

**MINUTES OF THE REGULAR MEETING OF THE RURAL RETREAT TOWN
COUNCIL HELD IN THE COUNCIL CHAMBERS ON
TUESDAY, MAY 28, 2013, 7:00 P.M.**

Council Members Present: Mayor Timothy Litz; Vice-Mayor A. Keith Crigger; Dale Yontz; Jerrell Hall; Peggy Hash; James P. "Sean" Viars

Council Members Absent: Ed Schaack

Administration Present: Michael James, Town Manager; Lori Guynn, Clerk/Treasurer; Scott Mitchell, Police Chief

Administration Absent: None

Others Present: Allan West, Jim Hall, Frank Slavin, Chris Pauley, Amanda Cameron, Charlie Viperman, Roger & Audrey Hedrick, Charles Slagle, Bob Lewis, Wayne Staley

DETERMINATION OF A QUORUM

Mayor Litz called the meeting to order and determined a quorum was present.

INVOCATION

The invocation was given by Dale Yontz.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Litz.

APPROVAL OF MINUTES

A motion was made by Councilmember Hall, seconded by Councilmember Yontz to approve the minutes of the May 14, 2013 regular meeting. There being no discussion, the motion passed by a vote of five (5) for: Crigger, Hall, Hash, Viars, Yontz; zero (0) against; one (1) absent: Schaack.

CITIZEN'S TIME

Mayor Litz invited the citizens present to the podium to address the Council. Roger Hedrick stated he and others present were at the previous meeting concerning dogs in their neighborhood. He added he would like to present a petition to the Council signed by residents in the neighborhood asking the town to do more than has already been done. He then presented the petition to Mayor Litz. Mayor Litz thanked Mr. Hedrick and asked Town Manager James for an update on the situation. Town Manager James explained to date communication with Ms. Walden has been established and she has been cited for a noise nuisance violation. He noted Ms. Walden has been cooperative and reduced the number of dogs on the property. He added the

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town is continuing to work with her to protect the town, the citizen's and Ms. Walden's rights. Town Manager James further stated what Ms. Walden is doing is a good thing but the neighbors have to be thought of as well.

Amanda Cameron inquired about Ms. Walden running a business in an R-1 zoned area. Town Manager James stated the town attorney is reviewing this but similar situations have gone to court before with the final determination being an animal rescue isn't deemed as a business because donations are accepted. He added case law is being reviewed on how other communities have addressed this.

Mayor Litz commented when this began there was concern there wouldn't be an instant solution. He added the wheels of government turn slowly. Vice-Mayor Crigger asked if the fact that tax exempt status had been applied for would this mean a business is being operated. Town Manager James explained no not in the legal definition of a business. He added communities have argued this in court and been denied because a rescue service is technically not a business due to there being no economic gain and this is operating as an incorporated non-profit. Vice-Mayor Crigger asked if an existing kennel license had been issued. Town Manager James stated to his knowledge one hasn't been issued but Ms. Walden was planning to pursue one because currently all the dogs have been licensed individually. Vice-Mayor Crigger inquired if this could be addressed through the Planning Commission and a public hearing to pursue one of the options presented at the previous meeting. Town Manager James stated it wouldn't be retroactive and would not address the current issue; it would only regulate future situations. Discussion ensued about whether or not a fee is charged to adopt a dog. Wayne Staley commented at one time a lady had taken a dog to the residence and decided later that she wanted the dog back but couldn't get it because she would have to pay fee. He inquired if a special use permit was required to operate something of this nature in the community. He added the property is becoming a public health hazard as well as a noise hazard and the dogs are chasing his cats. Mr. Staley explained a recent incident where one of the dogs got loose and took keys off of his porch.

Ms. Cameron stated she had spoken to the Wythe County Animal Control officer and was told a kennel license was turned down for the property. She then asked how a business can still operate if a kennel license had been turned down. Mayor Litz stated one thing he wanted to address and it's the most important thing is public safety which is first priority. He added his understanding is the rights of the individuals cease when the dogs cross into the rights of someone else. He then referred to the town's leash ordinance and stated no one should have to be accosted by the dogs in their own yard.

