

REGULAR COUNCIL SESSION
609 29th Street, Vienna, WV 26105
October 27, 2022
6:00 P.M.

INVOCATION AND PLEDGE OF ALLEGIANCE:

The Invocation was given by Rod Smith. The Pledge of Allegiance was led by Councilman Chris Mancuso.

CALL TO ORDER:

The Vienna City Council met in Regular Session on October 27, 2022. Mayor Rapp called the meeting to order at 6:02pm.

ROLL CALL:

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

PUBLIC FORUM:

Chad Emrick (2806 10th Ave.): Spoke about an idea for an incentive program for hiring police officers and retaining current officers. Provided a handout.

Brenda Powell (1409 31st Street): Would like to see us take another look at ordinances to see what needs to be changed to help as new businesses come into our community. Feels the community should have been involved more in the designs of the pool. She also thinks Councilman Mancuso should have been on the design team.

Tami Rhodes (4604 6th Ave.): Reviewed details about the former Dairy Queen property. Believes it should have been rezoned and gone through a public hearing and the planning commission. She would also like to see a vape shop ordinance limiting location and distance from churches and schools. Said we also need to be careful not to be discriminative. Had an idea about splitting the commercial district into two, a C1 and a downtown.

REPORT OF THE MINUTES:

The minutes of the Regular Council Session scheduled on 10/13/2022 have been printed, posted, and circulated. Approved as posted.

UNFINISHED BUSINESS:

1. None.

NEW BUSINESS:

1. **RESOLUTION: Approving Hourly Wage Incentive And Vacation Time Incentive For New Hire Police Officers Who Are Certified Police Officers According To The West Virginia Law Enforcement Professional Standards (LEPS) Subcommittee And Rescinding The \$10,000.00 Sign On Bonus For New Hire Certified Police Officers**

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA, that all new hire police officers that are currently certified police officers as determined by the West Virginia Law Enforcement Professional Standards (LEPS) Subcommittee of the Governor's Committee on Crime, Delinquency, and Corrections will be compensated an additional \$.35 (35 cents) on their hourly wage for every one (1) year of completed service as a police officer with a qualifying police agency, with a maximum of five (5) years.

In the case of a new hire police officer that was previously employed as a police officer in another state, in order for the incentive to apply, a review of that officer's training record by the West Virginia Law Enforcement Professional Standards (LEPS) Subcommittee is required to determine if said officer qualifies as certified, or certifiable, in that the officer is only required to complete an abbreviated training period to become certified in the State of West Virginia.

Furthermore, this incentive will only apply to new hires that were employed as police officers at the time of hire or had been employed as police officers within one (1) year at the time of hire at the City of Vienna.

New hire certified police officers as determined above, will also be compensated ten (10) days of vacation as of the initial hire date, waving the completion of one (1) year anniversary rule stated in the COV Personnel Manual. At the completion of one (1) year, the employee will resume vacation accrual as indicated in the Personnel Manual.

The above incentive will only apply to new hire police officers and does not apply to officers who have resigned and have been:

1. Re-hired or
2. Re-instated as per West Virginia Code §8-14-20 or any other provision under the West Virginia Code or Municipal Code of the City of Vienna

The \$10,000.00 sign on bonus program for new hire police officers who were certified as a police officer by the West Virginia Law Enforcement Training Committee or training equivalent as determined by the West Virginia Law Enforcement Professional Standards (LEPS) Subcommittee is hereby rescinded.

¹ WV CODE §30-29-2. LAW-ENFORCEMENT PROFESSIONAL STANDARDS SUBCOMMITTEE. (a) *The Law-Enforcement Professional Standards Subcommittee is continued as a subcommittee of the Governor's Committee on Crime, Delinquency and Correction. The subcommittee has the following responsibilities: (1) Review and administer programs for qualification, training and certification of law-enforcement officers in the state; and (2) Consider applications by law-enforcement officers whose certification is deemed inactive as a result of his or her separation from employment with a law-enforcement agency.*

¹ WV CODE §8-14-20. REMOVAL, DISCHARGE, SUSPENSION OR REDUCTION IN RANK OR PAY; HEARING; ATTORNEY FEES; APPEAL; REDUCTION IN NUMBER OF MEMBERS.

