



# Town of Vienna

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

## Meeting Minutes Town Council Work Session

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Monday, October 17, 2016

7:30 PM

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

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### Work Session

#### 1. Regular Business

*Present:* Mayor Laurie A. DiRocco  
Council Member Linda J. Colbert  
Council Member Pasha M. Majdi  
Council Member Douglas Noble  
Council Member Carey J. Sienicki  
Council Member Howard J. Springsteen  
Council Member Tara Voigt

*Staff present:* Mercury T. Payton, Town Manager  
Michael Gallagher, Acting Director of Public Works  
Hyojung Garland, Planning and Zoning, Deputy Director  
Patrick Mulhern, Planning and Zoning, Director  
Gwen Riddle, Finance, Budget Director and Acting Deputy Director  
Marion Serfass, Finance, Acting Director  
Carol S. Waters, Legislative, Deputy Town Clerk

#### Proposed Ordinance Changes - Sec. 18-248. - Protest against proposed change

*Town Manager Mercury Payton opened the work session at 7:31 p.m. Mr. Briglia, Town Attorney, began discussions of proposed, procedural related ordinance changes to the Code of the Town of Vienna, Zoning Code Chapter 18, Section 18-248. He said that he and the Director of Planning and Zoning, Patrick Mulhern, had been working on the changes together. Presently, the Town Code states:*

*“In case of a protest against any change of zone boundaries or rezoning of property signed by 20 percent, or more, of any one of the following groups: (1) The owners of lots included within the area of the proposed change; (2) The owners of lots abutting the area included in such proposed change; or (3) The owners of lots directly opposite the area included in such proposed change, where such area abuts upon a street; such change shall not become effective except by the favorable vote of six-sevenths of all the Town Council.”*

*Most of the Council Members, as well as staff, currently support modifying this policy mainly because if protests are to be allowed, the criteria should be clearer. First, rather than requiring 20 percent of any one of the groups specified in the Code, staff suggested requiring 50 percent of all of those groups, (the lots within, surrounding and directly opposite, as specified in the Code) depending on the combination. Mr. Briglia added that typically a lot of time is spent counting all the lots and figuring out which ones qualify.*

*Council deliberated the best percentage of affected property owners to require to*

*sign the petition of protest against a rezoning. Council Member Springsteen said that 50 percent seemed excessive and he preferred a lower percentage, closer to 30 or 40 percent. Council Member Noble said that his research of other jurisdictions across the country showed a range of between 20 and 40 percent, and he agreed with Council Member Springsteen. Council Member Colbert favored over 50 percent. The Mayor also favored a majority. She determined that Council would go forward with 50 percent in the draft that would be sent to the Planning Commission for their review and recommendations.*

*The required favorable vote of six-sevenths of all the Town Council referenced in Section 18-248 was another policy decision reviewed by Council. Mayor DiRocco opined that it should be at least two-thirds of the quorum in attendance at the Town Council Meeting. That would be five out of seven votes if all Council members were present. The Mayor indicated her view that two-thirds would be more reasonable and would follow the same standard as approval of tax amendments and approval of the budget. There was a lengthy discussion about the origins and original rationale of the "six-sevenths" favorable vote requirement. (The Deputy Town Clerk and Council Member Springsteen had unsuccessfully searched Council Meeting Minutes from the 1960s to find out when and why the six-sevenths requirement was adopted.) The Town Attorney reported that the requirement pre-dated the Town Code recodification of 1969. He further recounted that the six-sevenths requirement appears in codes from other local jurisdictions in the 1940's, and it was possible that Vienna took the language from those codes.*

*To be in keeping with other zoning ordinance provisions, Mr. Briglia recommended also updating procedural language about timeframe and qualifications of the protest petition being submitted, such as the number of days prior to the public hearing to accept protests and whether the parties are valid petitioners. Currently, the code does not indicate any days prior. The validity of petitions must be checked by confirming that the petition signers are the proper property owners with authority, or the managing members with authority to represent in the case of an LLC or condominium group. Mr. Briglia reported taking some of the proposed new language on owner corporations and condominiums out of other State Code Sections. He classified those disclosure provisions for petitioners as being "pretty standard." There was some discussion about the requirement of the burden of certification to be on the petitioner (i.e. to certify that they are the owner or legal representative of the parcel that is proposing the petition), and also about how to phrase the terminology of "properties" and "in the area."*

*Mr. Mulhern advised that another issue with processing the protest petitions is that the homeowners are not required to receive the notification letters about the Town Council public hearing and subsequent decision until a minimum of five calendar days before the public hearing, which limits the number of days that they have to respond with a protest. Council debated the fairness of giving only five days of notice to homeowners prior to the Council's public hearing. Council Member Springsteen asserted that it was insufficient time. Council Member Majdi agreed and asked if the notices could be provided earlier. Council Members Voigt and Sienicki reminded everyone that the property owners know about the proposed rezoning far prior to the Council's notification letters, because the Planning Commission sends them certified letters in notification of the Planning Commission's public hearing, and big yellow signs are posted at the property location. Council Member Sienicki suggested that with the very first notification letter, homeowners could be advised of the typical rezoning process procedure and its normal time-table. That way, citizens would be notified twice, they would know the process, and they could be more prepared to respond. Methods and procedures for citizen notification were talked*

over. The Town Attorney pointed out that the minimum notification time is specified by the State Code.

Hyojung Garland, Deputy Director of Planning and Zoning, advised that for revising the MAC Ordinance (Maple Avenue Corridor zoning requirements), the Planning Commission was currently recommending a pre-application meeting between developers and affected property owners as a prerequisite for the rezoning applications. The Mayor acknowledged that it would be good to advise affected property owners of the process and procedures at the very beginning of the rezoning process.

