

### **Town of Vienna**

Charles A. Robinson Jr.
Town Hall
127 Center Street South
Vienna VA, 22180

# Meeting Minutes Town Council Meeting

Monday, October 2, 2023

8:00 PM

Charles Robinson Jr. Town Hall, 127 Center St. South

#### Invocation: Reverend Jon Strand, Episcopal Church of the Holy Comforter

Mayor Colbert called on Reverend Jon Strand, Episcopal Church of the Holy Comforter Vienna to provide the evening's invocation.

#### Pledge of Allegiance to the Flag of the United States of America

1. Roll Call

**Present:** 

7 - Council Member Chuck Anderson, Council Member Ray Brill Jr., Council Member Nisha Patel, Council Member Steve Potter, Council Member Ed Somers, Council Member Howard J. Springsteen and Mayor Linda Colbert

#### 2. Acceptance of the Minutes:

A. 23-4009 Acceptance of the Conference Session Minutes of September 18, 2023

The Conference Session Minutes of September 18, 2023 were accepted as presented.

- 3. Receipt of petitions and communications from the Public that are not on the Agenda. (Limited to 3 minutes per issue and no formal action can be taken this evening)
- 4. Reports/Presentations
  - A. Report and Inquiries of Council Members

Council Member Patel wished a happy two-year anniversary to the Royal Nepal Bistro.

Council Member Springsteen thanked Andrew Jenks, Transportation Engineer for the continued progress with the bridge work.

Council Member Somers thanked Public Works for the new traffic light at Park St. and Locust, commending previous Council for their vision. He also commended the Vienna Police Force for their responsiveness with regard to cases of mental health.

Council Member Brill reminded Council of the Octoberfest celebration this weekend, October 7, 2023 form 11:00 AM – 7:00 PM on Church Street. He also noted that Wolftrap Performing Arts Center is hosting a Bat Festival on Sunday, October 29, 2023 from 3:00 PM- 6:00 PM.

#### B. Report of the Town Manager

Town Manager Payton called on Leslie Herman, Director, Parks and Recreation, to provide an update on the LSG landscape project along Church Street and Maple

Avenue. Director Herman introduced Jeremy Edwards, Parks Maintenance Supervisor who reported that most of the identified trees have been removed. As a reminder, these trees were either in decline, an invasive species, or nonconforming. There will be a one to one replacement. Natalie Monkou, Director, Economic Development has been notified to provide business community outreach to build on the information provided during an earlier business community meeting. Council presented the idea of a stroll led by the designers and planner to allow residents and business owners to see and enjoy the new landscape.

#### C. Report of the Mayor

Mayor Colbert reiterated earlier appreciation to the Vienna Police Department, especially for their efforts during the James Madison High School homecoming parade. Council Member Somers recognized PIO Karen Thayer for her efforts to push street closure information for the parade. It helped to avoid complaints.

Mayor Colbert reminded Council that Octoberfest is seeking additional volunteers.

#### D. Proposals for Additional Items to the Agenda

#### E. Closed Session Report

It was moved that the members of the Vienna Town Council be polled to affirm that a Closed Session was held on October 2, 2023 in accordance with Virginia Code, Section 2.2-3711.A.(1), for discussion or consideration of personnel matters, specifically the interviewing of individuals for consideration of appointment and/or reappointment to Town Boards and Commissions.

It was further moved that the Certification Resolution be adopted in accordance with State Statutes, and that the Town Clerk is authorized to execute the Certification Resolution.

And it was further moved that the Closed Session be continued to Monday, October 23, 2023 at 7:00 PM in accordance with Virginia Code, Section 2.2-3711.A.(1), for discussion or consideration of personnel matters, specifically the interviewing of individuals for consideration of appointment and/or reappointment to Town Boards and Commissions.

Motion, Council Member Somers; second, Council Member Springsteen. Motion carried unanimously.

It was moved to reappoint Jessica Ramakis to the Planning Commission for a two-year term. Said term shall commence October 12, 2023 and expire October 12, 2025.

