

TOWN OF HAYMARKET, VA.
Chartered in 1799
County of Prince William

TOWN COUNCIL
SEPTEMBER 10, 2001

MAYOR
John R. Kapp

ATTORNEY
Bob Bendel

COUNCIL
James Shepard, Vice Mayor
Nancy Bailey, Liaison & Chair Planning Comm.
Tom Utz, Building Official Liaison (absent)
Mary Lou Scarbrough, ARB Liaison
Pam Stutz, Historical Commission Liaison
Doug Mohr, Police Dept. Liaison

Mayor Kapp opened the regular session at 7:33 p.m. Rev. Arthur Cubban, Shepherd of the Hills Lutheran Church, led the council in prayer.

Citizen's Time

Mr. Bear spoke saying there many people in the town hall he doesn't know.

Trigger Time 4-H Club

Mayor Kapp presented the competitors in shooting sports who went to the Olympic try outs. They do not have a permanent place to shoot. The group is looking for fund raisers to purchase a moving target.

Minutes of July 26 and 30

Vice Mayor Shepard moved to approve with corrections noted, second by Councilman Mohr. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Police Report

Chief Roop reported. Councilman Mohr states Town Council agreed to pay for new Police Dept needs. He needs \$600 to prepare the PD for move in. Councilman Mohr moved to approve \$600 expense for the PD to move into the new quarters to be charged to the capital improvement budget, second by Councilwoman Scarbrough. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Councilman Mohr states the burgundy car is complete and ready for the road. Officer Breeden is interested in a junior police program for 15 to 18 year olds. Councilman Mohr asks council to send a letter to the county for their participation. Councilwoman Bailey has drafted a letter for that purpose.

Treasurers Report

Town Council regular session, September 10, 2001

First Virginia Bank general fund checking account:

June 30, 2001 balance \$121,108.94, expenses for July \$51,150.83, deposits \$74,751.07, ending balance July 31 \$144,709.18.

July 31, 2001 balance \$144,709.18 expenses for August \$144,709.18, expenses for August \$113,080.46, deposits \$51,715.07 ending balance \$83,343.79.

Mayor Kapp asked if the pump was installed (for PD). Councilman Mohr does not know, if not, it will be installed shortly. Councilman Mohr states regarding the Leaberry agreement for security - Mr. Leaberry offered to purchase security for parking lot up to \$16,000 for surveillance but he doesn't want to be responsible for the maintenance. The system he is looking at will record 72 hours. The new proposal is good for the town and Mr. Leaberry. The equipment has a ten-year life. Councilman Mohr will be looking for a maintenance contract.

Councilman Mohr asks counsel about Leaberry giving money to the town and the town can purchase the equipment at a better price.

Unpaid Bills

The treasurer states council resolution was to pay operating expenses by allocation. The treasurer wants direction on how unpaid bills are to be handled.

Councilwoman Stutz suggests all operating expenses that have been budgeted and are normal expenses be paid without approval. Councilman Mohr says since the council approved the PD budget he would like the PD to be able to spend their money without approval of council providing they stay within their line item budget. Council agreed to this procedure.

Councilman Mohr moves to not pay Dominion Power \$2278. He wants a letter detailing what they did, who did the work, time worked, second by Vice Mayor Shepard. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Metropolitan Plants - FY 2002 contract proposal is \$146 per month. Councilwoman Scarbrough moved to pay the ground maintenance at \$146 per month for July, August and September and keep for additional thirty days to November 1, second by Councilwoman Bailey. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Metropolitan Plants \$136 to move two trees. Councilwoman Bailey asked who planted the trees there. Councilman Mohr says the contractor planted them. The Town Clerk is to call Gull on Sept 11 and ask them to complete the punch list and get a punch list to each council member.

Councilman Mohr asks about the evergreen tree. Mayor Kapp thought they sent us a fax about replacing the tree. Councilman Mohr states Gull wanted to replace it with a four foot tree.

