



Town of Vienna

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

Meeting Minutes Town Council Meeting

Monday, July 10, 2017

8:00 PM

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

Regular Council Meeting

Invocation: Reverend Corky Eddins, Christ Church Vienna

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

1. Roll Call

2. Approval of the Minutes:

2. Approval of the Minutes:

Approval of the Regular Council Meeting Minutes of June 5, 2017 and the Work Session Minutes of March 6, 2017, March 18, 2017, March 20, 2017 and April 3, 2017.

It was moved to approve the Regular Council meeting minutes of June 5, 2017 and the Work Session minutes of March 6, 2017, March 18, 2017, March 20, 2017 and April 3, 2017 and as submitted.

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

3. Receipt of petitions and communications from the Public

A local Boy Scout from Troop 987 introduced himself to Council, he is working on his Citizenship in the Community Merit Badge.

Mr. Bob McCahill 429 Center St. North, President of Northeast Vienna Citizens Association reported to Council about some great work that has been done to enhance Northside Park in getting rid of some invasive plants and cleaning up the park.

4. Reports/Presentations

Vienna Community Center Update

Ms. Leslie Herman, Director of Parks & Recreation and Mr. Dan Straughtman of Orr Partners presented Council with a status update on the Community Center renovation stating that everything is on track for employees to be back in the building in August and open to the public in mid September.

A. Report and Inquiries of Council Members

Councilmember Colbert mentioned the passing of her friend and community leader,

Lenny Schultz. He was the head football coach of Madison High School. He graduated from Madison in 1983 and was in the Athletic Hall of Fame at Madison for wrestling and football. He was a wonderful guy and made a huge impact. He will definitely be missed.

Councilmember Sienicki thanked the American Legion for putting out the flags on Maple Avenue for the 4th of July, it makes the 4th of July in Vienna something special. They also had their inaugural 5k this year and it was great. She also thanked Parks & Rec, Public Works and the Police who worked on the fire works display with set-up and clean-up, it was a great event.

Councilmember Sienicki also mentioned that the Vienna Arts Society has paired with Fort Belvoir Community Center to display artwork that was created by Veterans or Service members that have had problems or their family members and they have some nice puzzle pieces up, it is some nice artwork. The display goes through to August 5th. It is very inspirational.

Councilmember Springsteen asked to confirm if they were all set to send the Bey Lounge to the BZA next week. Mr. Briglia stated they were on the agenda and the notice has been given.

Councilmember Noble reported that he, the Mayor and Councilmember Voigt were invited to a community meeting for the Kingsley Road area neighborhood to have discussions with VDOT about the traffic and interchange designs around the I-66 Outside the Beltway project that VDOT is running. It was a two hour meeting and there was a lot of good back and forth and commentary between the community and VDOT staff. There will be some follow-up meetings in July and August on what does this diverging diamond interchange mean to the community. They will be in touch with the community members that are actively leading the charge on this but they are actively participating in it as Councilmembers representing the community. They are still paying attention to the sound walls, the bike path and a number of the other moving parts that are associated with the I-66 project.

B. Report of the Town Manager

Mr. Payton thanked Ms. Leslie Herman and Mr. Dan Straughtman for doing an outstanding job up to this point with the Community Center renovation. He also thanked Mike Gallagher, Director of Public works and Marion Serfass, Director of Finance for working behind the scenes to get the project to this point. He thanked them all for all their hard work.

C. Report of the Mayor

Mayor DiRocco also thanked Parks & Recreation and the Police Department for a wonderful fireworks display.

Mayor DiRocco also reported that Council has only one meeting in July and then they don't meet again until August, they have a lighter schedule during the summer months.

D. Proposals for Additional Items to the Agenda

None

E. Closed Session

It was moved that the members of the Vienna Town Council be polled to affirm that during the Closed Session convened this date, Monday, July 10, 2017, the Town Council met for purposes of discussion of personnel matters, specifically, the interviewing of individuals for consideration of appointment and/or re-appointment 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, September 11, 2017 at 7:00 p.m. in accordance with Virginia Code Section 2.2-3711A(1), for purposes of discussion of personnel matters, specifically the interviewing of individuals for consideration of appointment and/or reappointment to Town Boards and Commissions.

*Motion: Councilmember Voigt
Second: Councilmember Noble
Abstain: Councilmember Majdi
Motion carried*

It was moved that Jonathan Rak be re-appointed to the Bicycle Advisory Committee for a two-year term. Said term shall be retro-actively effective from April 30, 2017 through April 30, 2019.

It was further moved that Tamara Redmon be re-appointed to the Transportation Safety Commission for a two-year term. Said term shall be retro-actively effective from June 20, 2017 through June 20, 2019.