Further, it was moved to reappoint Paul Layer to the Board of Architectural Review for a two-year term. Said Term shall commence October 5, 2023 and expire October 5, 2025.

Motion, Council Member Somers; second, Council Member Anderson. Motion carried unanimously.

#### This matter was approved

#### 5. Public Hearings

#### **A.** 23-3978

Public Hearing on 2023-24 Budget Supplemental Appropriations (Purchase Order Roll Forwards and Carry Forwards)

Mayor Colbert called the public hearing to order at 8:25 PM. All Council were present.

Marion Serfass, Director, Finance presented the Item for consideration.

The Town Council must conduct a Public Hearing to receive public input if it wishes to consider an amendment to the approved Budget that exceeds 1%.

Council Member Springsteen questioned if the carbon monoxide detector repair at the Community Center was due to expiration of warranty. Leslie Herman, Director, Parks and Recreation responded that the fire department connection test failed, and rust was detected on the pipes, necessitating that the well and pipes be sealed to prevent seepage. Council Member Springsteen further inquired about the purchase of the holiday tree and ornaments that were approved at the Conference Session of September 18, 2023. Director Serfass noted that this item was inadvertently left off and the budget will be corrected to reflect this purchase.

Director Serfass remarked that tonight the discussion will be directed toward the reallocation of carryover funds that are part of the 2023-2024 operating budget. It is the Town's practice to put half of any fiscal year surplus in the Unreserved Fund Balance (Rainy Day Fund) up to an amount that represents at least 18% of the subsequent year's budget (Rainy Day percent). The remainder can be spent on items determined by the departments and prioritized/approved by the Budget Committee and Council.

As a reminder, the \$700,000 surplus discussed at the last meeting will be an agenda item at the October 16, 2023 Conference Session (these are capital funds which don't necessarily expire). This is bond money that was borrowed in 2022, but with receipt of ARPA funds, many projects were transferred to ARPA, while others were delayed or moved to the 2024 bond. It is necessary to spend 85% of this \$700,000 by 2025, and can only be used for items defined in the bond document. While taxes are not among the item listed, others include streets, water and sewer, stormwater, parks, etc.

Council Member Potter indicated that he had a question regarding the roll forward. The explanation stated this was due to supply chain issues or lack of staff. Please identify those purchases that have been completed. Director Serfass indicated that many of the projects have been completed. While she did not complete a status check prior to this meeting there are most likely funds remaining in paving, cell phones, laser fish, Code Create, blog post. These are items that have not been completed as of June 20, 2023. Exact information will be compiled and forwarded to Council. In response to Council Member Potter, these projects will be completed by 2024. Director Serfass clarified that the lack of staff issue was a reference to lack of contractor staff.

Council Member Brill requested an explanation for the sign laminator and the sign machine. Adam Layman, Acting Director, Public Works, explained that the sign machine will allow for signage creation work in house, while the laminator will extend the life of the sign.

A motion was made to close the public hearing at 8:40 PM.

Motion, Council Member Patel; second Council Member Springsteen. Motion carried unanimously.

It was moved to adopt the \$576,380 amendment to the FY 2023-24 General Fund budget as presented and direct the Town Clerk to advertise a Notice of Adoption.

Motion, Council Member Patel; second, Council Member Springsteen. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Springsteen, that the Action Item be approved. The motion carried by the following vote:

Aye:

7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member
 Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

#### 6. Regular Business

**A.** 23-3948

Request approval to utilize VDOT Transportation Alternative funds for design and construction of Locust Street Trail Improvements and Mashie Drive, SE, Sidewalk.

Mayor Colbert called on Adam Layman, Acting Director, Public Works and Andrew Jenks, Transportation Engineer to present the Item for consideration by Council.

A motion was made to approve utilizing VDOT Transportation Alternative funds for design and construction of Locust Street Trail Improvements and Mashie Drive, SE, sidewalk

Motion, Council Member Patel; second, Council Member Somers. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Somers, that the Action Item be approved. The motion carried by the following vote:

Aye:

Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

**B.** 23-3924

Request approval for spending of up to \$327,608.60 with the Berg Corporation to remove asbestos containing material and demolish the Annex building located at 301 Center Street South.

