

**REGULAR COUNCIL SESSION**  
**609 29<sup>th</sup> Street, Vienna, WV 26105**  
**August 12, 2021**  
**6:00 P.M.**

**INVOCATION AND PLEDGE OF ALLEGIANCE:**

The Invocation was given by Ryan Romine. The Pledge of Allegiance was led by Councilman Roger Bibbee.

**CALL TO ORDER:**

The Vienna City Council met in Regular Session on August 12, 2021. Mayor Randy Rapp called the meeting to order at 6:02 p.m.

**PUBLIC FORUM:**

Henry Sasyn (1307 Greenmont Hills Dr.): Hopes the state legislature will correct things and spoke in favor of the moratorium.

Mike Pauley (1211 10<sup>th</sup> St.): Resident of the Oxford House. Stated that living there has changed his life. Asked council not to pass the moratorium.

Steven W. Sims (1313 21<sup>st</sup> St.): Asked that council vote for the moratorium.

Robert Harris (5408 3<sup>rd</sup> Ave.): Spoke in favor of the moratorium. Asked council to vote as if the facility was across from their own home.

Sara Hylbert (5305 3<sup>rd</sup> Ave.): Asked council to place the recovery residences in other neighborhoods.

Brenda Powell (1409 31<sup>st</sup> St.): Is there another city that has had a successful moratorium? Asked for the moratorium be tabled.

**ROLL CALL:**

Attendance was taken by Recorder Melissa Elam with the following Council members present: Kim Williams, Roger Bibbee, Mike Elam, Jim Leach, Tom Azinger (via phone), City Attorney Russell Skogstad, Recorder Melissa Elam, and Mayor Randy Rapp.

**REPORT OF THE MINUTES:**

The minutes of the Regular Council Session scheduled on 7/22/2021 have been printed, posted, and circulated.

The minutes were approved.

**REPORT OF THE TREASURER:**

After review of the Reconciliation of Funds dated August 9, 2021, accounts are in order and the city is solvent. Net change in capital reserve is due to an adjustment at the end of the year from cost to actual market value.

**UNFINISHED BUSINESS:**

**1. ORDINANCE – SECOND READING: Imposing a Moratorium Upon New Substance Abuse Rehabilitation Group Residential Facilities**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIENNA that in support of the adoption of this Ordinance the following findings are made:

1. The provisions of West Virginia Code 27-17-1, define “Group Residential Facilities” and “Group Residential Homes” as residential facilities for persons with a “Behavior Disability”, not to exceed twelve residents, which includes persons undergoing substance abuse treatment and rehabilitation;
2. The provisions of West Virginia Code 27-17-2 explicitly mandate that Group Residential Facilities and Group Residential Homes shall be a permitted use for purposes of zoning in residential and all other zoning districts of a municipality. However, the statute is silent as to the extent the location of such facilities or homes may be geographically restricted or limited as permitted uses, nor does the statute preclude regulation of similar facilities exceeding twelve residents;

3. There has been a proliferation of substance use facilities within Wood County, West Virginia, and the City of Vienna. Specifically, recent statistics reflect that approximately 26% of beds in such facilities in the entire State of West Virginia are located within Wood County;
4. The City of Vienna has less than 1% of the population of the State of West Virginia. Accordingly, the existence of facilities for substance abuse rehabilitation presently located within and around the City are far out of proportion to that which would be otherwise needed for residents of the City and surrounding areas, and a substantial portion of residents in such facilities are from outside the geographical area of the City of Vienna and Wood County;
5. There is a significant percentage of residents of substance abuse facilities who either are involuntary evicted from programs or voluntarily terminate participation in such programs. As a result, a substantial number of individuals who did not previously reside in the geographical area of the city remain in this area without family or other support structure, many of whom become homeless;
6. The recent increase in the homeless population of the City of Vienna, and Wood County, significantly impacted by the proliferation of substance abuse facilities, has been detrimental to the health, safety, and welfare of the citizens of the City for many reasons, including the following:
  - (a) The City of Vienna has experienced a substantial increase in the homeless population, which has contributed to a rise in crimes such as shoplifting (46% increase over the past year) and overdose calls which have seen a 22% increase. Drug related calls have increased 16%. The city believes that there is a correlation between the proliferation of substance abuse facilities and the increase in the homeless population.
  - (b) Numerous persons voluntarily leave such facilities or are involuntarily expelled, many of whom then remain in the Vienna area without a place to live. Further, a significant number of persons residing in substance abuse facilities are not from the Vienna and Wood County geographical area.
7. Extended time is needed for the Council of the City of Vienna to consider possible changes to zoning and/or other ordinances to regulate or limit substance abuse facilities, and it is possible that the West Virginia Legislature may address the issue during its 2022 Session.
8. While it is recognized that substance abuse facilities perform an important and necessary function, based on the findings as herein set forth there is a compelling basis, in the interests of the public health, safety, and welfare of the City, to temporarily preclude the establishment of any additional such facilities for a limited period of time.

