

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

**TOWN COUNCIL SPECIAL MEETING
JULY 26, 2001, 8:00 P.M.**

MAYOR

John R. Kapp

ATTORNEY

John Arledge, Smith & Davenport

COUNCIL

James Shepard, Vice Mayor (absent)

Nancy Bailey, PC Liaison

Tom Utz, Bldg. Official Liaison

Mary Lou Scarbrough, ARB Liaison

Doug Mohr, PD Liaison

Pam Stutz, Hist Comm. Liaison (absent)

Mayor Kapp opened the special meeting, for assignment of lease for Haymarket Grocery, at 8:03 p.m.

Ms. Alexa Lee, daughter of Mr. John Jinn, tenant at 15010 Washington Street, Haymarket Grocery, presented Mr. Jinn's proposal. Ms. Lee asks for an assignment of the lease for a proposed buyer.

The lease is assured by the new buyer and Haymarket Grocery, Inc. and Mr. Jinn for the approximately nine years left on the lease. Mr. Jinn will be on the hook for the balance of the lease. She states the proposed buyers agree to the terms of paying attorney fees if there is a default on the lease.

Councilman Mohr asks why the potential tenant is not present. He states he is concerned there has been no audit of the financial statement and there is no credit report to verify the information on the personal financial statement. Councilman Mohr asks why the potential tenant or his legal representative is not present and asks if Ms. Lee has the authority to speak for them. She says she does not intend to agree to anything that is not in the lease assignment document.

Ms. Lee states no accounting firms confirms the financial status, this is a standard disclaimer. Councilman Mohr does not want to go any further without a 1040 or verifying the financial status. Ms. Lee says she wishes the town had told her they wanted the Bangs to be here and wanted the 1040.

Councilman Mohr asked why the financial statement had not been given to council to review earlier. Atty Arledge had the financial report on the 14th of July. Mayor Kapp gave it to him the day after he received it. The town office received it on Wednesday morning. Atty Arledge stated he did not know the council wanted to see it earlier.

Councilman Mohr states a bank would require a full disclosure and confirmation of financials. Mayor Kapp states Mr. Jinn will be responsible for the full lease period. Ms Lee says the town would have both the Jinn's and the Bang's to back the lease. Councilwoman Scarbrough asks about the statement on their business plan of no competition in the area. She asks about the Food Lion, are they aware it is coming? Councilwoman Bailey and Councilman Mohr are also concerned if the Bang's are aware of the Food Lion coming. Ms. Lee say yes, she has a statement

to that effect [in her possession, but now with her.]

Councilwoman Bailey asks about the sale of the grocery business from the Davis's. Ms. Lee says that is not typically disclosed to the landlord. Atty Arledge says the town has not set a standard or policy of what they require of their lessors. The town did not tell them they want a credit report and the Bang's to be present.

Councilman Mohr says the summary [of the business plan] shows they don't know the competition in town or the area. He also says he was against using the Gossom/Jinn lease, we should have used our own lease. Atty Arledge states we accepted this lease when we bought the property and if we change it to over a five year lease period we have to advertise for a public hearing. Atty Arledge says the Bang's could be responsible for attorney fees if we have trouble collecting rent from the Bang's. Mr. Jinn would not be responsible for attorney fees, just the rent.

Councilman Mohr wants council to be aware the mayor has been dealing with this since the 14th of July and we don't have full disclosure. It is a serious internal problem. Atty Arledge says he didn't realize the council wanted to see the financial statement and the council has no procedure.

Councilwoman Bailey asks if the Bang's know the condition of the building and the repairs needed. Ms. Lee says the Bang's have been at the store every day since they signed the sales agreement. Councilman Utz asks how this sale came about, was the store marketed. Ms. Lee says they came through a real estate broker but they didn't advertise. She states her father's health is failing. He will lose money through this deal. He is running the place by himself with the employees.