And it was further moved that Bob Robinson be re-appointed to the Community Enhancement Commission for a two-year term. Said term shall be retro-actively effective from June 1, 2017 through June 1, 2019.

And it was further moved that Sammy Thompson be appointed to the Community Enhancement Commission to replace Jack Ruskowski as a student representative, effective July 11, 2017 through July 11, 2019.

*Motion: Councilmember Voigt
Second: Councilmember Noble
Carried Unanimously*

The motions carried as shown above

5. Public Hearings

Public hearing to consider Planning Commission-recommended changes to the protest vote provision in the Zoning Ordinance, **Article 24 - Rezoning and Amendments, Section 18-248 - Protest against proposed change.**

Mayor DiRocco called the Public Hearing to order at 8:33 p.m. The Town Clerk called the roll, all members of Council were present.

Patrick Mulhern, Director of Planning & Zoning explained that this item is part of a larger effort to update the zoning ordinance. The Protest Vote is one of the codes

that was identified long ago for Council to send to the Planning Commission and they have brought back the Planning Commissions recommendation after much work. The Protest Vote goes back to 1956 in the Town but it is rare in Northern Virginia, only Alexandria and Falls Church have the same provision, 19 other jurisdictions do not. The current code states that any protest against a change of a re-zoning boundary or property be signed by 20% or more of any one of the following groups: owners of the lots included in the area of the proposed change, owners of lots abutting the area in such proposed change and owners of lots directly opposite the area included in such proposed change where such area abutts upon the street, basically across the street. The current provision has a favorable vote of 6/7ths of all Town Council is required which is considered a super majority.

Next Mr. Mulhern looked at what Council had sent to the Planning Commission as a draft, under the re-zoning property percentage, they recommended that it be changed to 50% or more of the following groups: owners of the lots, owners abutting but instead of "or" they recommended "and" owners of lots directly opposite the area included in such proposed change. Council also recommended a favorable 2/3rds vote of the Town Council. They also added a section regarding submission of a petition and that it must be in writing and received by the Town Clerk no later than 12:00 p.m on a working day in which the Public Hearing on the application or motion is first conducted by Town Council. Submitting under such protest shall be executed and the protest language under oath of legal ownership or authorized representatives need to be represented.

Mr. Mulhern continued stating the Planning Commission recommendation that came after a lot of hard work with no less than three work sessions and two public hearings. There was a lot of public input that was very much appreciated. The changes that they are recommending is rather than the original 20%, they recommend 35% of the surrounding property owners. The owners of lots included within the area, and then they added "or", the second category only, the owners of lots abutting the area and owners of lots directly opposite the area. Basically they combined number 2 & 3 so you are basically separating out, in terms of the vote, the applicants, presumably those rezoning and the neighbors abutting and surrounding. In terms of the vote they agreed with Council with a 2/3rds of town council quorum present and in terms of the direction for submission, they want it to say the day before the day of, which would be noon on Friday and that would give the Town Attorney and staff a chance to take a look at it. One other thing that Councilmember Springsteen asked them to bring up was the proposal that was brought up by Planning Commissioner Laurie Cole that was not accepted by the Planning Commission, was that rather than re-writing the protest ordinance consider recommending that it be eliminated and that the new ordinance adopted require all re-zoning decisions be approved by a 2/3rds vote of the entire Town Council. It was duly considered but not recommended by the Planning Commission.

Councilmember Springsteen stated that he thought former Councilmember Cole had stated to keep the super majority and not to go with 2/3rds but maybe he mis-understood. Mr. Mulhern stated it was 2/3rds.

Ms. MaryEllen Larkin, 317 Church St. asked Council how many other times has the protest vote been used since the 1950's other than the Marco Polo vote. Mr. Briglia stated that it has not been used since 1992 and does not know if it was used prior to that and does not remember ever hearing about it. Mayor DiRocco stated that in the current history we have not used other than that one time. Ms. Larkin stated that she hopes that Town Council and the Planning Commission would do everything in their power to protect citizens in our town by not changing this ordinance. The MAC

ordinance has provisions that require the developer to not mitigate the impacts of their re-development project on abutting residential neighborhoods. Compliance with these provisions should be carefully monitored by the town, this also came from the Comprehensive Plan. One important point in the Comprehensive Plan is to maintain the stability of established single family residential neighborhoods. She can only hope that Town Council is here to take care of all of the citizens and not just the developers.

