

## Call to Order

Mayor Stutz calls the meeting to order at 7:00 p.m.

## Roll Call

Tobias, Leake, Cole, Stutz, Scarbrough, Kenworthy, Weir

## Structural Engineer Reports

The Town Manager is looking for a little guidance on how to proceed with the Old Post Office. Leake comments that it needs a roof and siding. Mayor reminds that we left the last meeting trying to figure out if a General Contractor or the Town Manager would handle the renovations.

### Old Post Office

Weir says we changed course in May this year. We put out to bid the renovation of both buildings to see if this course would be financially feasible, the bids were varied, we couldn't make an informed decision, so we hired a structural engineer. He believes Tobias' motion to advertise a public hearing for the consideration of demolition of the Hulfish House was proper. He didn't believe the motion was out of order, which is why he motioned to suspend the rules. Leake would like it on the record that he disagrees with Tobias motion of December 5 to advertise a public hearing for the consideration of demolition of the Hulfish House; in his opinion there has been no information that has come forward that determines the building should be demolished. There is nothing revealing in the two reports that should change our course. Weir disagrees, he believes that there were new discoveries in the structural engineer's reports.

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**Tobias motions to advertise a public hearing on January 10, 2012 for the purpose of discussion and consideration of action that evening for spending up to \$200,000 for the renovation of the Old Post Office, Weir seconds; Discussion:** Kenworthy comments that siding and roof shouldn't be done first. Leake disagrees and thinks those things could be done first. The Town Attorney comments that we do not need another public hearing as long as we stay within the confines of the July public hearing notice.

Tobias motions to call for a vote, Weir seconds; (Who?)

**Tobias-Yes, Leake-No, Cole-Yes, Kenworthy-Yes, Scarbrough-No, Weir-Yes**

Call for a vote on the motion:

**Tobias-Yes, Leake-No, Cole-No, Scarbrough-No, Kenworthy-Yes, Weir-Yes**

**Mayor breaks tie with a No vote**

**Motion Fails**

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**Leake motions to spend up to \$200,000 for the renovation of the Old Post Office (15120 Washington Street) in a manner to be determined by the structural engineer, Town Manager and the Building Official; funds to come from the Town Center Property budget line item, Scarbrough seconds;**

Cole does not want this council to get into the nuts and bolts of this project; we are not qualified to decide what order the renovations should be done in. Weir comments that it seems silly to do the roof, we don't know the cost of the full project, we don't know how much or how little, the earlier RFPs do not take into consideration the structural engineer's report. It is fiscally irresponsible and he cannot support it. Mayor comments that this action shows that some want to get things done; we are no longer dragging our feet. Weir says again, we do not have the expertise to pull this off, we should hire a professional. Tobias comments that the Town

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Manager has a lot of things to do and not sure he wants to be a project manager, lastly, all the information we have on this building has changed since July, again in the light of full disclosure we should present this to the public again before spending funds. Cole would like to give the Town Manager a chance, he amenable to not obligate funds tonight until we see the plan. Mayor: Here we are not doing anything and stalemating again. Weir asserts Point of Privilege, comments that her comment was directed at him. The Mayor says the comment was directed at everyone sitting up here on the Council.

**Tobias-No, Leake-Yes, Cole-Yes, Scarbrough-Yes, Kenworthy-No, Weir-No**  
**Mayor breaks the tie with a Yes vote**  
**Motion Carries**

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**Leake motions to spend up to \$150,000 for the renovation of the Hulfish House in a manner to be determined by the Town Manager, Structural Engineer, & Building Official, to come from the Town Center Property budget line item, Scarbrough seconds; Discussion:**

Weir asserts the motion is out of order. Weir asks if it's a legal motion in light of the upcoming public hearing on this building, this motion greatly impacts the prior motion of December 5 to hold a public hearing regarding the building. Town Attorney responds that the public hearing was held in July and that this motion is within the context of the public hearing that was held. Tobias agrees with Weir and feels this motion is out of order. Weir asks legal counsel if this matter was dispensed with at the earlier portion of the meeting by Tobias' motion to advertise a public hearing for January 10, 2012?