Councilman Mohr says we are going to be in the situation we were in six months ago that the Bang's didn't know the Food Lion is coming. Councilwoman Scarbrough suggests we have the Bang's sign a letter they are aware the Food Lion is coming. Ms. Lee says she has already had a letter signed to be sure they are aware as Mr. Jinn was not aware until the day of settlement.

Ms. Lee says she has dealt with subleases and leases for large corporations and supplying their needs. She has never had to supply a 1040 to any of them. Councilman Mohr states small business loan always require 1040's and credit reports.

Ms. Lee says requiring a credit report and 1040 is a practice of discrimination. Councilman Mohr says we are on a learning curve here. Ms. Lee asks if the town decided to put this practice in place today for this lease. Ms. Lee says you can't arbitrarily be requiring things.

Councilman Utz asks counsel can we legally step back and say we want a 1040 at this time? Can we hold them to that standard? Atty Arledge says the grocery is different from office space. If council wants a credit report or a 1040 the town should have notified them prior to this meeting. Councilman Mohr states a 1040 and credit report is part of the financials, a normal procedure even at a higher level. Atty Arledge asks what a credit report runs. About \$100. He says the settlement is scheduled for July 31. Council must schedule another meeting [if they aren't going to decide this tonight.]

Councilman Scarbrough asks Councilman Mohr what he wants besides a credit report and a 1040. Councilman Mohr has a problem with what Ms. Lee has said to council in the past. He

said she told council the Jinn's were not told about Food Lion [prior to purchase of the store.]

Ms. Lee will provide council with the written statement they know Food Lion is coming. Ms. Lee asked Councilman Mohr to write the letter for her to give to their counsel. Councilman Mohr wants to make sure they know of all the competition around; Food Lion, McDonald's, Sheetz, Q-Stop and two miles east and is going on and coming in three months later.

Councilwoman Scarbrough wants them to be aware of what condition of the building. Councilman Utz thinks we need to take issue with the leaking roof, holes in the walls and basic maintenance that is the town's responsibility. Councilman Mohr says no, Mr. Lowery said that building meets building code even though there are a lot of things that need to be fixed that don't affect occupancy. He doesn't know why the holes are in the walls.

Councilwoman Bailey asks about the freezers that don't work. Yes, states Ms. Lee, that is a business issue. Councilwoman Bailey asks if their main sales in the D. C. are liquor or groceries? Ms. Lee said it is not liquor, it is a neighborhood store. Councilwoman Bailey states she can't tell from reading this [proposal] what is going on. Councilman Utz states we're not pushing alcohol in town. Ms. Lee says Mr. Bang would continue to run the store in the District and Mrs. Bang would be here with her extended family to run this store. Ms. Lee says council is telling her the premises is not worth paying for. Councilman Mohr says in November she said they didn't realize the condition of the store was so bad. Mayor Kapp says Alan Gossom has taken care of many of the issues.

Councilman Utz says he understands her dad's health failing and he has compassion and he wants to sell and the Bang's want to buy the business. It is good to know how all this is happening. He doesn't sense a great vigor that this is a profitable business. Ms. Lee says it could be more profitable if you don't have to pay employees. Ms. Lee says revenue is okay but expenditure is too high. The Bang's have checked the gross receipts every day at the end of the day. It is their opinion they will make a decent profit.

Councilman Utz says it has all been topsy turvy. Ms. Lee says since last May, 2000 it has been horrendous for Mr. Jinn. He is happy he has found someone who can take of the business. These people are younger. Ms. Lee says her father vouches for the credibility of the Bang's and so do the Davis's. Assignment of the lease is better than tying her father to the lease.

Councilwoman Scarbrough asked if the Davis's had a say in the sale. Ms. Lee said the Davis's got the same financials and Mr. Davis accepted the agreement.

Councilwoman Bailey said she heard Mr. Davis was concerned with the stock in the store and Mr. Davis told Mr. Jinn he must restock the store to like it was when he took over. Ms. Lee says they had a conversation and worked that out.