Mr. Jon Downs, 156 Church St. stated that he was born and raised in Vienna and now raising his kids in the house he grew up in. He moved back here to raise his kids because it has that small town feel and character and a lot of towns have lost sight of that. He thinks as the town moves forward they should do it in a very deliberate and careful way. He is not someone that is against any change or development but he does think it should be done in a very pragmatic way. Things that are either rash, controversial or divisive especially on small margins and he thinks the town is operating from a position of strength right now, this is a desirable place, a lot of people want to be here and a lot of developers want to be here. We don't need bad deals, we can pass on things but we can't undo things and he would like to ask Council to keep that in mind as they move forward and maintain that feel and respect. Above all he would say that minimizing the voice of the homeowners in this town seems to him to be a very dangerous and slippery slope. People like Dan Mulville that have been here since before 1975 are the people that make this community great and strong and when they have things to say about whats going on people should listen.

Mr. Bryan Goldberg, 216 Park St. NE stated that he is speaking against the motion. He moved to Vienna in 2009 and purposely moved close to town so they could walk to all sorts of things. They enjoy the proximity to Viva Vienna to Oktoberfest, the farmers market until it moved, restaurants and everything else that is close. They knew that development was abutting them and that is what they signed up for but they signed up knowing that they had the protection of good zoning ordinances that really protected them and they didn't expect to have those things be easily changed and this is making them easier to change. In the name of development it needs to be done with a great deal of grace and caution. The discussion about 2/3rds vs. 6/7th's, to him it is really about 1 vs. 3 and 2 vs. 3, the idea it that today it only takes 2 Councilmembers to block a project that has been protested and this will move that number to at least 3 so it is a 50% increase in the number needed to block which may not seem like much in going from 2 to 3 but going from 2 to 3 is a big growth in terms of the number needed to block. The change from 20% to 35% and expanding to across the street and adjacent all add different interests and the residents behind the development may have very different needs than the residences that are across the street from the development so it is not apples to apples and the most sensitive audiences should be given the greatest weight. He also stated that he doesn't think comparing Vienna to all the other places that have weaker protections makes any sense. Alexandria and Falls Church are wonderful communities to have as peers but not everyone on the list should be considered as peers for us. They are very happy to be here and appreciate having all the protections that are in place and want to keep them as they are.

Ms. Linda Mann, 428 Windover Avenue, NW stated that when she was doing research on protest against proposed change she came across an article that said local zoning, it's complicated and she thinks they can all agree that this is the case. She was not directly involved in the Marco Polo process but she did get involved in attending zoning meetings when she heard of the desire to change the protest petition because it caused concern for her. She wondered why the town would make a

reactive change in this process that it seemingly just wrote. Yes, she understands that for some Vienna members the outcome was not what they had hoped for but to change an amendment in response worried her. Policy should be made proactively and should work towards maximizing the public good while minimizing risk. She is not sure the town officials and the public know what that is. To try and see the trees through the forest she thought they would review a little bit of the facts that the town legislation presented on the power point. One of the things they talk about is the Tennessee research project which was discussed months ago at one of the zoning meetings where 21 states were studied and was demonstrated that those 21 states have petition clauses, all of those states except for 2 have 20%, one had 35% and the other had 50%, so 20% is the norm. She further stated some of the history on petition ordinances. Based on her research she suggests that this is not the time to tighten the protest petition and making it almost impossible for community members to voice their opinion, this is the time to keep it in place. Vienna is facing potential significant growth and now is the time to assure the original purpose of the protection which was to give the voice to the owner and to prevent easy and careless changes in zoning regulations. With that in mind 35% is not the standard, 20% is. Keeping 20% does several things, it avoids potential pricey litigation for those who cannot avoid litigation and provides all members of Vienna a voice. Regardless of whose voice you believe you champion, the Vienna Town Council should value the checks and balances that were put in place years ago.

Mrs. Loretta Robi, 203 Mashie Drive stated that she loves her neighborhood and the Town of Vienna and she loves the idea that she has a voice. Recently there was a proposal that there was a developer that was going to ask for a zoning change and her neighborhood came together and voiced their opinion and the developer did not come forward and ask for that zoning change. She thinks that is a good example of a zoning situation where the residents of Vienna should be heard. The Town Council should respect and give deference to those neighbors and individual families that are most impacted by a zoning change. They came to Vienna because they like the small town atmosphere. They in particular chose their neighborhood for a particular reason as she is sure many others did too. What she feels has happened recently is many developers come in and they may have good intentions but their intentions may not align with those of them that have families and have chosen Vienna for it's small town nature. With these zoning changes it seems to her that the developers have more of a say and may not be residents of the Town of Vienna and those who live closest to that particular development are residents of Vienna and when you make changes to the ordinance as these are proposed, she feels that her rights are being taken away. She does not favor these changes and thinks they were put in place for a particular reason and those rights should be protected.