Mayor Colbert called on Adam Layman, Acting Director, Public Works to present the Item for Consideration by Council.

Comments by Council included the following:

- The request is for \$327,608 but the original quote was \$250,000; the additional dollars will be used for the abatement of asbestos, which must be removed prior to demolition:
- A third party inspector was contracted out at \$20,000;
- It is standard operating procedure to import clean fill and top soil;
- A similar lot located at 123 and Nutley St. did not provide clean fill and top soil following demolition; Acting Director Layman will discuss with Civil Engineer and report back to Council; Council stressed the importance of completing this work, if possible;
- Alternate proposal for the Annex site was presented at the September 18, 2023 Conference Session; Town requested information to allow for a complete evaluation of the proposals viability; Applicants were unable to provide requested information.

A motion was made to approve spending of up to \$327,608.60 with The Berg Corporation to remove asbestos containing material and demolish the Annex

Building located at 301 Center Street South.

Motion, Council Member Springsteen; second, Council Member Somers.

Additional discussion comments included the following:

One of the bids for this project was substantially lower than the others, yet it was not selected. Town Attorney Briglia stated that the Town questioned whether the contractor fully understood the totality of the project. Additionally, they failed to provide a bid bond (required to ensure that the contractor is financially able to complete the project) and when contacted, elected not to provide the bond.

With no additional comments or questions, Mayor Colbert called for a vote on the motion.

Motion carried unanimously.

A motion was made by Council Member Springsteen, seconded by Council Member Somers, that the Action Item be approved. The motion carried by the following vote:

Aye:

Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

**C.** 23-3991

Request approval to award IFB #24-04 to Bright Construction Group for \$1,250,315.00 for the construction of Robinson Trust Sidewalk projects at Beulah Road, NE, Lawyers Road, NW, and Tapawingo Road.

Mayor Colbert once again called on Adam Layman, Acting Director, Public Works to present the request for consideration.

A motion was made to award IFB #24-04 to Bright Construction Group in the amount not to exceed \$1,250,315.00 (bid + 10% contingency) for the construction of the Robinson Trust sidewalk projects at Beulah Road, NE, Lawyers Road, NW, and Tapawingo Road.

Motion, Council Member Somers; second, Council Member Patel.

Comments from Council are summarized as follows:

- Property at 230 Beulah Rd. is unusual as it presents with a significant embankment abutting the right-of-way; Project will incorporate a 5-6 ft. mass retaining wall (mixture of stone and rock joined with mortar to make a mass structure) whose weight will resist and retain the soil behind it; Where walls exceed 42 inches, black iron railings with vertical pickets and railing will be installed. Use of a panel system will be used where necessary to avoid deep excavation and allow for saving trees;
- Consider not adding sidewalk to this portion of Beulah Rd. until property changes hands to avoid destruction of trees; Sidewalk is recommended because of heavy traffic volume, existence of bus route and the availability of funding through Robinson Trust;
- A total 10-12 mature trees will be removed; Trees will be replaced with 2-inch diameter nursery stock, through funding from the Robinson Trust; Staff met with residents opposed to project; Several years ago Town decided, due to engineering challenges, to leave that one side portion of Beulah Rd without sidewalk; Consider shifting road over to provide larger right-of-way for accommodating a sidewalk without disturbing the trees.

A motion was made to award IFB #24-04 to Bright Construction Group in the amount not to exceed \$1,250,315.00 (bid + 10% contingency) for the construction of the Robinson Trust sidewalk projects at Beulah Road, NE, Lawyers Road, NW, and Tapawingo Road.

Motion, Council Member Patel; second, Council Member Somers.