Town Manager: At the last meeting the Town Council asked us to speak with a real estate agent, he does recommend putting off action on the Hulfish House until the January meeting. He is concerned that it is too much to do and not enough time. He feels we may find a tenant that would be willing to put money into the building. Leake feels the motion needs to go forward now. Weir asks again is this motion proper. The Town Attorney responds that yes it is; the July public hearing was for action and this motion is acting on that public hearing. Tobias' public hearing motion was for informational purposes only, not for action. The Town Attorney responds that spending \$150,000 is vastly different that spending \$200 on an advertisement for a public hearing, the two actions are vastly different and do not conflict. Weir still believes the two actions of council are conflicting, but that this can be resolved if someone reconsiders the motion for a public hearing for January. "Authorizing a public hearing for informational purposes does not preclude the Council from acting on the same manner prior to the public hearing", John Bennett.

**Call for Vote:**

**Tobias-No, Leake-Yes, Cole-Yes, Scarbrough-Yes, Kenworthy-No, Weir-No**  
**Mayor breaks the tie with yes vote, Motion Carries, the matter will be voted on**

**Call for a Vote on the Motion:**

**Tobias-No, Leake-Yes, Cole-Yes, Scarbrough-Yes, Kenworthy-No, Weir-No**  
**Mayor breaks tie with a Yes**  
**Motion Carries**

## **Planning Commission Vacancy**

Mayor has two persons interested in filling the Planning Commission vacancy; she would like the agenda item tabled to January 10, 2012.

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**Leake motions to table discussions of appointments to the Planning Commission to the January 10, 2012 Town Council meeting, Cole seconds;**

**Ayes: 4**

**Nays: 2**

## **January Meeting**

Scarbrough & the Town Manager cannot attend the January 10, 2012 meeting

## **Zoning Text Amendments**

**Weir motions to refer to the Planning Commission, Section 58-12 of the Town Code for its recommendation as to whether good zoning practice and the public welfare require the amendment of such section to better address land areas brought into the Town limits by annexation or boundary adjustment, Kenworthy seconds; Discussion:**

John Bennett will send his recommendations to the staff on this code section

**Tobias-No, Leake-Yes, Cole-Yes, Kenworthy-No, Scarbrough-Yes, Weir-Yes**

## **Town Manager**

- Study of the relocation of the storm pipe at the Haymarket Baptist Church for streetscape purposes. He recommends that this matter be discussed in the closed session.
- Additional funds are needed for Robert Dively, Esq. He believes that an appropriation of \$10,000 would be sufficient to cover costs through the end of the fiscal year.

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**Scarbrough motions to appropriate \$10,000 for the legal services of Robert M. Dively, funds to come from the Streetscape expenditures line item,**

**Tobias-Yes, Leake-Yes, Cole-Yes, Scarbrough-Yes, Kenworthy-Yes, Weir-Yes**

## **Mayor**

- Announces that the food pantry was robbed, one full freezer of meat was cleaned out
- Mayor asks if the TC would be willing to let the food pantry have a 4<sup>th</sup> room at 14740 Washington Street

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**Weir motions to authorize the Town Attorney to amend the lease agreement with the Haymarket Regional Food Pantry to allow the use of a 4<sup>th</sup> room at 14740 Washington Street, Cole seconds;**

**Tobias-Yes, Leake-Yes, Cole-Yes, Scarbrough-Yes, Kenworthy-Yes, Weir-Yes**

## **Verizon**

\*\*For discussion in January

## Closed Session

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**Leake motions to enter into closed session pursuant to VA §2.2-3711 A(1) for discussion and consideration of a named town employees, namely contract employees, and A(3) for the acquisition of real property for public purposes, namely the streetscape project, specifically the Haymarket Baptist Church property acquisition and A(7) matter specific legal advise, namely enforceability of lease provisions, Scarbrough seconds;**

**Tobias-Yes, Leake-Yes** (with the exception of the streetscape project, relating to the Haymarket Baptist Church), **Cole-Yes, Scarbrough-Yes, Kenworthy-Yes, Weir-Yes**

## Certification of the Closed Session

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**Weir motions that the Council of the Town of Haymarket does hereby certify that to the best of each member's knowledge, only public business matters lawfully exempt from the open meeting requirements by Virginia law were discussed in the closed session, to which this certification applies, and only such public business matters as were identified in the motion convening the closed session were heard, discussed or considered by Council, Leake seconds; Discussion:**

The record reflects that Councilman Leake did not participate in any matters relating to the Haymarket Baptist church and his certification does not include that matter.

