

**MINUTES OF THE REGULAR MEETING OF THE WYTHEVILLE TOWN COUNCIL
HELD IN THE COUNCIL CHAMBERS ON MONDAY, FEBRUARY 11, 2008, AT 7:00 P.M.**

Members present: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert

Members absent: William B. Weisiger

Others present: Town Manager C. Wayne Sutherland, Jr., Assistant Town Manager Stephen A. Moore, Chief Deputy Clerk Sharon G. Corvin, Town Attorney Robert P. Kaase, Police Officers Chris Irvin and Joe Posillico, Danny Gordon with WYVE/WXBX, Wayne Quesenberry with *Wytheville Enterprise*, John Rick, Ron Dunlap, Eddie Williams, Sherry Williams, James S. Ryan, Joyce Ryan, Linda Hostetter, Joe Moore, Danny McDaniel, Madeline Zuurbier, George Zuurbier, Robert Kendrick, Richard Northrop, Donald Nance, Kerry Eans, Stephen Snider, Jill Snider, Herb Craft, Joan Craft, Mark Mills, Agnes Eades, Dale Hartley, Josef Stemplinger, D. W. Campbell

RE: CALL TO ORDER, QUORUM, INVOCATION, PLEDGE

Mayor Crewe called the meeting to order and established that a quorum of Council members was present. The invocation was given by Councilman Jones followed by the Pledge of Allegiance led by Vice-Mayor King.

RE: CONSENT AGENDA

Mayor Crewe presented the consent agenda consisting of the minutes of the regular meeting of January 28, 2008, and the request of the Wytheville Department of Museums for issuance of a raffle permit for 2008. A motion was made by Vice-Mayor King and seconded by Councilman Lambert to approve the minutes of the regular meeting of January 28, 2008, and the request of the Wytheville Department of Museums for issuance of a raffle permit for 2008. Mayor Crewe inquired if there is any discussion on the motion. There being none, the motion was approved with the following voting in favor and there being no opposition: For: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert. Against: None.

RE: PUBLIC HEARING – PROPERTIES AT CORNER OF PEPPERS FERRY/COVE ROADS

Mayor Crewe stated the meeting constituted a public hearing (due notice having been given) to consider the rezoning of properties located on the west side of Peppers Ferry Road between Cove Road and Interstate 81 (corner of Peppers Ferry and Cove Roads) from M-1 Industrial to B-1 Business with Conditions. He inquired if there are persons present who wished to address the Council during this public hearing. Mayor Crewe noted he thinks most people have indicated on the sign up sheets that they desire to speak to Council during the public hearing on the on-frame modular issue. Mr. George Zuurbier advised he would like to see this topic explained a little. Mayor Crewe inquired if Mr. Zuurbier is inquiring regarding the rezoning. Mr. Zuurbier inquired if this is on the west side of Cove Road. Mayor Crewe advised that is correct and that the request is to rezone it from M-1 Industrial to B-1 Business with Conditions. Vice-Mayor King inquired if Mr. Zuurbier understands where this property is located. Mayor Crewe explained that the property is across the street from the old Alco plant. Mr. Jones noted the property is behind the Fastenal store. Mayor Crewe noted that is correct and down where the storage units are located. Mr. Zuurbier pointed out that this is the east side of Cove Road. Town Manager Sutherland stated that is correct. Mayor Crewe noted it is the east side of Cove Road and Mr. Zuurbier is correct. Mayor Crewe thanked Mr. Zuurbier for his comments. Town Manager Sutherland remarked that it is on the north side of Peppers Ferry Road. Mayor Crewe pointed out that these properties are on the corner of Peppers Ferry and Cove Roads, but it is on the east side, and not the west side, of Cove Road. He noted that the map he received did not have north marked on it either. Mayor Crewe inquired if there is any other discussion or if anyone has any other comments during the public hearing. Mr. Lambert advised that it may be the west side of Peppers Ferry Road. There being no other comments, Mayor Crewe declared the public hearing closed.

RE: PUBLIC HEARING – ON FRAME MODULARS

Mayor Crewe noted the meeting also constituted a public hearing (due notice having been given) to consider amending the following Zoning Ordinance sections regarding on-frame industrialized building units (on-frame modulars): Article III – Definitions; and, to consider amending the following Zoning Ordinance sections to restrict the use of on-frame industrialized

building units (on-frame modulars): Article VI – Residential District R-1, Section 6-1.1; Article VI-A – Residential District R-1A, Section 6-1.1A; Article VI-M – Residential District R-1M, Section 6-2.1M; Article VII – Residential District R-2, Section 7-1.1; Article VII-A – Residential District R-2 FH, Section 7-1.1A; and, to consider amending the following Zoning Ordinance sections to allow the use of on-frame industrialized building units (on-frame modulars): Article VIII - Residential District R-3, Section 8-1.1; Article VIII-A – Residential District R-3 MH, Section 8-1.1A. He stated this is the public hearing that most everyone who has signed up to speak has indicated they are interested in speaking about. He noted these proposed revisions would amend several sections of the Zoning Ordinance basically to restrict the use of on-frame industrialized building units and on-frame modular units. Mayor Crewe indicated that several people have indicated they want to speak on this issue, so maybe the easiest thing to do is go down the sign up sheets, and the Town Council will be glad to hear from everyone. He requested everyone to come forward to the microphone so that everyone can hear, and so that the minutes can be properly recorded.