Further discussion included:

- Shifting the road would require new curb and gutter which would make it potentially cost prohibitive as it would no longer qualify for Robinson Trust funding;
- Contract is written to allow completion of other two locations in proposal should the Beuhla Rd. portion be excluded; Removal of this location from the contract would leave a heavily trafficked area, close to Maple Avenue and with a high volume of walkers, without sidewalk on both sides of the street; Failure to complete the sidewalk because of the existence of trees would be inconsistent with actions taken in other locations throughout Town;
- Sidewalk is typically placed to include a grass utility strip that serves as a buffer between it and the street; Placement against the curb may result due to limited Town right-of-way, avoidance of grading on private property, or in an effort to save a tree;
- Sidewalk already exists on both sides of Beulah Rd. with the exception of a section from Ayr Hill Avenue to Maple Avenue; Walkers are required to cross Beulah Rd. to reconnect with a sidewalk to Maple Avenue, presenting a safety hazard.

With no further comments, Mayor Colbert called for a vote on the motion. Motion passed in a 5-2 vote.

Action Item: Staff to provide Council Member Springsteen cost for shifting Beulah Rd. from Ayr Hill Avenue to Maple Avenue.

A motion was made by Council Member Patel, seconded by Council Member Somers, that the Action Item be approved. The motion carried by the following vote:

- Aye: 5 Council Member Anderson, Council Member Patel, Council Member Potter, Council Member Somers and Mayor Colbert
- Nay: 2 Council Member Brill and Council Member Springsteen
- **D.** 23-3992 Request approval for spending \$236,230 with Kimley-Horn for Park System Master Plan

Mayor Colbert recused herself due to a family connection to the company under consideration. Mayor Pro Tem Somers assumed the Chairmanship for the duration of the discussion of Item 7 D.

Mayor Pro Tem Somers called for a motion. It was moved to approve the spending of \$236,230 with Kimley-Horn for a Parks System Master Plan as indicated in this report. Motion, Council Member Springsteen; second, Council Member

Mayor Pro Tem Somers recognized Leslie Herman, Director, Parks and Recreation who introduced David Somba, Project Manager, Kimley Horn.

Comments by Council are summarized as follows:

- Concerned about timeline of 12-16 months; Kimley Horn will work to find efficiencies to accelerate the project;
- Concern that scope of work contains competencies that already exist in Town Staff such as marketing and communication skills, dedicated core team, project management, etc; Proposal advises the formation of a specialist advisory panel, notes the need for assistance to create alignment with the commission for accreditation of parks and recreation agency, and states that a consultant assistant will be provided to efficiently manage partnerships; This suggests gaps in the Town's ability that requires taxpayers to pay a consultant \$236,230 to correct; As an example, the document of June 6, 2022 entitled Town of Vienna Parks & Potential Property for Parks Master Plan Study already exists with the exception of a condition report, which staff could quickly compile, and checks several of the boxes noted in the proposal;
- Stated deliverables replicate work that has already been completed and significantly increases the timeline; The focus appears to be on workshops and focus groups rather than financial implications and needs analyses; Of the 26 deliverables identified in the proposal, only two mention cost of funding strategies; Remaining deliverables are repetitive of the material gathered for the Annex project;
- Question if this is an effective use of Town funding at this time; Suggest that Town should focus on the key findings from previous studies/workshops and consider putting this current project on a path that includes Staff involvement, similar to the Code Create model;
- Should be aligned with CIP; Proposal should include current and future funding scenarios;
- Kimley Horn noted that the project will work collaboratively with Town Staff; Urge Council to remember that this will be the first Parks System Master Plan ever completed; Among the outcomes will be the digitization of all the gathered data to allow for easy future updating and access; Among the first steps in the process is the collection and review of all existing data (past studies) to avoid duplication; This allows for starting the project from a position of strength;
- Proposed work includes a five to ten-year financial analysis and strategies;
- Must develop a mechanism to keep the final plan up to date;
- No additional costs projected for this project unless Council requests information outside of the original scope of work;
- Prior Council determined the need for a Parks Master Plan; First step is to determine if work can be completed internally; Magnitude of effort required for this project necessitated contracting with experienced company to work in tandem with Town Staff; Result should provide information critical for CIP and serve as a foundation for future spending;
- Project must focus on providing data to answer basic questions of what do we
  have, what are our needs, what will this cost, what are future cost projections, what
  are our undeveloped assets and capital/operational cost; what are options for
  undeveloped assets;
- Proposal under discussion lacks robust fiscal operating cost analysis (coordinated with financial officer); Plan must be greater than five years, must align with CIP timetable:
- Town has funded two prior studies with Kimley Horn that have produced little in the way of useful information; Town has 17,000 residents, yet the proposal bases big decisions on small sample of involved residents; Don't believe results justify the cost;
- Must be able to say that for each of the best options for Town parks they have been vetted, this is the cost, this is how it will benefit the community, this is what to expect financially long term, this is what we can generate in revenue, and this is the

unmet need that will be satisfied; Deliverables must be tangible and realistic;