Mr. Jeff Watts, 400 Mashie Dr. stated that it is often said "that the best idea is the one we can all agree with" so if you want them to come forward as neighborhoods then say that there is a high percentage that need to come together, as a neighborhood they accept that responsibility. He further stated don't ask them to make the effort to talk if they don't have the requirement to listen. Now they have talked back what the vote is that they need to be able to do. If they are all going to come together and agree then they should hold a huddle that they all come together and agree so there should be that requirement of 6/7th's that was there so they all have to believe this is a good thing. If you make a zoning plan then you believe in a zoning plan. You plan for the future based on the zoning plan for our families, real estate investments and our lives. So if your're going to mess with that plan your messing with something that they have all put a lot of faith into.

Ms. Terry Bachman, 325 West Street stated that she also opposes the proposed

changes to the protest petition. She also stands tonight in support of development of the Maple Avenue corridor as an important goal of the town. She values the hard work in crafting the MAC re-zoning ordinance and including the recent revisions, she doesn't think the goal of supporting the MAC redevelopment should necessitate stripping existing Vienna citizens of their rights. The protest ordinance has been in place for more than 50 years and during those years our citizens have purchased and owned land in Vienna with the presumption that the zoning changes in their neighborhoods would be subject to significant rigor. This is important as zoning changes can significantly impact property values, abutting or inclusive, in a proposed re-zoning. The town has a proud tradition of valuing and respecting the rights and opinions of citizens and in this tradition is consistent with the Virginia state enabling legislation the protest provisions were adopted into our code. She believes to remain true with that tradition they need to ensure the rights of our current land owners are not diluted. She remains convinced that the proposed amendments are an over reaction to the failed re-zoning of the Marco Polo property and she asks Council as she has asked the Planning Commissioners, to look beyond this one example and ask yourself the fundamental question, do you want to make it harder for the legitimate concerns of engaged citizens to affect the outcome of our re-zoning initiative. The protest provision remains an important check to balance the rights of those who might attempt to manipulate ambiguities in our zoning ordinances and Council members cannot and should not vote against re-zoning initiatives if they are consistent with our town's comprehensive plan and comply with our zoning ordinances. As they know compliance is not always clear and it is important that those most affected by re-zoning maintain their rights and be heard to affect the outcome. She is convinced that the proposed changes, for all practical purposes, will strip citizens of their ability to ever invoke the protest again. Voting to change these provisions is a vote against the voice of Vienna citizens.

Ms. Patty Hanley, 333 West St. NW, stated that if you are going to make a change then make a change that is going to make the process more productive. Nothing has been addressed to make it more productive of getting neighbors involved at the Planning Commission level. These revisions just kind of watered down the protest and didn't push it back to the Planning Commission at all. She likes the ideas that have been thrown out there, she thinks they are improvements but if they want more engagement she doesn't think this is achieving that at all.

Mr. Chuck Anderson, 125 Pleasant St. NW stated that he was going to be speaking from experience since he has experience with this ordinance and only focus on the 20% threshold. He agrees that number seems low but in reality it's not because to get 20% you basically have to find a tip of an iceberg. It is very difficult to get to the 20% for a whole host of reasons. Reason #1, there are a lot of people that don't want to put their head out of the foxhole and they don't want to take a position. Reason #2, absentee land owners. He had reason to believe that the property that is directly behind his house supported him in the protest but since there is an absentee landlord and he couldn't get a hold of him. Reason #3, large companies. He had reason to believe that the Bank of America supported their protest provision but he could not get anyone to sign. So there are a whole host of reasons why 20% seems to be very low but it is a very difficult threshold to achieve. He believes it is representative of a much higher percentage. He proposed an alternative to the Planning Commission which is based upon his work in international trade, where they have a similar situation where there is popular support for a measure but for a whole host of reasons people don't want to publicly come out and say it. It was a so called 25-50 rule. 25% could bring a protest petition but then they would be asked to demonstrate that they represented 50% of those expressing an opinion. So you would have a two step process, 1. bring one, 2. the town would poll the adjoining properties to see if

they expressed an opinion. This would prevent a small minority from basically bringing a protest position but it would also allow for a situation where a small minority could represent the wishes of their silent neighbors. He presented this at the Planning Commission and provided a copy of the proposed legislation that he provided to Council. He thinks it is a compelling compromise which allows the minority to essentially bring the petition but can't be a small minority.

Mayor DiRocco reported there were three letters received in opposition of the proposed from residents, Mr. Mullville, Mr. Covell and Ms. Lillis that have been entered into the record.

It was moved to close the public hearing.

