIRGINIA FOR CONSIDERATION OF THE ACQUISITION AND/OR DISPOSITION OF AN INTEREST IN REAL PROPERTY CONCERNING A POTENTIAL PARTNERSHIP FOR FUTURE DEVELOPMENT OF A PROPOSED SITE WHERE THE PUBLIC DISCLOSURE OF SUCH INFORMATION COULD HAVE AN ADVERSE EFFECT ON THE CITY'S BARGAINING ABILITY.**

Councilor McInturff moved to convene into executive session at 8:17 p.m. *The motion was seconded by Councilor Clark then unanimously approved by voice-vote.*

Vice-Mayor Butler moved to re-convene in open session at 9:35 p.m. The motion was seconded by Councilor Veach 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

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

### **Adjournment**

With no further business to discuss, President Buettner adjourned the meeting.