Audrey Hedrick commented on the same dog Mr. Staley had referred to and stated the dog warden had told Pam Henley to not tie the dog back outside but to put it where it can't get out because it was a danger to the neighbors. She added after the officer left they tied it back in the same place it was before. Mayor Litz added this is a public safety issue and it will take time to resolve. He further stated the petition is proof of who is complaining about the dogs.

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Bob Lewis questioned where the decibel meter comes into play with barking dogs. Chief Mitchell replied it was based on a case that went to the Virginia Supreme Court that includes all noise ordinances. He added this requires localities to specify a noise level or it is considered unconstitutional. Mr. Lewis stated the ordinance doesn't refer to noise it states to annoy or to cause one to lose sleep. Chief Mitchell stated he is basing this off of what he was told by legal counsel. Mr. Lewis suggested citing the citizen and letting Wythe County courts determine how to handle it.

Charles Slagle questioned public safety and stated there is a dog next to the driveway that comes at him when he is walking up and down the street. He added if the dog got loose, he wouldn't want to see what the dog would do to a person. Mayor Litz asked Ms. Cameron for the ages of her children. Ms. Cameron responded five and ten. Mayor Litz commented children don't understand property lines. He added he doesn't understand that if the dogs are a danger then something should be done because the rights of one ceases when another's are fringed upon. He posed the question of how much will have to be watched in order to do something if others are in danger. Mrs. Hedrick asked how many of the Councilmembers have driven up their street lately. Mayor Litz stated he drives above it on Parsonage Avenue every day. He advised the citizens if the dogs leave the owners yard then they can testify they saw it in their yard and they are afraid of it. Ms. Cameron stated she has photos of the dog that got loose and was in her yard barking at her while she was standing on her deck. She commented if she had been in the yard she would have probably been bitten.

Vice-Mayor Crigger stated he had been looking on Ms. Walden's website and it is clearly stated the adoption fees for each dog. Town Manager James explained the town is trying to get a plan together but he wants to make sure we don't go down a path that can't be changed. He noted loose animals are easy to deal with and that issue will be pushed with Ms. Walden. Councilmember Yontz asked at what point are the rights of a dog above the citizens' rights that elected them to the Council and why do dogs have more rights than a child. Mayor Litz responded this will need to be determined.

Bob Lewis inquired if there was another issue at the property with inoperative motor vehicles. Chief Mitchell stated he will be mailing letters this week to violators and this property owner will be receiving one.

Councilmember Viars asked how many times the dog or dogs have gotten loose. Mr. Hedrick responded more than a person can count. He added he arrived home after a fire call at 11:30 p.m. last night and didn't get to sleep until after 1:00 a.m. due to the dogs barking. Councilmember Viars asked the citizens if they were calling someone each time a dog got loose. Mr. Hedrick replied there isn't enough time. Councilmember Viars suggested doing this in order to have better documentation. Mayor Litz added this helps to keep it from being hear say.

Ms. Cameron explained she used to have a small dog but her daughter started developing allergy issues so they gave the dog to her mother-in-law. Her daughter no longer has allergy issues unless she is around the dog but she is to be tested for allergies tomorrow. Ms. Cameron

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expressed her concern for her daughter being outside with the neighbors having the dogs and dog hair being in the air because she won't be able to go outside to play. She asked how this was fair to her daughter.

Councilmember Hash commented this type of facility shouldn't be allowed in town, it should be out in the county. Mayor Litz stated he understands Town Manager James wanting to err on the side of caution but our options need to be determined within a reasonable amount of time. Town Manager James stated all the legal information on the business side should be gathered by Thursday for review to determine our options.

James Hall inquired if she was advertising that she was selling dog food and other items on her website. Vice-Mayor Crigger stated she is selling dog treats and other items on her Facebook page stating her physical address is 419 West Baumgardner Avenue.

Ms. Cameron stated the majority should rule not the minority because all of the neighbors are complaining. She also stated there was an ordinance regulating animal rescues, shelters and kennels that animals have to be in kennels. She then asked if this applied to the dogs chained outside. Town Manager James stated our Zoning Ordinance doesn't address this type of issue. Mr. Hedrick asked if the town adopted an ordinance could the grandfather clause be removed from it. Town Manager James replied probably not because he didn't know how the town could get around it. Discussion ensued on the safety of the neighborhood especially the children, if they would be hurt by a dog. Ms. Cameron inquired if the owner had insurance on the dogs if they hurt someone. Mayor Litz responded this would be covered under the liability of the home owner's policy. Mr. Hedrick commented the individual doesn't own the home. Ms. Cameron added her children have trouble sleeping at night because of the dogs. Councilmember Yontz commented he wanted to make sure everyone understands this is not about being dog haters because most people own a dog.