Mr. John Rick was recognized and stated he is an attorney who represents the Virginia Manufactured and Modular Housing Association. He indicated that he resides in Powhatan County, Virginia, which is just west of Richmond for those who are not familiar with it. Mr. Rick stated that the association he represents is opposed to any zoning change the Council would make, without getting into specific in and out details, which has the effect of excluding from residential districts, on-frame modular homes. He advised there are several reasons for this, and then there are several observations he could make about this case. Mr. Rick indicated that the principle reason is they believe State law, and noted he has forwarded this to Town staff, Assistant Town Manager Moore, and Town Attorney Kaase, specifically states that a town or county zoning ordinance cannot regulate the construction or materials of a home. He explained that if it does, it is in direct conflict with the Uniform Statewide Building Code (USBC). He indicated that the USBC came into being in 1972 when the State of Virginia went to a Uniform Statewide Building Code, and there are only 10 or 15 states in the Union which have done this. Mr. Rick advised that before this, he can remember, that most towns, counties, and cities had their own building codes, and some were very strict and some were not so strict and some not fair. He explained that the State came in and noted there was going to be a single building code, and the first thing that was asked was about the towns', counties', and cities' local building codes. Mr. Rick noted that the State advised the localities that they were gone. He remarked that the second question that came up was about the localities' zoning ordinances. Mr. Rick advised that Section 36-97 of the State Code was adopted back at that time to state the localities' zoning ordinances are untouched by the State Building Code provided they do not try to regulate the manner of construction or materials. He pointed out that this has been the law ever since, and it has not been changed. Mr. Rick noted he believes if a zoning ordinance anywhere in Virginia, and now it just happens to be in Wytheville, states a person cannot place an on-frame modular in a particular district, whatever it might be, but a person can put in an off-frame modular, then the Town of Wytheville is stating because it is the way the on-frame is built, and noted he has read through the records and it is quite clear it is because it has a steel-frame under it, which is the way it is built. He reiterated that it is quite clear the Town is stating an on-frame modular cannot be placed in a district because of the way it is built. Mr. Rick explained that it seems to him this is directly affected by that State Code section which states this is not supposed to happen. Mr. Rick noted he is not unaware that there is another Code section at the very front end of the whole zoning enabling statute which talks about zoning ordinances being able to regulate construction. He indicated he is not attending the meeting to be "lawyer" with the Council too much, but there is a little bit of a lawyer question there. Mr. Rick pointed out that the State zoning enabling legislation was on the books before 1966 in that form. He noted that in 1966, the State of Virginia completely rebuilt all zoning, subdivision, comprehensive plan, and capital improvement plan enabling legislation, and it carried that language forward. Mr. Rick advised that this language has been on the books for many, many decades. He explained that in 1972, much later, the General Assembly stated the localities cannot use zoning to regulate construction if it conflicts with the Uniform Statewide Building Code. Mr. Rick indicated that this puts it in a lawyer problem and a court problem because there are two statutes butting heads, and one seems to say zoning can regulate construction, and the other states it cannot. He stated the courts have dealt with these kinds of problems for a long time, and they have two easy answers. Mr. Rick advised that one answer is the latest in time, and in 1972, the most recent General Assembly thinking on the subject prevails. He noted the second answer states the one that is more specific prevails. He noted he would suggest to the Town Council that he thinks the 1972 section he is relying on at this meeting is more specific than the generic language of the 1966 State enabling statute. Mr. Rick pointed out that they think it is a matter of State law that the Town cannot keep an on-frame modular home out of a district if they let an off-frame modular home in the district. He indicated he is not attending the meeting to really try and throw a lot of "smoke" around about the difference between them. Mr. Rick stated there is one thing about both of the homes that is critically important. He noted they are both built to the exact same building code in which his house is built, which is neither a trailer, nor a mobile