Mayor Kapp says we need a blurb they are cognizant of the Food Lion, McDonald's, Q-Stop, Sheetz and fax it to us tomorrow. Councilman Mohr says on the personal financial statement section 2 balance sheet says business partnership interest is \$300,000. Cash & short term revenue from \$130,000 equity credit, the form is not cash, it is a loan and that should be taken off.

Councilman Mohr asks about the business partnership. What is it? The automobiles are a wash.

The real estate must have certification of the worth of the real estate. The personal property is not touchable in the state of Virginia. There are no assets to cover a problem.

Ms. Lee says they reserved the \$130,000 for the business. Councilman Mohr says Ms. Lee can not tell him that large corporations don't require a quarterly statement to back up their financial statements. Ms. Lee says she did not prepare the financial statement. She says she can back up the statement.

\$10,000 is for other business, \$130,000 line of credit is a loan, we need financials on the business in Washington. He only sees \$2000 in assets. Ms. Lee asks if they draw down the line of credit and deposit it in the bank. Councilman Mohr asks Atty Arledge if they could provide a letter dedicating that money to the business. Atty Arledge says it would then be a loan and would defeat the purpose.

Ms. Lee asks doesn't the fact they qualify for the \$130,000 line of credit give him any satisfaction? Ms. Lee says she could have them have the house appraised but it would cost money. Councilman Mohr asks how does he know the age of the house and where it is located? Where did they get the value of the house? He would like to see detail of the assets. Ms. Lee says that information would cost a lot of money. No one requires it.

Councilman Mohr says the real estate value has gone down drastically in the Fairfax High School area because of crime. He doesn't know where it is. Councilman Utz said he is surprised you don't have to sign that everything here is correct. Atty Arledge says it is on page 2 of the assignment. Mayor Kapp checked a map and said that is a good neighborhood.

Councilman Mohr says he has already pointed out the financial statement is inaccurate, the line of credit is not cash. Councilman Mohr says the \$20,000 personal property is the usual value of personal property. It is a value to sell in a yard sale. Councilman Mohr suggests Ms. Lee call a bank tomorrow and ask what they would require for a small business loan.

Councilman Mohr states Ms. Lee does not have a statement giving her the right and authority to represent the Bangs. We should have a credit report, an accurate financial statement and a letter saying they know the competition in the area.

Mayor Kapp says he thinks Ms. Lee can represent the Davis's saying that they accepted the business contract. Councilman Mohr says she can't represent the Davis's side but can represent her fathers side.

Councilman Mohr has no problem if the requirements [he presented] are met.

Councilwoman Bailey says in regard to the old lease, it mentions meat cutter. Atty Arledge says it would be included.

Councilman Utz is not giving to approve anything until all is brought in and approved as accurate. Need letter of awareness of competition, examined the condition of the structure and building and condition, credit report on them individually [the Bang's] and correct the financial statement.

Councilman Mohr says section 3 says annual income \$75,000 without back up, how does he

know what they brought in? Ms. Lee says this is already July, last years [1040] is out of date. Councilman Mohr says it would be last years 1040 that this year is based on. Councilman Mohr says the statement says annual income for last year.

Councilwoman Bailey asks about income statement salary. Ms. lee says that is revenue minus expenses and taxes. Councilwoman Bailey asked if that is their combined income. Ms. Lee says that is their sole income.

Councilman Mohr says they show assets for business but no expenses. Ms. Lee says the business is the couples business and are the sole owners. Mr. Lee says the \$300,000 is what a business like that is worth in that area. Councilman Utz asks how long they have owned the liquor/grocery store. Ms. Lee replied since 1997.

Ms. Lee would like these things drafted to her. She asks if council can make this conditional. No, was the reply.

Continuation

Monday, July 30, 7:30 p.m.

Ms. Lee to provide the social security numbers for the credit reports, both personal reports. Mayor Kapp to ask Linda at the bank to get them for the council.

Councilwoman Scarbrough moved to approve expense for whatever it costs for the credit reports, second by Councilwoman Bailey. Yeas: Scarbrough, Bailey, Utz, Mohr. Nays: None. Motion carried by 4/0 vote.