Frank Slavin asked for permission to speak and commented based on what he is hearing the odor, barking and danger is considered a public nuisance and would be a civil action the citizens could bring against the individual and it would not involve the town or the town's attorney to research it.

Mr. Staley asked if the town could establish a special use permit to regulate this type of activity in a residential area. Town Manager James and Attorney Sobey are working on this, Mayor Litz replied, which will take time. Mr. Hall asked if the Police Chief could be directed to issue tickets for the violations. Chief Mitchell stated he has issued citations to Ms. Walden. He explained all the dogs come from the animal shelter and if enough complaints are made they may stop allowing her to take them. Town Manager James stated he would like to work something out with Ms. Walden to resolve the issues. He added our Zoning Ordinance doesn't address this.

Councilmember Hall referred to a comment Chief Mitchell made at the previous meeting in which he stated citizens have the right to protect themselves on their own property and in the public right-of-way. Mayor Litz apologized to the citizens for not being able to do something

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quicker but this will take time. He added the Town Council understands and supports their efforts. Town Manager James asked the citizens to call him each time there is an issue with the dogs in order to document the occurrences.

Allan West stated he assisted with drafting the petition and asked if Town Code overrides State Code. Mayor Litz replied no, local law can only be more stringent but not less. Mr. West referred to the petition and further stated the town should be able to regulate this based on the State Code. Mr. West referred to the Code relating to public safety and added this should be enforced. Ms. Cameron commented the Code gives each district the right to regulate, restrict, prohibit and determine if the Mayor, Zoning Ordinance and Planning Commission agrees that it is a public safety and health issue. Mayor Litz stated the Council is aware of public safety.

Vice-Mayor Crigger inquired how long until the property owner is cited instead of the person with the dogs. Town Manager James stated he was unsure. He reiterated he and Attorney Sobey are researching this to determine the best way to handle it.

Mayor Litz thanked the citizens for their comments and for attending. Councilmember Yontz encouraged the citizens to continue to attend the meetings until resolved. He also thanked them for attending.

Frank Slavin addressed the Council on behalf of the Rural Retreat Depot Foundation. He explained the Foundation is planning to begin a Farmers' Market in early July and would like to ask the town to consider this as a town function to be covered under the town's insurance umbrella. Vice-Mayor Crigger stated this would be an event sanctioned by the town as with other requests received. Town Manager James asked Mr. Slavin to submit a written request outlining the dates and times of the event. Mayor Litz added this will allow the town to sanction it based on the request.

All citizens left the meeting except Messrs. West, Hall and Lewis (7:42 p.m.).

Mayor Litz asked Bob Lewis if he had any comments. Mr. Lewis addressed the health and safety concerns and commented this has been looked at many times especially with houses. He added the health department does nothing because the property is habitable to the people that live there. He then addressed the crossroads area and yard sales being held more than the two times per year as allowed by the town's ordinance. He explained there has been a lady set up at least three times selling clothes on racks that she hauls in on a trailer. He added this lady isn't conducting a yard sale but a business and she needs a license. Mayor Litz commented she would be a peddler. Mr. Lewis stated the Williams Superette parking lot also has frequent yard sales. Councilmember Hall asked if the ordinance is per party or per property. Both Mr. Lewis and Clerk/Treasurer Guynn replied per property. Mayor Litz thanked Mr. Lewis for his comments.

CORRESPONDENCE

None

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POLICE REPORT

Chief Mitchell reported he has issued two summonses related to dog issues to date. A larceny occurred at the Crossroads Mart on Friday and he is working with the Marion Police Department and the Wythe County Sheriff's Office on the investigation.

UNFINISHED BUSINESS

PERSONNEL POLICY – Town Manager James reported minor adjustments have been made and the final draft will be presented at the next meeting for adoption. He asked to be contacted if there were questions or concerns.