It is therefore ORDAINED BY THE COUNCIL OF THE CITY OF VIENNA that a MORATORIUM upon the establishment of any Group Residential Facilities or Group Residential Homes is hereby imposed until JUNE 30, 2022. The provisions hereof shall have no effect upon any such facilities in existence as of the date of the adoption of this Ordinance.

**Councilman Mike Elam moved to approve Imposing a Moratorium Upon New Substance Abuse Rehabilitation Group Residential Facilities. Motion seconded by Councilman Roger Bibbee.**

Councilman Tom Azinger stated Wood County has 5% of the population and 25% of the beds but is carrying a significant burden for the state. He feels Vienna has done enough.

Councilman Mike Elam asked Attorney Russ Skogstad if it passes, will it stop the residences from coming to the city. Attorney Skogstad stated in the short term it will probably work because it is a temporary moratorium. Ultimately, an ordinance or restriction on a protected class is doomed for failure but that is not what the moratorium is doing. Business owners in the recovery homes can live outside of the zoning rules but other business owners have to live within them. The law has to be applied fairly. If the law doesn't change it won't succeed. We will have to find a way for everyone to peacefully exist within the confines the legislature gives us.

Mayor Randy Rapp stated that the state legislature will be meeting September 12 and it will be on their agenda. He will be speaking during the session. Enforcement is not a police issue. Code enforcement told him our ordinances are limited in dealing with these issues. He believes the certification process is what we need to pursue.

Councilman Jim Leach feels there is a disproportionate impact on our county to provide these services. Current legislation does not allow us to regulate and enforce our zoning laws. How do we decide who gets to follow the law?

Recorder Melissa Elam asked where the current sober living home should have been located according to our current zones. Kevin Parrish (Code Enforcement) stated it is classified as a business and should have located in a commercial zone.

Councilwoman Kim Williams stated there are positive things happening in the world of recovery in our community. She visited the Oxford House and found it to be an effective place where they want to be in good standing and good neighbors and that they are holding each other accountable. She has been going to as many meetings as she can to learn more. The Appalachian Regional Council and others have been very informative. The state legislature has a certificate of need exemption that would stop places like St. Joseph Landing, the federal building, etc. However, for sober living homes, it is protected by the Fair Housing Act and many others. Proposed a motion to table the ordinance. There was no second.

Mayor Rapp said the Oxford House will not ask to be certified. Reminded council that there was an overdose six days after it opened and the needle was not recovered. Emphasized we need to be able to protect our neighborhoods and help those who need recovery housing.

Councilwoman Williams thinks we should be working with the recovery community and be good neighbors. She would welcome them to her neighborhood. Wood County is not isolated from the drug problem that has impacted our state.

**Roll call vote taken by Recorder Melissa Elam. Councilman Mike Elam, Councilman Roger Bibbee, Councilman Jim Leach, Councilman Tom Azinger, and Mayor Randy Rapp voting “yes”. Councilwoman Kim Williams and Recorder Melissa Elam voting “no”. Vote: 5-2.**

**NEW BUSINESS:**

**1. BID APPROVAL: Concrete Replacement**

Sealed bids for the cost of concrete replacement were opened on Tuesday July 27, 2021, at 9:00 am with the following results:

	<u>Concrete Replacement</u>	<u>Subgrade Replacement</u>
Alan Stone Company	\$200.00/sq ft.	\$60.00/sq ft.
Jimmie Harper Construction	\$10.86/sq ft.	\$4.86/sq ft.

After careful review of the bid proposals, the recommendation for Council approval from the Budget & Finance Committee for concrete replacement for the 2021-2022 budget year is:

Jimmie Harper Construction	\$10.86/sq ft.	\$4.86/sq ft.
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**Funding the project:** Funding for this project is budgeted in the City’s General Fund account# 01-570-65-58.

**Councilman Jim Leach moved to approve the Bid Approval for Concrete Replacement. Motion seconded by Councilman Mike Elam.**

Councilman Mike Elam asked why there was such a big difference in bids. Councilman Jim Leach and Craig Metz think Alan Stone was probably interested in something else.