Councilman Mohr says he understood VDOT got the paving asphalt on the [crosswalk] bricks; it is not just from the tires. This was caused by the paving equipment going over the bricks. Councilwoman Bailey states there is also broken concrete that needs to be repaired.

Public Hearing session, September 10, 2001

Councilwoman Bailey asked about the town hall steps. Mayor Kapp says it was on the punch list to redo them. Councilman Mohr asked counsel can we do a letter of responsibility to tell them they are responsible if someone gets hurt. Atty Bendel states yes. Mayor Kapp states he wants to wait until September 29.

Burgess & Niple \$623.80 - E&S Program Administration - Mayor Kapp got the documentation. Councilman Mohr said he remembered they threatened the town that they wouldn't do any work unless they were paid and they didn't give back the town back up documents. Mr. Lowery was to notify them of his appointment [as E&S administrator]. Council sends this to Jim Lowery to rectify and respond to council by October 1.

Councilman Mohr suggests council require an audit for everything they have billed. Councilman Mohr asked counsel to give us an audit. Atty Bendel says without reviewing the contract, he can't answer that. Councilman Mohr asked Atty Bendel to remind Atty Arledge that we requested his looking into that.

Mayor Kapp states these phase 1A costs are part of the engineering expense of the project.

Councilman Mohr asked about the HVAC repair by ADCO. The Clerk states we had a leak in the town hall air conditioning unit.

Grocery store, 15000 Washington Street - stone repair - Councilwoman Bailey moved to have Brian McGann fix the corner of the building at Washington & Jefferson street, second by Councilwoman Stutz. Councilwoman Stutz asked if this is the only bid we received. No. Councilwoman Stutz would like another bid. Councilman Mohr asked Mr. Lowery states if there was any damage to the building. No, it is just to reinstall the stone. Councilman Mohr states the gaping holes where the stone doesn't meet the sidewalk should be fixed. Councilwoman Bailey withdrew the motion, Councilwoman Stutz withdrew the second. Councilwoman Stutz to submit names of masons.

Barclay Towers, Virginia Beach, Certified Municipal Clerks Institute lodging for Clerk and Deputy Clerk - Councilwoman Scarbrough moved to approve lodging for the town clerks for the class to be charged to the training budget, second by Councilwoman Bailey. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Virginia Mayor's Institute, October 12 - 14, Virginia Beach - Mayor Kapp would like to attend. Registration is \$190, hotel \$89 per night, plus mileage. Councilwoman Stutz moved to approve expenditure of registration, hotel for two nights plus food and mileage from the training budget, second by Councilman Mohr. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Virginia Institute of Certified Planners refresher course program, October 7-9 Hampton Roads, Va. - Councilwoman Bailey requests to attend. \$175 registration, \$99 a night lodging plus mileage and meals to be charged to training budget. Yeas: Shepard, Mohr, Scarbrough, Stutz. Nays: None. Abstain: Bailey. Motion carried by 4/0/1 vote.

Town Council regular session, September 10, 2001

Certified Municipal Clerks Institute, Clerk and Deputy Clerk to attend - Councilman Mohr moved to pay the expense for registration, lodging, food and mileage for both clerks to attend the week of September 28th in Virginia Beach. Expense to be charged to the training budget, second by Councilwoman Scarbrough. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Training Budget - Councilman Mohr states our training budget is \$3,000 for the year. We spent \$1700-\$1800 in the first quarter of the year. He reminded council we would discuss the budget at the end of the quarter.

Bond Release

Haymarket Self Storage - 6600 James Madison Hwy - Mr. Minchik requests council to consider returning his performance bond, conservation bond and E&S inspection fees overage.

Business License

Haymarket Grocery, release agreement from Lee Law Firm - Councilman Mohr doesn't know how Ms. Lee can represent the sublease party as they aren't legal counsel for the Bang's. Mayor Kapp says the Jinn's are releasing the Bang's from responsibility. Councilman Mohr reminds Ms. Lee said her father's health is failing and her father will not be able to continue in this business and the Bang's are not [taking the lease], and council has never seen the Bang's.