Mayor Rapp provided clarification the 10 days of vacation is 8 hours per day for 10 days. Need to be amended to say 80 hours.

Councilman Tom Azinger moved to approve the Resolution Approving Hourly Wage Incentive And Vacation Time Incentive For New Hire Police Officers Who Are Certified Police Officers According To The West Virginia Law Enforcement Professional Standards (LEPS) Subcommittee And Rescinding The \$10,000.00 Sign On Bonus For New Hire Certified Police Officers. Motion seconded by Recorder Melissa Elam.

Councilman Roger Bibbee asked for clarification on LEPS. Chief Pifer shared that the training from LEPS is to make sure that training is consistent and provides continuing education. Some officers come from other states and need to be updated on WV law.

Councilman Chris Mancuso asked about compensation for time off. Mayor Rapp stated that as the personnel manual is now, they would have to wait a year before getting any vacation, but this will allow them to get 80 hours as soon as they start.

Roll call vote taken by Recorder Melissa Elam. Councilwoman Kim Williams, Councilman Tom Azinger, Councilman Roger Bibbee, Councilman Chris Mancuso, Recorder Melissa Elam, and Mayor Randy Rapp voting "yes". Vote: 6-0.

2. RESOLUTION: Approving The Final Settlement Agreements In The Ongoing Opioid Litigation With Johnson & Johnson/Janssen, Allergan, CVS, Rite Aid, Teva, And Walmart

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA, upon recommendation of its Opioid Litigation Counsel, that it hereby accepts and adopts the FINAL SETTLEMENT AGREEMENTS, attached hereto and incorporated by reference herein, as part of the City's ongoing opioid litigation with **Janssen/Johnson & Johnson, Allergan, CVS, Rite Aid, Teva, and Walmart**. Council further authorizes the Mayor, his agents or designees, to take any steps as are reasonably to adopt these six settlement agreements, including the execution of any and all documents to facilitate the same.

Recorder Melissa Elam moved to approve the Resolution Approving The Final Settlement Agreements In The Ongoing Opioid Litigation With Johnson & Johnson/Janssen, Allergan, CVS, Rite Aid, Teva, And Walmart. Motion seconded by Councilman Roger Bibbee.

Councilman Roger Bibbee asked if there would be other settlements coming as well. Attorney Skogstad said it is possible.

Roll call vote taken by Recorder Melissa Elam. Councilwoman Kim Williams, Councilman Tom Azinger, Councilman Roger Bibbee, Councilman Chris Mancuso, Recorder Melissa Elam, and Mayor Randy Rapp voting "yes". Vote: 6-0.

3. RESOLUTION: Dedicating Lands North Of Jackson Park Drive, Presently Known As Fields Four, Five, And Six, For The Sole Purpose And Use Of Youth Soccer Administered By The Vienna Recreation Improvement Association, Or Its Assigns

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA, based upon the request by the Vienna Recreation Improvement Association (VRIA) and upon recommendation of the Park Board of the City of Vienna, in order to secure the stability and future growth for youth soccer in the City of Vienna, that

it hereby dedicates those certain fields located north of Jackson Park Drive, presently known as Fields Four, Five, and Six, exclusively for the youth soccer program presently administered by the Vienna Recreation Improvement Association, or any other entity assigned by the City in the future to implement and administer a youth soccer program.

Recorder Melissa Elam moved to approve the Resolution Dedicating Lands North Of Jackson Park Drive, Presently Known As Fields Four, Five, And Six, For The Sole Purpose And Use Of Youth Soccer Administered By The Vienna Recreation Improvement Association, Or Its Assigns. Motion seconded by Councilman Roger Bibbee.

Councilman Tom Azinger asked if there would be adequate fields for baseball. Mayor Rapp shared the numbers given to him by the Parks Director for baseball/softball participation. Stated soccer is the largest sport we have in our recreation program and they need the space.

Councilwoman Kim Williams referenced the email that the Parks Director sent to Council with his objections. She said she had heard that there is a significant donation that will be made if soccer fields can be made at the base of the sledding hill. She also doesn't know why we need to take of this issue right now.