- Not enough useful information in the proposal to make an informed decision;
- Council directed Director Herman to include in the proposal every property owned by the Town that had nothing on it; Beulah Rd. property currently includes leaf storage so must address options for this property that account for the activities/uses already in place; Caution against setting false expectations;
- Concerned that decision on short term use for Annex property will be delayed until Parks Master Plan is concluded;
- Should Council elect to defer awarding the contract, Council must provide clear list regarding what additional information is requested; Recommend focusing questions on Item 4-4 (Task, Timeline, Key Deliverables); Cannot request more information than defined in the RFP; Likely date for reconsideration would be the Town Council meeting of October 23, 2023; If proposal approved on that date, 2X2's will be scheduled to follow immediately;

Town Attorney Briglia recommended that all questions be forwarded to Director Herman for final assembly. She will forward the final list to Jerry Amacker, Procurement Officer and C.C. Council.

A motion was made to amend the spending of \$236,230 with Kimley-Horn for a Parks System Master Plan until the Council Meeting of October 23, 2023. It was further moved that Council will provide written comments/questions to the Parks and Recreation Staff by close of business on October 6, 2023.

Motion, Council Member Springsteen; second, Council Member Potter.

Town Manager Payton reminded Council that agendas will be distributed on October 17, 2023. Questions will need to be received by Kimley Horn on October 16, 2023 to allow for reply by October 13, 2023.

Council reiterated that numerous surveys, workshops, etc have been held to date, the current proposal identifies 10 additional months of these; Must reduce this number and increase inspections and needs analyses.

With no further discussion, Mayor Pro Tem called for a vote on the motion.

Motion passed unanimously.

A motion was made by Council Member Springsteen, seconded by Council Member Potter, that the Action Item be approved. The motion carried by the following vote:

Aye:

 Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers and Council Member Springsteen

Recused:

1 - Mayor Colbert

**E.** <u>23-3990</u>

Code Create - Consideration of Intent to Adopt new Chapter 18 of Town Code, to replace the current Chapters 17 (Subdivisions) and 18 (Zoning) of the Town Code.

Mayor Colbert called on David Levy, Director, Planning and Zoning to present the Item. Director Levy noted two items that require Council input. The first item is related to mixed use zones and what limits to place on ground floor access to upper floors. Council requested additional information on how much square footage could be residential serving amenities. Having originally decided 25%, information was requested on what uses could be included. It was agreed that no list would be included because these could be requested for modification. The final decision was to retain 25% and take up the discussion of specific uses eligible for modification at

a later date.

The second item evolved from editing corrections provided by one Council Member. Division 3 Section 18-307 addresses adult businesses. The original draft contained language that included "anyone over 18 years of age". This language was removed from the final draft as it could inadvertently effect other businesses (tobacco stores, hookah bars, etc.) The Council Member requested that the language be retained. Following discussion, it was determined to leave the draft as is. Council requested requirements for classifying tobacco stores as an adult business. Such a change would initially entail an investigation into state law to determine if there is language that prohibits this action. Staff was directed to investigate if the Town has the authority to regulate tobacco stores.

A motion was made to direct the Town Clerk and staff to advertise and conduct all required notifications regarding the Town Council's Intent to Adopt, on Oct. 23, 2023, the new Chapter 18 of the Town Code, as presented, to replace the current Chapters 17 and 18 of the Town Code, and the updated Zoning Map, as presented, with an effective date of Jan. 1, 2024.

Motion, Council Member Patel; second, Council Member Somers. Motion carried unanimously.