ORDINANCE REGULATING TRASH ON PROPERTY - Councilmember Hash inquired if there was an ordinance regulating the trash people had around the outside of their house or in their garage that the public can see. Town Manager James referred to Mr. Lewis' previous comments and commented as Mr. Lewis stated if the home is habitable to the person living there the health department doesn't get involved. He added the best way to resolve it is to speak with the property owner. He further stated he wasn't aware of the property brought to his attention earlier in the day but he will speak with the owner.

NEW BUSINESS

None

COMMITTEE REPORTS

HERITAGE DAYS – Chairman Yontz reported the committee met prior to the meeting. The Rich family is now chairing the Wall of Honor. He expressed his appreciation to Cleta Roberts for chairing this over the past years. Currently there are negotiations with a title sponsor; more details will be provided when finalized. Town Manager James has contacted Troy Harris with the Dr. Pepper Corporation to follow up on their participation with the Indian Blessings Backpack Ministries program.

FINANCE & APPROPRIATIONS – Chairman Crigger reported the public hearing for the 2013-2014 Fiscal Budget will be held June 11.

PERSONNEL – No report.

TOWN MANAGER'S REPORT

The following items were discussed and/or acted upon:

RURAL RETREAT SIDEWALK IMPROVEMENT PROJECT PHASE 7 – King Contractors, Inc. has gathered all the bond documents needed for VDOT and returned them to Anderson &

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Associates. We will host a pre-construction conference as soon as possible to begin the project, possibly the end of this week or early next week.

UV DISINFECTION – WWTP – The bid closing was successfully held on May 21st and the initial disbursement has been wired to the Town's account. We have forwarded the notice of award from the Town to Teeters Trucking. A time schedule for project completion will be provided to Council as soon as it is agreed upon. A pre-construction conference will be held for this project.

CONSOLIDATION DISPATCH CENTER – As noted in the update last Friday, the advisory board has agreed to look at the citizen alert system from Code Red and negotiate a reduction in the quoted price. Once that information is received we will make a final decision to bring back to the elected bodies. We will have enough money in our budgeted funds to cover the Town's portion of the extra expenses for the citizen's alert program. Code Red and 21st Century are under state contract with Code Red being a great deal cheaper.

Mr. Lewis questioned if money was being put aside the past couple of years to extend the warning system. Town Manager James replied no, the new system will expand services and the siren won't be needed as much.

VDOT STREET ACCEPTANCE – We have received detailed information from VDOT on what streets can be accepted and what, if any, improvements will need to be undertaken in advance of the state accepting the streets. After a more thorough review, Council will be provided information on how best to proceed. These will most likely become an item incorporated into our Capital Improvement Plan.

DOWNTOWN REVITALIZATION – We are awaiting feedback from DHCD staff. Once we receive this, we will host more management team meetings and community meetings in preparation for another meeting with DHCD for the facilitated planning session. A master plan will be developed to apply for construction funds.

RURAL RETREAT SUMMER CONCERT SERIES – The next scheduled concert at the Pepper Stage is June 7 at 7:00 p.m. with Wayne Henderson.

Town Manager James noted the Southwest Virginia Clogger's will be using the stage this weekend to host their end of year program.

2013-2014 FISCAL BUDGET PUBLIC HEARING – Town Manager James explained the public hearing on the budget is scheduled for June 11. He stated he will not be in attendance at the meeting due to a family matter.

Prior to proceeding, Vice-Mayor Crigger asked Chief Mitchell for the status of the Police Department Coalition and training services. Chief Mitchell explained he had spoken to Sheriff King and Albert Newberry and they advised him they would be speaking with the Bland County

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Sheriff prior to proceeding. Vice-Mayor Crigger added it was his understanding the Virginia State Police was interested in getting involved.

TREASURER’S REPORT

Clerk/Treasurer Guynn informed the Council she had recently completed the requirements to receive the Master Governmental Treasurer certification from the Treasurer’s Association of Virginia.

The bills for May 28, 2013 were read and approved.

TALK OF THE TOWN

Town Manager James is to attend the *Talk of the Town* radio program at the WYVE/WXBX radio station on Wednesday morning.

ADJOURNMENT

There being no additional business to discuss, the meeting was adjourned upon a motion by Councilmember Yontz. The motion was duly seconded and approved. (8:07 p.m.)

Mayor

Clerk