Recorder Melissa Elam responded that just as the pool had been put off for years, soccer has been put off too. Baseball/softball would need to make changes to their schedule to accommodate this change but soccer participation requires more space. Explained that deciding now is necessary because it will take at least a year to get fields ready and there are a lot of logistics that will be worked on. She believes VRIA has been patient and their needs have been overlooked. They are a good partner to the city. She believes baseball deserves an upgrade also. Soccer has outgrown the facilities we have provided. Also addressed the possibility of the sled hill. The money from the foundation is tied to helping youth soccer succeed and it is not locked into a piece of property. It is very important to provide something now. A majority of our soccer participants are Vienna kids.

Councilman Roger Bibbee doesn't want to see Vienna lose kids to other areas because of logistics. Wants Council to take action.

Mayor Rapp is not in favor of doing anything else with the sledding hill.

Motion to table by Councilwoman Kim Williams. Second by Councilman Tom Azinger.

Roll call vote taken by Recorder Melissa Elam. Councilwoman Kim Williams, Councilman Tom Azinger, voting "yes". Councilman Roger Bibbee, Councilman Chris Mancuso, Recorder Melissa Elam, and Mayor Randy Rapp voting "no". Vote: 2-4. Motion failed.

Councilman Chris Mancuso wants Council to stay on top of this and get it done.

Councilman Roger Bibbee stated this has been an ongoing problem. He thinks VRIA and the Park Board have been progressive and we need to act on it.

Roll call vote taken by Recorder Melissa Elam. Councilwoman Kim Williams, Councilman Tom Azinger, Councilman Roger Bibbee, Councilman Chris Mancuso, Recorder Melissa Elam, and Mayor Randy Rapp voting "yes". Vote: 6-0.

4. RESOLUTION: Renaming The Area Containing Fields 1, 2, 3, 4, 5, And 6 Of Jackson Park As The Darrell Dotson Sports Complex. Council Accepts The Design, Location, And Placement, Of A Sign Reflecting The Same. Council Accepts Any And All Of The Donations Previously Offered And Collected To Defer The Costs Of The Design, Location, And Construction Of The Sign

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA, that it hereby renames those areas of Jackson Park containing what is commonly referred to as **Fields 1, 2, 3, 4, 5, and 6**, and its curtilage, as the Darrell Dotson Sports Complex.

Council approves the design, location, and placement of a sign reflecting the same. Council further accepts any and all donations previously offered to defer the costs of design, location, and construction of the same.

Mayor Rapp explained the meetings he had with the Department of Highways that determined the placement of the sign. Donations had been given to fund the project.

Councilman Roger Bibbee asked if it is going to be lighted. Mayor Rapp said not at this time.

Councilman Chris Mancuso asked about the material that will be used. Mayor Rapp stated it will be steel and be similar to the one for JuliAnna.

Councilwoman Kim Williams moved to approve the Resolution Renaming The Area Containing Fields 1, 2, 3, 4, 5, And 6 Of Jackson Park As The Darrell Dotson Sports Complex. Council Accepts The Design, Location, And Placement, Of A Sign Reflecting The Same. Council Accepts Any And All Of The Donations Previously Offered And Collected To Defer The Costs Of The Design, Location, And Construction Of The Sign. Motion seconded by Councilman Roger Bibbee.

Councilwoman Kim Williams acknowledged that Darrell Dotson changed her life and he made a difference.

Roll call vote taken by Recorder Melissa Elam. Councilwoman Kim Williams, Councilman Tom Azinger, Councilman Roger Bibbee, Councilman Chris Mancuso, Recorder Melissa Elam, and Mayor Randy Rapp voting “yes”. Vote: 6-0.

5. DISCUSSION: Zoning And Sale of 3400 Grand Central Avenue

Councilwoman Kim Williams asked how the sale happened and why it didn't go back to the Planning Commission. Her understanding is that it would have reverted back to residential after the property didn't sell for a year.