A motion was made by Council Member Patel, seconded by Council Member Somers, that the Action Item be approved. The motion carried by the following vote:

Aye:

7 - Council Member Anderson, Council Member Brill, Council Member Patel, Council Member Potter, Council Member Somers, Council Member Springsteen and Mayor Colbert

## F. 23-4012 Renew the motion to set a Public Hearing on Proposed Amendments to Town Code Chapters 17, 18 and 27, related to Enhancing Vienna's Tree Canopy

Mayor Colbert called on Town Manager Payton to present the Item for Council consideration. According to Town Code, when requested by one Council Member, an item must be added to the next agenda (Town Code Section 2-53). The item under consideration tonight failed Council approval at the September 25, 2023 Council meeting. At least one Council Member filed a request for the item to be added to tonight's agenda. It is the Mayor's role to rule whether the request is proper.

Council comments are summarized as follows:

- The inclusion of two documents for consideration by the public would be confusing; The proposed language submitted by the Town Attorney has been determined to be legally vetted; The citizen submitted document may or may not include ideas/suggestions that are legal;
- Recommend a Conference Session to allow for greater clarity of both documents;
- There were at least three Council Members who requested reconsideration of this Item.

A revised motion was presented as follows:

To renew the motion to set a public hearing for Oct. 23, 2023, on the two proposed approaches to amending Chapters 17, 18 and 27 of the Town Code with respect to enhancing Vienna's tree canopy with the Option 1 approach also to be presented to the public for consideration of its form, content and structure for possible inclusion into a tree ordinance. It was further moved to direct the Town Clerk and staff to

advertise this public hearing as required.

Council comments and concerns are summarized as follows;

- Still have difficulty putting forth for public comment a document that is not legally defensible; Attachment 4 contains information that compares the two documents and provides clarity on differences;
- Residents have identified Vienna as a tree city and regard this as a critical issue; It is wrong to limit further discussion of this topic; It is evident that residents want a document that they can read, understand, locate in one place and trust as timely; Residents should be allowed to consider unique element in the Land proposal for inclusion in the final ordinance.

A motion was made to strike the phrase "two proposed approaches amending chapters 17, 18 and 27" and replace with "the Town Attorney recommended approach to amending Chapter 17, 18 and 27" which included recommendations made by Conservation and Sustainability Commission Chairman Christine Kaplin regarding an amended tree board.

Motion, Council Member Somers; second, Council Member Anderson.

Further discussion by Council included the following:

The offered amendment fails to include the possibility that a better ordinance might be developed; If something is missing in the Town Attorney's approach that makes sense, is legal and is already in use in other jurisdictions, it should be considered for inclusion; Failing to consider both options eliminates the potential for healthy discussion on ways to improve the proposed ordinance.

Vote on proposed amendment, via Council Member Somers: Motion failed in a 4-3 vote.

Council Member Anderson offered additional language changes to his proposed amendment as follows; Following the word "of" include the statement "elements of its form, content and structure for possible inclusion".

Vote on proposed amendment, via Council Member Anderson: Motion passed in a 4-3 vote.

A motion was made by Council Member Anderson, seconded by Council Member Potter, that the Action Item be approved. The motion carried by the following vote:

Aye: 4 - Council Member Anderson, Council Member Brill, Council Member Potter and Council Member Springsteen

Nay: 3 - Council Member Patel, Council Member Somers and Mayor Colbert

#### 7. Meeting Adjournment

Mayor Colbert called for a motion to adjourn at 12:16 AM. Motion, Council Member Patel; second, Council Member Anderson. THE TOWN OF VIENNA IS COMMITTED TO FULL COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT STANDARDS. TRANSLATION SERVICES, ASSISTANCE OR ACCOMMODATION REQUESTS FROM PERSONS WITH DISABILITIES ARE TO BE REQUESTED NOT LESS THAN 3 WORKING DAYS BEFORE THE DAY OF THE EVENT. PLEASE CALL (703) 255-6304, OR 711 VIRGINIA RELAY SERVICE FOR THE HEARING IMPAIRED.