**Roll call vote taken by Recorder Melissa Elam. Councilman Mike Elam, Councilman Roger Bibbee, Councilman Jim Leach, Councilman Tom Azinger, Councilwoman Kim Williams, Recorder Melissa Elam, and Mayor Randy Rapp voting “yes”. Vote: 7-0.**

**2. BID APPROVAL: Water Hydrant Replacement**

Sealed bids for water hydrant replacement were opened on Tuesday July 27, 2021, at 9:30 am with the following results:

Alan Stone Company	\$124,300.00
Jimmie Harper Construction	\$70,360.00

After careful review of the bid proposals, the recommendation for Council approval from the Budget & Finance Committee for hydrant replacement for the 2021-2022 budget year is:

Jimmie Harper Construction                      \$70,360.00

**Funding the project:** Funding for this project is in the City's Water Fund.

**Councilman Jim Leach moved to approve the Bid Approval for Water Hydrant Replacement. Motion seconded by Councilman Mike Elam.**

No discussion.

**Roll call vote taken by Recorder Melissa Elam. Councilman Mike Elam, Councilman Roger Bibbee, Councilman Jim Leach, Councilman Tom Azinger, Councilwoman Kim Williams, Recorder Melissa Elam, and Mayor Randy Rapp voting "yes". Vote: 7-0.**

### **3. BID APPROVAL: Park Fencing**

Sealed bids for fencing along the access road to the basketball courts and to the small dog park were opened on Wednesday, July 28, 2021, at 11:30 am with the following results:

Jeff's Fence Company                      \$18,417.00

After careful review of the bid proposals, the recommendation for Council approval from the Budget & Finance Committee for the fencing project is:

Jeff's Fence Company                      \$18,417.00

**Funding the project:** Funding for this project if approved will be from General Fund 01-540-65-58 (\$13,000) and 01-540-55-59 (\$5,417).

\*\* Park Director Steve Black has asked that the money originally allotted in the 21-22 budget for a floor cleaning machine (\$6,000) be used towards this project.

**Councilman Jim Leach moved to approve the Bid Approval for Park Fencing. Motion seconded by Councilman Roger Bibbee.**

No discussion.

**Roll call vote taken by Recorder Melissa Elam. Councilman Mike Elam, Councilman Roger Bibbee, Councilman Jim Leach, Councilman Tom Azinger, Councilwoman Kim Williams, Recorder Melissa Elam, and Mayor Randy Rapp voting "yes". Vote: 7-0.**

### **4. APPROVAL OF ITEMS FOR AUCTION**

Below is a list of items that the departments have compiled and are requesting to sell on GovDeals.com:

- 2003 Dodge Durango                      Mileage: 92,946                      Last four of VIN: 9056
- 2003 Leaf Mulcher Machine
- 2006 Cub Cadet Walk Behind Mower
- NEC Phone System

**Recorder Melissa Elam moved to approve the List of Items for Auction. Motion seconded by Councilman Mike Elam.**

No discussion.

**Roll call vote taken by Recorder Melissa Elam. Councilman Mike Elam, Councilman Roger Bibbee, Councilman Jim Leach, Councilman Tom Azinger, Councilwoman Kim Williams, Recorder Melissa Elam, and Mayor Randy Rapp voting "yes". Vote: 7-0.**

### **5. Approval for the Reclassification of Capital Funds - Parks Department**

From Steve Black: I currently have \$20,000 for Christmas lights and replacements budgeted in line item 01-540-58. I feel that I can skip a year purchasing additional Christmas lighting displays. I would like to reclassify those funds for the purchase of playground pieces instead. I am gathering price estimates for two small pieces for Spencer Park, two pieces for Jackson Park, and two pieces

to coordinate with the 13-person cross fitness rig. That package of items would require a sealed bid.

**Councilman Mike Elam moved to approve the Reclassification of Capital Funds – Parks Department. Motion seconded by Councilwoman Kim Williams.**

No discussion.

**Roll call vote taken by Recorder Melissa Elam. Councilman Mike Elam, Councilman Roger Bibbee, Councilman Jim Leach, Councilman Tom Azinger, Councilwoman Kim Williams, Recorder Melissa Elam, and Mayor Randy Rapp voting “yes”. Vote: 7-0.**

#### **6. Vienna Indoor Aquaculture Agreement**

**Councilman Jim Leach moved to go into Executive Session. Motion seconded by Councilman Roger Bibbee.**

**Vote was unanimous to go into Executive Session.**

**Dismissed to Executive Session at 7:07pm.**

**Returned from Executive Session at 7:23pm.**

#### **7. PRESENTATION: CRAIG METZ – Water and Sewer**

Water project priority: Line from well field 7 and 8 to 23<sup>rd</sup> Street. Engineer’s estimate is \$444,000. It would include a 6” bore that would go across River Road at 28<sup>th</sup> Street. It would supply water to Spencer’s Landing, Minibel Golf Course, and the citizens that live on the private drive (approximately six customers). It also ties all three systems together and the system would then be 80% balanced. Dead end lines would still be an issue and that is where the circulation stops and the chlorine dissipates.