Attorney Russ Skogstad: This ordinance leaves a lot of room for interpretation. Interpretation leaves room for people to exact judgment. Code enforcement determined the intent was to market it as a commercial property, continued to maintain the building, and sold it to a commercial occupant. The city's policy has been to be business friendly. Referenced previous businesses that lost their commercial property status because of abandonment or change of use. Attorney Skogstad believes it is a reasonable decision for it to remain a business. The decision was consistent to what has been done with other nonconforming properties. We have not pursued abandonment for other businesses. One of Code Enforcement's duties is to keep what they know confidential. He believes the interpretation was reasonable.

Councilwoman Williams referred to the language of “discontinued” vs “abandoned”. Attorney Skogstad explained that if the hardware shop wanted to sell to a dress shop and the new shop moved in the very next day. If the hardware shop discontinues their business and a new business takes over that location, in the case of “discontinuance” the new business would not be able to open.

Recorder Elam asked if we view discontinued the same as abandoned does that mean that as soon as a business sells, they have abandoned the property? Are they forfeiting their property and it will convert to the zone the property is located in? Attorney Skogstad said yes the value of the property value could be lost if it went from a commercial property to a residential property.

Councilman Tom Azinger believes the owner was taking care of the building. We can't punish owners because they can't rent their building.

Mayor Rapp encouraged council to change the ordinance if they so desire. Based on the actions that were taken by the owner he believes it was a legitimate sale.

Attorney Russ Skogstad thinks the difference in vacant and abandoned has to be considered. Recommended changing the time period from 6 months to a year. Consider having clearer definitions of what constitutes abandonment. If maintaining a property doesn't qualify, property owners could be negatively impacted if they can't find renters. Tax sales can take 15 months so that is something else to consider. He reviewed municipal code, state statute, and spoke with code enforcement and his opinion was the decision of conformity was a reasonable interpretation.

Councilwoman Kim Williams believes the ordinance was clear and the city did not follow it.

6. UPDATE: Jackson Pool – Core Samples

Recorder Melissa Elam reported that there were no areas of concern found. The city is able to proceed with the project. CEC made recommendations on how to excavate, areas that will need filled, what the process should be ahead of pouring concrete, and what will be monitored.

It is not a guarantee that there won't be challenges, but the sampling indicates we can move forward.

7. PRESENTATION AND DISCUSSION: Jackson Pool Design Proposal

Recorder Melissa Elam presented the options and renderings that were prepared by Omni and Martin Aquatic. The Pool Design Team met with Omni and Martin Aquatic the previous week and chose the design they wanted to recommend to Council. Each of the options have the same pool configuration. The differences are the locations for the slide and baby pool and decking layout.

The design includes an expanded deck with a double slide situated on the eastern side with the baby pool area located directly north of the slides. Included elements: lily pad walk, agility course, climbing wall, diving board, rope swing, basketball hoops, zero entry baby pool with water spout features. The mechanical room will be completely torn out and relocated to the outside of the pool decking on the southern side. The bathhouse will contain a restroom hallway that is a dedicated space that will not double as an entrance or exit for the pool. There will be four ADA/family restrooms with two of them having showers also. There will be an 8 foot wide breezeway for entrance and exit where the current concessions gate is located. A concessions room and lifeguard room will be built to the western side of the breezeway. The slides have a runout instead of dumping into the pool. Minimum height is 42”.

Council’s decision is to say yes to the basic design so they can give us an Opinion of Probable Cost and begin the engineering plans.

Landscaping is optional. Colors can all be chosen later.

Slides, baby pool, and large pool would all have their own pumps and filtration systems.

The ramp will not be integrated into the structure of the pool. It will be a separate structure. We are still waiting on ramp options and decide on those without hindering the progress of the pool project.

Recorder Elam encouraged Council to consider the culture of Jackson Pool. A hard to please demographic is boys age middle school and up. The designs should enhance the experience for those boys. There is ample space for moms of little ones in the baby pool area and free play space in the large pool.

We will be able to keep a roof on the bathhouse and work through the winter.

Shade structures would be permanent structures that would not need to come down at the end of the season.

Everything will be plumbed and will be ready for installation regardless of when slides, etc. arrive.

She has requested a cost for a platform diving board. Regulation says it has to be 1 meter.