**Tobias-Yes, Leake-Yes, Cole-Yes, Scarbrough-Yes, Kenworthy-Yes, Weir-Yes, Stutz-Yes**

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**Cole motions to authorize up to \$750 for the study of relocating the storm drain pipe that is currently engineered to be located at 14800 Washington Street (Haymarket Baptist Church), fund to be taken from the Streetscape expenditure budget line item, Tobias seconds;**

**Tobias-Yes, Leake-Abstain, Cole-Yes, Scarbrough-Yes, Kenworthy-Yes, Weir-Yes**

## Council Time

### Leake

- Leake comments that the roads are cracking terribly in Greenhill Crossing. He has put in a work order with VDOT, but he asks if the Town Manager could assist him.
- He would like to spend his \$250 Discretionary monies on the purchase of a sump pump for the Hulfish House.

**\*\*Discretionary funds must be approved by Council, per the Town Attorney**

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**Leake motions to allow Leake to spend up to \$250 for the purposes of installing a sump pump to come from the discretionary line item.**

**Motion withdrawn**

**\*\*Next month's agenda for spending discretionary funds for Mayor and Councilman Leake**

### Cole

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Cole had discussion with a friend of a developer at PACE. He asks the Council how they would like to keep the front of the building the same, they want a church. They went to the school board to ask how much it is. He would like to come to the TC next month

**Cole motions to appropriate \$3,500 for staff Christmas bonuses, Leake seconds; Discussion:** Weir would like to know the basis and justification of the bonuses. The Town Manager responds that the bonuses are to go to the 9 salaried employees of the Town.  
**Tobias-No, Leake-Yes, Cole-Yes, Scarbrough-Yes, Kenworthy-Yes, Weir-No**

Scarbrough  
*Nothing*

Kenworthy

- The street lights look great
- He would like to have seen a wreath on every pole

Weir

- He would like a report on status of sidewalk repair as soon as available

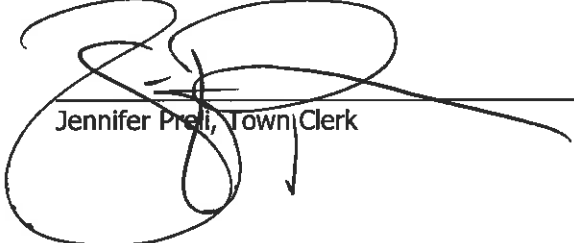
Tobias  
*Nothing*

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**Tobias motions to adjourn at 9:37 p.m., Scarbrough seconds;**  
**Ayes: 6**  
**Nays: 0**

Submitted:

Approved:

  
Jennifer Praeli, Town Clerk

  
Pamela E. Stutz, Mayor

**JOHN C. BENNETT**

Attorney at Law  
The Hill House  
306 N. West Street  
Culpeper, VA 22701  
(540) 825-3838

December 19, 2011

VIA email [dleake@townofhaymarket.org](mailto:dleake@townofhaymarket.org)  
David Leake

with copy to Town Council via email

Dear Mr. Leake:

In regard to your email inquiry requesting a "legal opinion on the motions made at last night meeting regarding the request for a public hearing / demolition of the Hulfish House" being "in anyway out of order" or "considered invalid null or void" and steps or actions a council person could take to "reverse, cancel the actions or put on notice" an objection if such motion was out of order or invalid, may I offer the following comments:

1. I am always reluctant to take up the Council's time researching a point during a meeting. While I thought it necessary to examine the minutes as to the history of whether the demolition question was before Council that evening, I did not take time to research Robert's Rules of Order ("Robert's Rules") as it pertained to the motion to suspend the rules. After reviewing Robert's Rules, I believe the procedures I state below should have been followed.