Sewer project priority: There are a lot of issues along the 17<sup>th</sup> Street area. When it rains too hard it backs up in people’s basement and overflows man holes. This will upsize the line from 12<sup>th</sup> street sewer plant up to Pond Run, along Pond Run to 17<sup>th</sup> Street. Estimate is \$1.5 million. Another priority is the trunk line replacement from the 12<sup>th</sup> Street Sewer plant that runs to Parkersburg. Estimate is \$3 million. It will be a bond issue.

#### **8. RESOLUTION: Allocating American Rescue Plan (ARP) Funds Allocated To The City Of Vienna For Fiscal Year 2021-2022 To The Vienna Utility Board For Infrastructure Projects**

**BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA**, that it hereby assigns all American Rescue Plan (ARP) funds received by, or allocated to, the City of Vienna for fiscal year 2021-2022 by the federal government under the American Rescue Plan Act of 2021 to the Vienna Utility Board. The allocation of said funds to the VUB is for the purpose of planning, purchasing and/or leasing equipment, hiring personnel (if necessary) and funding necessary water, wastewater, and/or stormwater infrastructure projects undertaken by the Vienna Utility Board and as contemplated by the ARP.

Mayor Randy Rapp stated we have received \$1.4 million and the Vienna Utility Board is asking for \$500,000 to pay for the Water Project.

**There was no motion to approve the Resolution.**

**Resolution failed for lack of a motion.**

#### **COUNCIL COMMENTS:**

Councilwoman Kim Williams gave an announcement from the Tree and Beautification Committee that there is no money in the budget for Christmas lights from 29<sup>th</sup> to 60<sup>th</sup> Street for the median. Friends of Vienna would like to pick that up to make it happen. If anyone would like to donate to Friends of Vienna, reach out to them through Facebook. They will need \$3,000.

Recorder Melissa Elam addressed her vote against the moratorium. She wants teeth to it and fairness across the board. Does not see the moratorium reconciling the community to work on solutions together. Hopes it does give us time to get things right with the legislature. Hates that our codes can be superseded. She also commented on the Vienna Utility Board meeting. Questioned whether the water line project is coming from the board or from the mayor who strongly suggested that direction.

Attorney Russ Skogstad asked that communication improve and be more detailed for wording on resolutions. He wrote the ARP resolution broadly.

Mayor Rapp asked to be on the record that the resolution did not come from him. Said his resolution would have asked for \$500,000 for the water project because balancing the water system is the number 1 project. Thinks sending all the ARP funds to the utility board is wrong. We received the bridge report from the state and the 27<sup>th</sup> Street bridge has been rated critical so it will need to be looked at in the near future. The stormwater issue on 28<sup>th</sup> Street is also a priority. He stated he would never allocate all the money to the utility board. He stated he had no input and did not ask it to be written this way.

Recorder Elam asked Attorney Skogstad who asked him to put the resolution on the agenda. Councilman Elam asked to be on the record that he had previously wanted it on there but asked Mr. Skogstad to pull it. Recorder Elam produced the email she received from Mayor Rapp that stated: "Please add: Resolution allocating all ARP funds to the Vienna Utility Board for infrastructure projects." She stated she emailed Mr. Skogstad asking for the resolution but he was not aware that there was one. She stated she clarified with Mayor Rapp that he was asking for this resolution himself and that it was not coming as a reminder of what Mr. Elam had originally requested. She stated that Mayor Rapp confirmed that he was asking for it and that even though it was broad it would be amended and it wouldn't matter how it was originally written.

Mayor Rapp denied that he asked for the resolution.

Mayor Rapp thinks we should do what Parkersburg does and have a sponsor for anything put on the agenda.

Councilwoman Williams said the Vienna Utility Board voted to ask for \$500,000 and didn't understand why the resolution didn't include their recommendation. Mayor Rapp said he would have amended it if it would have received a motion.

**Meeting adjourned at 7:57 p.m.**

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Melissa Elam, Recorder

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Randall C. Rapp, Mayor

APPROVED: \_\_\_\_\_  
                  Initials                    Date