Atty Bendel states we can put reasonable conditions on the assignment. Mayor Kapp said the Bang's did not consummate the deal. Atty Bendel states he wasn't aware of that. Councilman Mohr says the Bang's are under lease to the town. Councilman Mohr thinks the money we spent on meetings and attorney fees should be returned to the town. Mayor Kapp suggests to table to the next meeting. Councilwoman Stutz wants all legal expenses submitted prior to releasing or considering the release. Tabled to Atty Arledge's return.

Unpaid Bills

Town Center, plumbing contract, Bill's Plumbing Practice - Councilwoman Bailey asks if we have any contracts on these proposals. Mayor Kapp says yes we have a proposal. Councilman Mohr asked about the bathroom, does this have anything to do with the break room? Councilman Mohr says Mr. Hines told him there is a venting problem. He wants accounting of the \$1,033.46 and what it will take to fix the problems.

Vice Mayor Shepard states he took a box of face plates and cat 5 cable to the town center. It disappeared. He asked the electrician if he has seen it but he hasn't gotten back to him. Councilwoman Stutz asked if he filed a report to the Police Dept. No, he states he will do so.

Councilman Mohr asked who has keys to the [town center] building. Mohr, Lowery, plumber, electrician, Alan and Mayor Kapp.

Business License

Claude E. Cox, 15175 Washington Street, pumpkins, mums, Christmas tree, greenery sales out of a tent in front of the property - Councilwoman Bailey states the PC tabled due to questions about parking, electricity, size of tent, requires a special use permit per Sec 12-162 & 12-9 public

and meet all standards. Tabled. Councilman Mohr states on follow up with beautifying the town doesn't want a tent up there. He wants a detailed business plan.

EMG Associates, I-1 district, general contractor, Shoppes at Haymarket contractor - Councilwoman Bailey moved to approve, second by Councilwoman Stutz. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Food Lion, LLC, 6701 Leaberry Way, I-1 district - PC approved subject to physical address corrected. Councilwoman Bailey moved to approve subject to conditions, second by Vice Mayor Shepard. Councilman Mohr states he understood there is an issue with Coke machines and asks if that was resolved. Councilman Mohr asked counsel if it is drawn on the site plan and signed does that approve it. He says the town charter says if we don't like something we can request it to be changed. Atty Bendel asked why it wasn't addressed at site plan stage. Bendel states there is a problem trying to require changing the site plan after the fact. Councilman Mohr says the ordinance doesn't permit backlit signs that is what the Coke machine is. Councilman Mohr states this a Leaberry problem. Councilwoman Bailey states the PC did not tell Food Lion they could have the machines. Councilwoman Stutz has a problem that Food Lion opened without a business license. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Councilwoman Scarbrough states the ARB did not look at the Coke machines. She will bring it up to them. Councilman Mohr would like to review the BPOL ordinance for the next meeting.

Stutz Property Management, 15020 Washington Street - Councilwoman Bailey moved to approve, second by Councilwoman Scarbrough. Yeas: Shepard, Mohr, Bailey, Scarbrough. Nays: None. Abstain: Stutz. Motion carried by 4/0/1 vote.

Councilman Mohr asked Atty Bendel if the council needs to amend the lease to permit the office in town center property. Yes, was the reply.

McDonald's, 6740 Leaberry Way, I-1 district, fast food restaurant - Councilwoman Bailey moved to approve, second by Councilwoman Scarbrough. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

David Gore, 6727 Leaberry Way, optometrist office - Councilwoman Scarbrough moved to approve, second by Councilwoman Bailey. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

KB Sewing Designs, home business, 14896 Greenhill Crossing Drive, window treatments - Councilwoman Bailey moved to approve, second by Councilwoman Scarbrough. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Designer Fitness & Rehab Center, 6715 Leaberry Way - PC tabled not a by right use and council has not adopted the fitness center ordinance amendment. Councilman Mohr states it is a rehab center. Councilwoman Bailey says it is also fitness center. Tabled.