2. It is a fundamental requirement of a governing body that members receive prior notice of a substantive item to be considered at a particular meeting. This is the reason agendas are prepared and circulated prior to the meeting. Even if there is a proper amendment to the agenda, generally it is only for the purposes of discussion, unless an incidental or nonconsequential item. Matters of substance should be carried to another meeting where notice can be given to all members of Council prior to any discussion on the merits, action or vote being taken thereon. Therefore, I believe that renewing the question of demolition was not properly before the Council at its December 5, 2011 meeting, and that no vote should have been taken authorizing advertising at a public hearing. It should have been added to the agenda for the next regular meeting, so as to give all members of Council notice, the opportunity to be present and the opportunity to be heard, before any action or vote was taken on the matter.

3. The Mayor, as the officer presiding over the meeting, ruled the motion to advertise out of order. Then a motion was made to "suspend the rules". Robert's Rules which constitute the Rules of Order for the Town Council, states that "Rules which embody the *fundamental principles of parliamentary law* ... can not be suspended, even by unanimous vote."

Opportunity for a duly elected council person to have notice of a substantive matter to be considered and acted upon is a fundamental principle governing the conduct and operation of any governing body.

Moreover, Robert's Rules state that "No *procedural rule prescribed by federal, state or local law* can be suspended unless the Rules specifically provide for its suspension." Procedural due process is recognized by both the federal and state governments through numerous court decisions and their constitutions. This includes the right of prior notice and the opportunity to be present and be heard, in this case, on "a substantive question before a governing body" as a duly elected member of that body.

Robert's Rules also state "Rules *protecting absentees* can not be suspended" and "Rules protecting a *basic right of the individual member* can not be suspended". It is stated thereafter that such Rules include the requirement to "give previous notice".

4. To clarify matters going forward, as to a motion that falls within the category that is properly considered under the suspension of rules (the motion to advertise not being in this category) which would suspend any Rule of Order of the Council, or any Rule of Parliamentary Procedure, a motion to suspend such Rules requires, as stated in Robert's Rules of Order "previous notice and a two-thirds vote". So, going forward, even if a motion is of the type that allows suspension of the Rules, the motion could be made, but not considered until a subsequent meeting when each member of Council has proper and lawful notice of the motion to be considered, at a meeting held at a time and place so as to afford the opportunity of all members of Council to attend, typically the next regular meeting.

5. Lastly, you ask what steps could be taken by a council person to reverse or cancel the actions or notice any objection. While I believe the motion is voidable, if not void, under these present circumstances where it was clearly stated the purpose of the public hearing is for consideration only and no substantive vote or action can result from the public hearing, while there is harm to the basic procedures of the organization, the potential injury does not rise to the level of requiring going into yet more difficult questions as to declaring the motion void or voidable. So, under the particular facts and circumstances of this matter, I would say it would be best to allow the motion to proceed, although defective, since no action can result from the public hearing.

6. Having said that the motion should proceed, henceforth, I will take more affirmative steps to ensure the adherence to the procedures which should be followed by Council. As I have stated a number of times, I believe it is particularly important that any substantive matter to be considered, whether voted on or not, be a proper agenda item, not added to the agenda the night of the meeting, so each council person has ample opportunity to be present, to

David Leake  
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be heard and to participate as to that matter. Moreover, it is a fundamental principle that can not be abridged, not only should council persons be notified of what will be considered at a meeting, but Council's constituents and the public in general should know what will be considered at a council meeting, so they have the opportunity to at least be present and observe, if not the opportunity to be heard and state any matter that they deem relevant for Council's consideration.

I would also suggest Council consider Bylaws to further clarify these matters, although going forward, I will be more active in stating if a substantive matter should not be considered because of lack of prior notice.

I hope this is of assistance.

Very truly yours,



John C. Bennett

JCB:fes