Motion: Councilmember Colbert

Second: Councilmember Voigt

Councilmember Noble asked if it would be prudent to continue the public hearing to the next Council meeting due to the length of the agenda. Mayor DiRocco stated they could vote on it and see if people want to continue it or not. Councilmember Springsteen stated that Mr. Mullville's letter stated that he was in favor of going to 2/3rds but he was not in favor of the percentage. Councilmember Voigt stated his email was in favor of reducing the super majority to the 5/7th's but he was not in favor of going from 20% to 50%. He said that perhaps 25% would be a compromise. Councilmember Springsteen stated that a lot of people have spoken and are opposed to this and Councilmember Noble made a good point that there is a long agenda tonight and is not opposed to postponing it until next month. Councilmember Noble stated that he has not had a chance to read the three letters. Mayor DiRocco stated that it has been moved and seconded so they will vote on closing the public hearing. She further stated that the Planning Commission has had this for eight months and had a number of work sessions and public hearings which doesn't mean they can't continue but she does know they have worked on it for a long period of time and Council has had this information from them. Councilmember Majdi stated that he would not mind voting next month as well because they will also get to see the revised application for the Vienna Market and that will be informative to this discussion. Councilmember Springsteen stated that the proposed application from the Vienna Market that they have looked at is significantly better than last years submission. Councilmember Sienicki asked that we keep the discussion relevant to this conversation and not move to another conversation. Mayor DiRocco stated we need to keep it to whether or not we want to keep the public hearing open or not. Councilmember Voigt stated that she would be in favor of closing the public hearing but continuing the discussion amongst Council to the next meeting. Councilmember Colbert stated that she would be in favor of looking at the Planning Commissioners proposed amendment. She has listened to everyone tonight and there were a lot of good comments made. Mr. Payton stated that the August 21st meeting already has a work session, two presentations, a public hearing and 12 items on it and if Council would like to continue this to the 21st they certainly can but he would have to move something else off of that agenda. Mayor DiRocco stated that we try to keep it to two public hearings so we could add it if we wanted to continue it. The other choice is to keep the public hearing open and continue it, we could close the public hearing and continue the discussion or we could close the public hearing and continue comment open. Councilmember Noble stated the last option would work for him. Councilmember Sienicki stated that they have looked at this before in a work session, they have seen what the Planning Commission has recommended, and Council members have had the opportunity to look at what was said in the Planning Commission as well as everything that was said here today. This is not a new thing

for Council and just postponing for the sake of postponing it doesn't help us out any and seeing an application next month will not change what this fundamentally is. She does not agree with pushing the debate to the next meeting. We need to start making decisions instead of postponing, delaying or deferring and that seems to be what they have been doing lately. She really feels like they have had several months to look at this, this is not a new thing that has just popped up. Council needs to make decisions. Councilmember Colbert stated that she agrees with Councilmember Sienicki and she has read all of the Planning Commissioner's notes and comments that were made at the meetings and she does not see a reason for them to postpone it. She feels ready to discuss it now and vote. She also doesn't think that waiting to see plans on any MAC project has anything to do with this at all, it is a whole separate issue.

Councilmember Noble made a motion to amend the motion to close the public hearing, leave the record open for email and written comments and finish the discussion at the next meeting if the maker of the motion is amendable. Councilmember Colbert is not amenable.

It was moved to close the public hearing but leave the record open for comments to be submitted until the next Council meeting and add the discussion item to the next agenda.

Motion: Councilmember Noble

Second: Councilmember Majdi

Motion failed 4-3

A vote was taken on the original motion to close the Public Hearing.

Motion carried 4-3

Councilmember Noble asked the Mr. Mulhern some clarifying questions.

Councilmember Noble stated that a lot of people think this is just about Maple Avenue, it is not about Maple Avenue, it is about any re-zoning we do in town. It could be re-zoning from residential to townhouse's, it could be simply from RS-12 to RS-16. He thinks they as a Council should look at that in a broader context and not just Maple Avenue.

It was moved for approval of the proposed changes to Article 24 - Rezoning and Amendments, "Section 18-248 - Protest against proposed change" as proposed by the Planning Commission with their changes with the word "or", and the 2/3rds vote but change the percentage to 25%, and the language pertaining to how the petition should be submitted, as recommended. It was further moved to direct the Town Clerk to advertise an intent to adopt at the August 21, 2017, Town Council meeting.