Sign Permit

Commission, September 10, 2001

She will answer all the questions and go back to the PC before a public hearing. She will speak with the applicant from her home.

Rezoning

Eyaris, Pardo, 14881 Washington Street – Council states applicant will have to put in street enhancement the gravel driveway will have to be paved. They need the site plan ordinance. Preliminary and final site plan required per the ordinance to go to the PC.

Special Use Permit

D&J Excavating, 15175 Washington Street, storage of mulch piles – Need full site plan and has to be to public hearing. Councilman Mohr said they said they weren't going to dump when they put the parking back there. They are dumping the mulch.

Subdivision Plan

6811 Jefferson Street, single lot subdivision – PC approved. Access is on the north side of the existing lot. Mayor Kapp states a single lot subdivision doesn't require a full site plan. Councilwoman Bailey moved to approve subdivision plat "out lot Lincoln Court," second by Councilwoman Scarbrough. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Construction permit

84 Lumber, 15151 Washington Street, new building – Councilwoman Bailey states Mr. Payne said the sidewalk should be in the right of way, their other plan had the sidewalk under their overhang. The building will be 10' off the property line. Comments have not been received from VDOT, engineer. Tabled to continuation meeting.

Continuation meeting

Scheduled for Wednesday, Sept. 19 at 7:30 p.m.

Bond Release

Haymarket Self Storage, 6600 James Madison Hwy, performance bond, conservation escrow and E&S bond – Councilman Mohr states since the business has been sold the new owner needs to sign the agreement [to permit adjoining properties use of the SWM pond] prior to release.

Subdivision Plan

Villages at Haymarket, Bleight Drive – Councilwoman Bailey states PC said applicant needs to stabilize lot 13 & 14, storm water management pond maintenance by HOA in writing. Mr. Payne has not signed off on the plan. Tabled to Sept. 19 for engineer approval.

Rezoning

Russo, 15120 Washington Street, R-1 to B-1 – Mr. Payne needs to note on the plat that the street scape will be installed.

Planning Commission

Tabled.

Architectural Review Board

Town Council regular session, September 10, 2001

Cox, 15175 Washington Street, peddler - Tabled.

Gore, 6727 Leaberry Way, Optometrist, temporary banner sign - Councilwoman Stutz moved to approve temporary banner to be monitored by the Police Department for 14 days, second by Councilwoman Scarbrough. Councilman Mohr says that is not a PD duty/issue. Councilman Mohr says the building official or public works department should do that. Councilwoman Bailey says the code says the placement is up to the zoning administrator. PC didn't make any motion. Councilman Mohr asks counsel - after 14 days the Zoning Administrator should be citing a violation not sending a letter. We have new businesses coming in and how are we going to handle this matter. Atty Bendel says council needs to notify and enforce. Councilwoman Scarbrough says what about once it is up with no permit. Atty Bendel says give them three days to take it down. Councilman Mohr says Sheetz is a big violator. Atty Bendel says ask the court to keep them from erecting banners for over 14 days. Councilman Mohr asks how many banners can hang at one time. Vice Mayor Shepard says one banner per business. Councilman Mohr asks how the council will handle this. Vice Mayor Shepard says we have to handle this banner as it is before us. We need to assign someone to the position to enforce the ordinance. Mayor Kapp suggested discussing this in the continuation meeting. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Food Lion, 6701 Leaberry Way, internally illuminated wall sign - Councilwoman Stutz says there is a discrepancy in the square footage of the store for determining the size of the lettering. Councilwoman Bailey states under 40,000 square feet permitted lettering up to 24 " tall and over 40,000 square feet permitted lettering up to 42" tall letters. Mr. Payne checked it and it is more than 40,000 square feet. Councilwoman Stutz wants Mr. Payne to document the square footage and how he figured it. Tabled. Councilwoman Bailey says the returns are black and are required to be white. She states she spoke with Marty Gearheart who states it will be in compliance within two weeks.