Councilman Mohr says it is not our responsibility to pay for a credit report in the future.

Councilman Mohr says they should have been better prepared. Ms. Lee says normally she submits the proposal and waits to hear back for more information.

The Clerk asked who is paying for the continuation meeting. Mayor Kapp says it is up to the council.

Councilwoman Bailey states she e-mailed the 23rd to Mayor Kapp for information from him. Mayor Kapp says he e-mailed Atty Arledge immediately when he was contacted. Councilwoman Bailey says we got e-mails Tuesday, July 24th/

Councilman Utz moved that the council should pay for the continuation meeting, second by Councilman Mohr. Councilman Mohr asked that the Bang's be here, at least one. Yeas: Scarbrough, Bailey, Utz, Mohr. Nays: None. Motion carried by 4/0 vote.

Councilman Utz wants someone to call him and leave a voice mail when the credit report is available.

Equipment for Police Department

Mayor Kapp says they need a sewer rejection pump for the new office. Mayor Kapp will pick it us. It costs \$163 +/-.

Councilman Utz moved to purchase with necessary funds for the rejection pump from the capital improvements line item on the budget, second by Councilwoman Bailey. Yeas: Scarbrough, Bailey, Utz, Mohr. Nays: None. Motion carried by 4/0 vote.

Recess

Council recessed at 9:38 p.m.

The Council went to the Town Center.

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**TOWN COUNCIL SPECIAL MEETING CONTINUATION
MONDAY, JULY 30, 7:30 P.M.**

MAYOR

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ATTORNEY

John Arledge, Smith & Davenport

COUNCIL

James Shepard, Vice Mayor

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Mayor Kapp opened the special meeting continuation at 7:32 p.m.

Councilwoman Bailey requests council consider another item of business. All council members agree.

R-2 district zoning text amendment general regulations requiring streets be built to VDOT standards with private bay access way not to exceed 600' in length, must be dedicated street. Councilwoman Bailey states this has been to public hearing for the Planning Commission and Town Council.

Councilwoman Bailey moved to adopt, second by Councilman Utz. Yeas: Bailey, Utz, Scarbrough, Mohr, Shepard, Stutz. Nays: None. Motion carried by 6/0 vote.

Haymarket Grocery Store, 15010 Washington Street - Assignment of lease

Ms. Lee asks council to be cordial and maintain a professional demeanor. She states she just delivered a copy of the assignment of lease and revised the financial statement. Ms. Lee states she brought Mr. Kim from CapSage who provided the financial statement.

At the last meeting the council had concerns that the Bang's didn't know about Food Lion coming in the area. She has a letter for the benefit of attorneys and is for attorney file only. She can share with buyers counsel only for council review.

Councilman Mohr asks if Atty Arledge approves of the letter. He states yes, council will not have a copy. If read it would be public knowledge. Mayor Kapp asked if everyone is happy with the financial statement. It is okay, the credit report is okay.

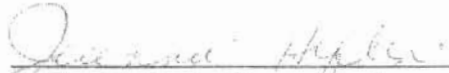
Town Council special meeting, July 26 and July 30, 2001

Councilman Mohr moved to approve the assignment of lease with the only stipulation, curren-
lessor [Mr. Jim] guarantees the lease. Atty Arledge adds it is on further authority for the mayo-
to sign on behalf of council, second by Vice Mayor Shepard. Yeas: Bailey, Utz, Scarbrough,
Mohr, Shepard, Stutz. Nays: None. Motion carried by 6/0 vote.

Adjournment


With no further business Councilwoman Scarbrough moved to adjourn, second by Councilman
Mohr. Yeas: Bailey, Utz, Scarbrough, Mohr, Shepard, Stutz. Nays: None. Motion carried by
6/0 vote.

RESPECTFULLY SUBMITTED:



Jeannie Heflin, Town Clerk

APPROVED:



John R. Kapp, Mayor

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