Motion: Councilmember Colbert

Second: Councilmember Voigt

Councilmember Majdi stated that the Planning Commission has come up with a very elegant solution here by inserting the "or" between 1 & 2 and combining what used to be multiple provisions, into provisions number 2. It really solves that problem which he actually thinks is the bulk of the issue here and doesn't get much attention but he thinks it was the biggest issue at play. The way he sees it is that they solved that problem. He thanked the Planning Commission as well as the Department of Planning and Zoning for all their excellent work in supporting that and also putting

together all the slides with different scenarios for counting parcels that are available online. For him it is not as dire a situation as it was when they made the proposal with what he thought was an awkward or complicated counting of parcels. If we are talking about 20-25% or 20-35% on the margins we are talking about 1 extra signature in many cases, sometimes 2 extra signatures so he does not think this is a life or death issue. He noted for the record that he spoke with a lot of the Planning Commissioners and mentioned that he would be supportive of raising the percentage and he still likes the idea but he is a little ambivalent now because he thinks raising the threshold percentage of signatures in combination of lowering the required vote tally has a cumulative effect that might be weakening the protest provision a little bit too much. If there were a proposal to change the triggering percentage on its own in the counting of parcels, he would be supportive of that or if there were a proposal to change it to merely 5-2 and the counting of parcels differently, he would be supportive of that. There were also ideas mentioned during the public hearing, a 25-50 rule that is new to him but an interesting idea. There was a proposal submitted by former Council member Cole and he would be supportive of that as well. He will say a lot of progress has been made but he is still ambivalent on the 25% plus the 5-2. He will continue to listen to further discussion and making up his mind.

Councilmember Noble asked Mr. Mulhern for a clarification on his interpretation of a lot that is diagonally away from a corner as opposed to opposit, across a street or across a side street. Is he treating a lot that is diagonal as directly opposite as well as part of the count in this proposal. Mr. Mulhern stated that was correct. Councilmember Noble stated he thinks as a point, in some people's minds directly opposite means orthogonal, right angles, as opposed to a 45 degree angle or whatever angle a street intersection is at and he thinks they need to be careful about what the language is to describe that. To him directly opposite means exactly what it says, across the street is across the street, no caddy corner across the street. He really respects Ms. Hanley's comment on how do we get people more involved earlier in the process, and speaking from experience as the former chair of the Maple Avenue Vision Steering Committee they had a lot of public hearings and conversation but people didn't come out of the woodwork until it was before Town Council. He does tend to agree that they need to figure out how to get people more involved earlier. He appreciates Councilmember Colberts change to 25%, it is better than the 35 or 50%. He thinks they need to keep the barrier to entry very low in terms of what this is and they also need to respect what the national practice is. One thing that is intriguing about this is this is a Protest Vote when it comes to Town Council and with regard to what Ms. Hanley said there is no conversation in here about citizens bringing something up to require a super majority of the Planning Commission before it is recommended to Town Council and he thinks that is something they may want to talk about a little further. If they want people engaged earlier do we want the Planning Commission vote to be more than 4-3 on a re-zoning if there is a protest petition submitted earlier because that is where we want the engagement early on where all the back and forth occurs. Mayor DiRocco asked Mr. Briglia if this is something that can be imposed on the Planning Commission since they are a recommending body. Mr. Briglia stated that he thinks they can impose on the Planning Commission that their recommendation has to be a certain vote. He reminded Council that they all received a report and there is only 12 jurisdictions in the Commonwealth of Virginia that even do this. Somebody has been throwing out that the majority of jurisdictions do protest votes and they do not. Council can impose a procedure on the Planning Commission if that answers the legal question. Whether that is the policy that is followed in most jurisdiction, he would say that it is absolutely not.

Councilmember Sienicki thanked Councilmember Colbert for coming up with that compromise. She also stated that they had some initial discussions about how to inform the people who are surround neighbors about getting involved earlier in the process and we had some discussions about putting how a re-zoning happens and what the steps are in the initial letter so that people know when they are coming to the Planning Commission meetings the subsequent steps if this is recommended and how it goes on to Council. She thinks that would be a way to get more citizen engagement earlier in the process. She doesn't know if staff is considering that but she thinks that would be a nice compromise. She thinks what they are hearing from a lot of people in the audience and some of the letters, is that they need to be engaged. She thinks the earlier they are engaged in the process the more they know about how it works. She thinks as a town they also need to inform them of the steps and how to stay informed with that process and is something that she would recommend.

Councilmember Noble stated that he still has a concern about the right-of-way issue on the south side of Maple because if that is not a street and is simply town owned property then residents may not be aware that exists and would not have a voice in this context. He has a real strong concern that it's a technical legality but it would disenfranchise some people. His concern is that if we are saying it is adjacent he wants them to understand that they are indeed adjacent properties. Councilmember Voigt stated that she believes that this topic would come up during the Planning Commission and be dealt with at that point so then a protest vote will be possible by the citizens rather than getting it all the way to Council.