Council Member Springsteen recalled that there had been problems when the Planning Commission wanted to have a checklist; there was a push to make sure that the developers meet with the adjacent and abutting property owners, and there was push-back about even having a checklist. Mr. Mulhern explained that at the time, they were concerned legally about having a requirement/checklist that might conflict with the existing state code guidelines on notification. Council Member Noble further clarified that yes, the Maple Avenue Vision Steering Committee had always anticipated that there would be a narrative document, to serve as department policy, with a description of the process, i.e. who is notified and when. The intent was to make one document for applicants and one document for affected property owners. However, after the ordinance passed, there was transition between different Planning and Zoning Department leaders, and there was no follow up on this.

The minimum number of days' notice to require before Council's rezoning public hearing and whether they be business days or calendar days was reviewed. Council Member Majdi quoted an ordinance from another jurisdiction that required the party submitting the protest petition to execute the protest under oath and self-certify. It was recognized that having the certification done in advance would save time. Mr. Briglia recommended using "by noon the first day of the public hearing" (like the City of Alexandria), and having the protest petition submitter self-certify and notarize their protest petition.

Discussion ensued in regards to the definitions of area and opposite, as well as potential rezoning scenarios and hypothetical situations.

Recommendations: The Town Attorney will draft the amendments as recommended by Council and will try to schedule Council's vote to refer this to the Planning Commission for the Council Meeting of October 24th. The Planning Commission will subsequently review the draft, conduct a public hearing, and make recommendations back to Council.

### Discussion on the Proposed 2017 Legislative Agenda

The Town Attorney went through the list of legislative items from 2016 to discuss whether they were still relevant or not for 2017. Mr. Briglia said that the "hot button topic" this year might be whether there would be suggested changes to the proffer statute which took effect July 1, 2016. He mentioned that the Virginia Municipal League (VML) did not really talk about this policy at the annual conference earlier this month. Two Council Members had attended one VML session on proffers, where the instructor stressed the risk of even having a conversation that could be construed as a suggestion about something that may be wanted, which then, in turn, could be interpreted as an unreasonable proffer. The instructor also advised that there should be a sole point of contact with the developer where there is any residential development, even with mixed use.

*The Mayor, Council, and Town Attorney continued on to verbally examine the other legislative agenda topics. Mayor DiRocco noted that the Council would meet with State Senator Chap Petersen and Delegate Mark Keam at a work session in November to walk through the list as always and talk through each of the items. She said that the Senator and the Delegate usually will give Council a realistic idea of whether they would sponsor such a bill and what could pass through the Virginia General Assembly.*

*Recommendations: Conduct a work session in November to review the 2017 legislative agenda with Senator Chap Petersen and Delegate Mark Keam.*

### **Maple Avenue Transportation Study- Draft Consultant RFP**

*Mayor DiRocco noted that they had been talking about having a transportation charrette, then told of how she and Council Member Noble had attended a transportation seminar earlier this month at the Annual VML (Virginia Municipal League) Conference. The Mayor reported that Laura Schewel from StreetLight Data, Mathew Pettit from Citilabs, and Eric Sundquist from State Smart Transportation Initiative were all there. From those people, it was learned that VDOT (Virginia Department of Transportation) would soon be offering free transportation data from StreetLight Data to government organizations in Virginia. Reportedly, the transportation data measures accessibility on how easy it is to get from place to place, helps score and understand the community's accessibility issues, and can be used with basic GIS from a laptop.*

*The Mayor said that most regional models just look at work-trips, back and forth, but they were informed by Mr. Sundquist that StreetLight Data wants to "step it up" to include non-work trips and non-auto trips. In that case, their information would include the 70% of trips which are not just to and from work, and would also determine bicycle and walkability.*

*As explained by Council Member Noble, the StreetLight Data company would collect data from every single Bluetooth transmission and the data from Waze (GPS-based geographical navigation application program) from peer communication, and would basically create GPS systems, in-car navigation systems that go by any of these different places that pick it up. Then they would aggregate all of this data to determine where people are going from and to, and then map it to specific parcels so that they know what kind of land use people are going from and to. With that very high level of detail as an input, they can figure out what the actual accessibility is. Council Member Noble indicated that StreetLight Data is doing some work with NVT (Northern Virginia Transportation Authority) and needs to get good data on people's non-work trips, i.e., going to schools, shopping, grocery stores and everywhere else, and they need to test it someplace to actually see if what they are doing works well in the context of the work they are doing for NVT. The Town of Vienna could be part of the test.*

*Mayor and Council discussed pros and cons of partaking in this endeavor as a test case. On the positive side, the Town would gain really good information about where people go in the community, and it may be free. As Council confirmed, doing this would not prevent them from doing a charrette at some point, and the new data would be very helpful for a charrette.*

*The next step would be for Town Staff to contact Mr. Sundquist about how to move the process forward and iron out details such as whether this offer really would be*

*free, whether they need an MOU, and what information StreetLight Data needs about the Town's existing transportation plans, concerns, goals and objectives. Another good thing is that the data package and the accessibility software package are already licensed through the state and local communities.*

*Mayor DiRocco clarified that the Town will not move forward with an RFP at this point in time; the Town will first try and pursue a Memorandum of Understanding and see where it can go with this.*

*Recommendations: Staff will contact StreetLight Data for more information. Another Council work session will be scheduled as a follow up after more information is received.*

## **2. Meeting Adjournment**

*The Town Council Work Session of October 17, 2016 adjourned at approximately 9:38 p.m.*

\_\_\_\_\_  
*Mayor Laurie A. DiRocco*

*Signed / Dated:* \_\_\_\_\_

*Attest:* \_\_\_\_\_  
*Deputy Town Clerk*

*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.*