Fence permit

Richard, 6860 Jockey Club Lane - PC and ARB approved. Councilwoman Scarbrough moved to approve, second by Councilwoman Bailey. Yeas: Shepard, Mohr, Bailey, Scarbrough, Stutz. Nays: None. Motion carried by 5/0 vote.

Rezoning Application

14845 & 14851 Washington Street, R-1 to B-1 - Councilwoman Stutz states the plan is missing the buffer requirement, storm water management site plan, need comments from VDOT and PWCSA, street scape and water assessment are due. Councilwoman Bailey understood if a property was sold and the zoning changed they had to hook up to public water. Councilman Mohr asks about property adjacent with septic fields and wells. Councilwoman Bailey says the Hubbard's are also using the well on this property and if he has to hook up to water line what happens to the Hubbard's since he has to cap off the well. Mayor Kapp says as long as it is disconnected the Hubbard's can use the well. Mayor Kapp says you can leave the well active. Mayor Kapp states this needs a site plan with the whole nine yards on it. Councilwoman Bailey states the plat is incorrect. The parking places that come into effect that needs to be answered. The mayor is to write a letter with concerns. Mayor Kapp told Mr. Beslove the applicant has to submit more information, proper site plan, E&S plan. Beslove states it is master planned B-1. Mayor Kapp says it has to comply with the ordinance. Councilwoman Bailey states applicant

Tabled.

Policies and Procedures

Councilman Mohr asks counsel if council chooses to discuss an issue do they have the right to have it on the agenda. Councilwoman Bailey asked for an opinion and e-mailed to Atty Arledge per Art. III 17.17 1-12 council may adopt procedures for meetings. The mayor does not determine the agenda; council may adopt procedures and policy for the conduct of the meeting. Mayor Kapp states there are no rules in place now. Atty Bendel states they [rules] are set in place and council may overrule. Mrs. Leonard threatened to sue each person if council adopts the policies and procedures.

Councilman Mohr moved to discuss policies and procedures, second by Councilwoman Scarbrough. Yeas: Mohr, Bailey, Scarbrough, Stutz. Nays: Shepard. Motion carried by 4/1 vote.

Councilwoman Scarbrough presented council with the Virginia State Code citing. Atty Bendel states regarding veto - veto authority does not just come from general statutes, charter does provide a veto in limited time (5) days; the Mayor does have a right, by charter, and does take precedence over state law. Atty Bendel says council can override the veto vote, which requires five members. Councilman Mohr states the charter states it [the time to respond] is counted by day, the state law also says by day, with the exception of Sunday. The veto did not meet the requirement - each motion was by policy - Mayor did not meet the requirement; veto is out of order. Veto does not stand, is not valid. Atty Bendel states he was told that within 5 days the mayor attempted to reply in this office, within five days. Mayor Kapp states Atty Arledge told him to respond by 5 p.m. Tuesday, but told him by 10 a.m. to be safe. Atty Bendel does not believe you count Wednesday citing "after it has been presented to him". Councilman Mohr states it says it starts the day it was presented to him.

Councilman Mohr asks if there is such a thing as a blanket veto. Councilman Mohr says the mayor should have vetoed by each motion. Atty Bendel the mayor must veto in writing with his objections in writing, submitted to the town clerk. Mayor Kapp says he did it in all good intent by advice of counsel. Atty Bendel states the timing by charter reads the mayor must act within five days, Sundays excepted, after presented to him.

Mayor Kapp would like to sit down with the entire council at the continuation to discuss the policies and procedures. Mayor Kapp states it appears to him, citizens and business people in town that this was done in a manner to railroad him.

Councilwoman Stutz states he accepts it that way and we need to move on and have resolution. She states she should be able to put issues on the agenda. Council does not want to continue in this manner. She states she doesn't appreciate the mayor going to the commonwealth's attorney about her regarding a conflict of interest. She states she told the mayor she wanted to sit down with him to help him but he walked away from her.

Councilwoman Bailey and Stutz agree things are put on the agenda and council doesn't know what it is about until the eleventh hour. Councilman Bailey takes exception to the mayor tabling agenda items that need to be discussed tonight.