It was moved that after consideration of input from the public at an advertised public hearing and the recommendations of the Planning Commission, it was further moved for approval of the proposed changes to Article 24 - Rezoning and Amendments, "Section 18-248 - Protest against proposed change" as proposed with the exception that the required percentage of those protesting the vote shall be 25% and with all the Planning Commission recommendations other than the percentage. It was further moved to direct the Town Clerk to advertise an intent to adopt at the August 21, 2017, Town Council meeting.

Motion: Councilmember Colbert

Second: Councilmember Voigt

Carried Unanimously

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

Public hearing to grant a 10-year license for use of a right-of-way to Mobilitie, LLC

Mayor DiRocco called the Public Hearing to order at 9:48 p.m. The Town Clerk called the roll, all members of Council were present.

Mr. Briglia explained that they have not had a license to use the right-of-way in awhile. After the Telecommunication's Act of 96 they had a number of telecom providers come in and ask to do franchises and pass through licenses using our right-of-way. Mobilitie has asked to use the right-of-way to attach cellular antennae on existing poles. They didn't really have a model license and looked for guidance in other jurisdictions and then the General Assembly got in the mix and passed and one of the bills they passed was that there is not a zoning process for this. Mobilitie came in well before the General Assembly passed this and went through the provisional process, applied for CUP's, were granted CUP's for three sites and applied for an

additional two or three which is the first step of the process. It is consistent with our comprehensive plan to install these kind of facilities along Maple Avenue, they are designated in our comprehensive plan and the zoning map. They were in compliance with the zoning but they still have to get a license to use the right-of-way and that comes before Council. What they have done is taken the post July state code provisions on the fees and the permitting application process because Mobilitie may want to come in later. They have already gone through or in the process of going through the zoning process for particular sites. Post July 1st they would not have had to do that, they would submit an application assuming they have a license to use the right-of-way. The license to use the right-of-way sets the ground work for the application. The license sets forth the provisions for the street cuts, posting of bond, removing their equipment on the conclusion of the license and they also put in provisions that they can only put on current utility poles and cannot install new ones. He further explained the fees and other details that were shown in the document attached in the agenda. He has worked with the Town Manager, the Director of Public Works and the Director and Deputy Director of Planning and Zoning in reviewing this from all angles. The language is consistent with the State Code, consistent with previous licenses and with the constitutional requirement that Council grant this license for use of the right-of-way.

Mr. Jim Falvey of Eckert Seamons representing Mobilitie, LLC, stated that Mr. Briglia summarized the negotiation very well and is available to ask any questions.

Councilmember Sienicki asked about section 6, damage to public facilities and would trees be considered part of public facilities that are in our right-of-way and should they expand it to that. She does not want people to start putting in poles and then saying our tree canopy needs to be cut to 5' level and we have nothing left. Mr. Briglia stated that the simple answer is some of this is already in place. Verizon and Dominion own most of the poles in town, the town has some as well but the Verizon and Dominion poles have easements that require clearances around them already so our trees are supposed to be out of that zone anyhow around their poles and without so many feet so there is a right to trim. Mobilitie would not have any greater right to trim the existing pole, they would ride on the back of the existing pole owners. Councilmember Sienicki would be more comfortable adding trees as a public facility in the section 6 language just in case. Mr. Briglia stated that he can inquire with Mobilitie's counsel. Mr. Falvey stated that he doesn't anticipate it being an issue, if you get 3 or 4 bars inside your house the signal is going through your walls and trees so they would not need to remove any trees.

Councilmember Sienicki also asked about section 5, the time to remove, right not it doesn't stipulate a time frame and she would feel more comfortable in setting a time frame that once they stop using that facility it is removed. Mr. Briglia stated they have 120 days.

Councilmember Noble stated in that section 5 it talks about relocation within 120 days and the last paragraph talks about termination of license but there is no duration on termination of the license. The 120 days only applies to relocation the way it is written and to him it is odd they are talking about relocation in two paragraphs and the whole section is called removal. Mr. Briglia stated he did not think the applicant would have a problem with 120 days upon termination.

Councilmember Noble also stated that in section 4D there is no explanation to what happens in case of an emergency and asked what happens in an emergency. After some discussion it was stated that the absence of language means we will deal with it as we deal with it. Councilmember Noble wanted to make sure there was something

that was implicit because it is a legally binding document. Mr. Falvey stated Mobilitie is fine with the way it is written.

No one from the public came forward to speak on this item.

Councilmember Noble stated they did receive an email from Jean Phillips and was entered into the record. Councilmember Sienicki had forwarded on to Council, Town Manager, Town Attorney and Town Clerk.

It was moved to close the public hearing at 10:09 p.m.

*Motion: Councilmember Voigt
Second: Councilmember Springsteen
Carried unanimously*

It was further moved to approve the proposed Mobilitie, LLC request for a 10-year license to use public right-of-way and direct the Town Clerk to advertise an intent to grant the proposed license as amended.