Largest expenses are going to be the mechanical room, slides, decking, and bathhouse remodel.

Objective for tonight is approving the scope and determining that our needs are met.

Next Council will have Opinion of Probable Cost so we can talk about real numbers.

Councilman Tom Azinger: When will they be able to start on it? Recorder Elam stated they can work on the bathhouse over the winter and that we will get a schedule from Omni.

Councilman Roger Bibbee: Satisfied with progress of this project. The community is excited about this pool and especially those who want a baby pool.

Councilman Chris Mancuso: Disappointed that the options are all the same thing. Doesn’t want the ramp to be an afterthought. Recorder Elam responded that the designs were based on the feedback the Design Team gave them. The ramp will be in place when the pool opens. Mr. Mancuso isn’t sure why we need to get it done in 2023 and thinks shortcuts are being taken. Stated that there is no way we will get it completed and open by our deadline. Asked if we are sacrificing a better bathhouse just we can open next year. Said it is hard to agree to a plan without any cost to go off of. Asked if swim lanes are possible. Can the pieces in the pool be easily removed? Recorder Elam assured Council we are not being hasty. She believes there is a value to our community to get the pool open as soon as possible. Because of the speed at which government moves, we need to have a sense of urgency in reaching a good product we can be proud of.

Councilwoman Kim Williams: Referenced geotechnical report saying optimal time to do earthwork is summer and early fall. She doesn’t want to set expectations that aren’t possible. Questions whether we have too many active play pieces over passive. Thinks the lily pads will limit use of the pool. Wants to prioritize swim lessons. Wants to figure out the total cost of the pool on a yearly basis. May have too many great things. Concerned about drowning. Would like to see splash elements under or around the slide. Would be ok with no wading pool.

Mayor Rapp thinks we need to move forward to get a price that will give us our starting point.

Councilman Chris Mancuso is frustrated that Omni and Martin Aquatic did not show up. Feels it is disrespectful. Thinks they should have been able to provide a schematic cost. Wants a schedule for construction. If there is no way the pool can be opened on time why not take a step back and look at things again.

Councilman Tom Azinger thinks we should make a decision and get the ball rolling.

Councilwoman Kim Williams doesn't like that options weren't more different. Hasn't had enough time to review and absorb the design.

8. RESOLUTION: Accepting Design For The Jackson Park Pool

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VIENNA, that it hereby accepts the design of the Jackson Park Pool as recommend by the Vienna Pool Design Team. Financing for said project will be contingent upon council's approval at a future council meeting.

Councilman Roger Bibbee moved to approve the Resolution Accepting Design For The Jackson Park Pool. Motion seconded by Recorder Melissa Elam.

Councilman Chris Mancuso moved to table. Second by Councilwoman Kim Williams.

Roll call vote taken by Recorder Melissa Elam. Councilwoman Kim Williams and Councilman Chris Mancuso voting "yes". Councilman Roger Bibbee, Councilman Tom Azinger, Recorder Melissa Elam, and Mayor Randy Rapp voting "no". Vote: 2-4. Motion failed.

No further discussion.

Roll call vote taken by Recorder Melissa Elam. Councilman Tom Azinger, Councilman Roger Bibbee, Recorder Melissa Elam, and Mayor Randy Rapp voting "yes". Councilwoman Kim Williams voting "no". Councilman Chris Mancuso abstained. Vote: 4-1.

COUNCIL COMMENTS:

Recorder Melissa Elam spoke with Officer Jones who is the Resource Officer for Jackson Middle School. He is very concerned about increased use at Jackson. He confiscates vape pens regularly. She stated that we don't want to discriminate. As elected officials, we try to create a good environment for our citizens and at the same time we are responsible for the people in our household.

Councilman Chris Mancuso loves the decorations and community involvement for Halloween and Christmas for some. Thanked neighbors for decorating and celebrating the holidays.

Mayor Rapp praised Chief Pifer for the Trunk or Treat event. It was well done and very well attended.

Meeting adjourned at 9:01pm.

Melissa Elam, Recorder

Randall C. Rapp, Mayor

APPROVED: _____
 Initials Date