*Motion: Councilmember Voigt
Second: Councilmember Sienicki
Carried unanimously*

A motion was approved as shown above. The motion carried by the following vote:

7. Regular Business

- B.** Review of proposed re-subdivision application by Mashie Drive, LLC., re-subdividing four existing lots into seven new lots in the RS-16 Zone./ Review of an alternative layout for a 6 lot subdivision on a cul-de-sac off Mashie Drive.

With the consent of the Applicant, it was moved to recommend that Town Council refer the proposed alternative 6 lot subdivision and request for waiver of the sidewalk requirement on Follin Lane and light deviations for two of the structures, as the preferred alternative subdivision layout, to the Planning Commission's meeting of August 9, 2017, for a recommendation. Also with the consent of the Applicant, it was further moved to defer approval of the 7 lot subdivision, previously reviewed by the Planning Commission, to August 21, 2017 meeting of the Town Council.

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

Request approval of Planning and Zoning Department's Work Plan for Zoning Code Changes

It was moved that Council approve the staff zoning code updates work program priority list and to look at the administrative items in terms of prioritization.

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

Request to forward Chapter 18: Zoning Article 11: C-1 Local Commercial Zone Regulations, Section 72: Permitted Uses to the Planning Commission for its review

It was moved that Council refer the proposed amendments to the C-1/restaurant

code: Chapter 18: Zoning Article 11: C-1 Local Commercial Zone Regulations, Section 72: Permitted Uses, which removes the requirement that a restaurant be located in a shopping center or freestanding only if it provides seating for a maximum of 125 patrons, to the Planning Commission for its review and recommendations and a proposed work schedule for the remaining items under the C-1 zone changes.

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

Request award of IFB 18-03 and FY18 spending for slurry seal application as needed with Slurry Pavers

It was moved to award IFB 18-03 to Slurry Pavers for slurry seal application as needed and approve FY18 spending in the amount of \$75,000 from the account listed above.

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

Request to approve emergency purchase of two A/C units and additional FY17 spending with Advanced Building Services

It was moved to approve the emergency purchase with Advanced Building Services for the two A/C Units at Northside Property Yard for a total of \$37,036.00 and additional FY17 spending in the amount of \$1,600.00 on PO 20170222 from the accounts listed above.

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

Request to purchase traffic cabinets from J.O. Herbert Co.

It was moved to approve purchase of traffic cabinets from J.O. Herbert Co., Inc. in the amount of \$22,724.90 from the account listed above.

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

Request Approval of Resolution for Issuance of Vehicle and Equipment Replacement Financing Request for Proposals for FY 2017-18

It was moved to approve a resolution authorizing the Town to obtain financing for vehicles and equipment purchases in an amount not to exceed \$730,000 in principal, from the account listed above.

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

Adoption of Brand Positioning Statement

It was moved to adopt the Town of Vienna brand positioning platform as presented this evening for use in developing the Town's logo and in inspiring marketing and other efforts.

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

vote:

Intent to Adopt Amendments to Chapter 6, Finance and Taxation, Article 8, Procurement

It was moved to adopt recommended changes to the Vienna Town Code, Chapter 6, Finance and Taxation, Article 8, Procurement as presented and I further move to direct the Town Clerk to advertise a Notice of Adoption.

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

Intent to Adopt proposed ordinance to amend the Code of the Town of Vienna, Chapter 9, Motor Vehicles and Traffic, Article 1, In General, Section 9-3, Adoption of State Code, of the Code of the Town of Vienna.

It was moved for adoption of the proposed ordinance to amend the Code of the Town of Vienna Chapter 9, Motor Vehicles and Traffic, Article 1, In General, Section 9-3, Adoption of State Code and it was further moved that the Town Clerk be directed to advertise a Notice of Adoption.

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

Adopt Resolution and Policy on Electronic Participation of Members of the Town Council of The Town of Vienna.

It was moved to adopt a Resolution and Policy on Electronic Participation of Members of the Town Council of the Town of Vienna to include before noon on the day of the meeting or before in section of the policy A1, to include that language and in addition section A1b to include telephonic, video, electronic or other communication means to be added after the word member, and in Section C to include a copy of any agenda's for electronic meetings held with the annual report to the FOIA Council and Joint Commission on Technology and Science and in Section D to make available a public comment form that has been prepared by the Virginia FOIA Council.

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

8. Meeting Adjournment

It was moved to adjourn the meeting at 11:40 p.m.

A motion was made by Council Member Linda Colbert, seconded by Council Member Douglas Noble, that the meeting be adjourned. The motion carried by the following vote:

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.