home, nor a manufactured home, nor an on-frame modular. Mr. Rick advised that on-frame and off-frame modulares are built to the exact same code, which is the one that governs all houses in this Commonwealth, other than manufactured homes, which are regulated by a federal code, sometimes called the HUD Code because it is the federal agency that promulgates it. He reiterated that on-frame and off-frame modulares are built to the same code. Mr. Rick indicated that if they are taken apart, they have the same numbers of 2'X4's in the same places, the same lengths, and they are identical, until it is below the floorboards. He explained that the on-frame modulares are built on steel rails so they can be transported easier, and the others have to come on flat bed trucks and get craned off and put on a perimeter block foundation. Mr. Rick advised he did not want to get off on the subject of the foundation. He inquired if there are time limits for speakers and he did not want to be lengthy, but a lot of words come up in this. Mayor Crewe answered that the Town Council has a five minute time limit, but Mr. Rick is speaking for a group. Mr. Rick advised that Mayor Crewe could advise him when he has reached his time limit to speak. Mayor Crewe noted that Mr. Rick could continue. Mr. Rick remarked that a lot of people think that the rectangular hole in the ground with cinderblocks coming around it and a nice long skinny rectangle is a permanent foundation, and they are absolutely correct, but what they do not know is that the Uniform Statewide Building Code, which is all he is relying on, also states unequivocally that piers are a permanent foundation. He indicated that for those of the Council who really feel intellectually curious, the USBC also states that wood pilings are a permanent foundation, which is why those houses down at the beach are legal. He indicated that there are actually three allowable permanent foundations under the Uniform Statewide Building Code, and not the one everyone thinks is a permanent foundation. Mr. Rick pointed out that he felt the same until he started doing this work many years ago, and it is not the only permanent foundation. He remarked that he would beg the Council to not get waylaid by the permanent foundation argument. Mr. Rick stated that on-frame homes are on a legal permanent foundation, and indicated that he got this from the State Building Review Board, which is the top board of all the building officials in the State of Virginia, and that is who stated this, and they stated it 15 or 20 years ago. He noted this is not anything new. Mr. Rick continued that he thinks State law states very clearly and very simply that these homes cannot be discriminated against by a zoning ordinance, and this is what the Council has on the table at this meeting. He advised that this is why he is attending the meeting. Mr. Rick indicated that he just learned, very recently, that there is actually a pending lawsuit about this matter. He noted it would seem to him that just as a matter of legislative prudence that the Council may want to wait until the lawsuit is finished. Mr. Rick stated this is not a mandate, but it might make some sense. Mayor Crewe inquired as to what court this lawsuit is pending in. Mr. Rick answered that he did not know which court it is pending in. He explained that Mr. Tom Jackson has the lawsuit and stated it is coming up rather soon. Mr. Rick noted he has sent to the Town Council and Assistant Town Manager Moore three lawsuits decided by circuit courts in different parts of Virginia starting back in 1989, which state that a manufactured home/mobile home/trailer is different from a modular home precisely because of the building code they are built to. He pointed out that this is what three circuit courts have done, and noted he is not aware of any court of a higher level that has considered the question. Mayor Crewe advised Mr. Rick that the Town Council has a copy of his February 8 letter and the attachments, and this is in their packet at this meeting. Mr. Rick indicated that he is not going to spend a lot of time about the home, but from brief discussions, it sounds to him like, not having gone out and ridden up and down the roads, and if the Council's own factual information can trump what he is stating, the assessed value of this home that is at issue is about average or a little better than average of some of the homes in the area and a little less than average for other homes in the area. He noted whether it is an on-frame or an off-frame home, it is no different when it is on the ground and on its foundation, and it is on a permanent foundation, and it is a home. Mr. Rick remarked that he is before the Council, and he has represented local governments as well. He advised that he understands how these issues can come up, and he understands how the Town Council or other Boards of Supervisors or Town Councils feel the need to respond to a problem. Mr. Rick indicated that it seems to him, in this particular case, that the legislative concern should have to do as much with use of town assets as anything else. Mr. Rick stated that his association, if this goes forward, will feel forced to see if the courts agree with them. He pointed out that it is just something they have to do because they have people all over the State who do this, and this has come up in many places and has been put aside once he went and talked to the localities and showed them the law, and the localities have noted that it looks like it makes sense. Mr. Rick noted that what is more intriguing to him in this case is if the Town Council was to pass this zoning ordinance amendment, based on the information he has, this home is already sited, and it is actually already being lived in. He stated when this Zoning Ordinance amendment is passed, it does not make that home go away, and it does not make it unlawful. Mr. Rick remarked that it makes the home a lawful, nonconforming use. He advised if the Council passes this Zoning Ordinance amendment, it does not fix that problem, and the Council will inherit a potential litigation liability. Mr. Rick stated to him this looks like questionable legislative motivation. Mr. Rick remarked that some might state this is a no-win situation for the Town Council because they cannot solve the problem, and they may incur some problems later. He

stated he would humbly ask the Council to simply find another way to solve this problem. Mr. Rick indicated that if the Council determines it is their business to solve this, he would ask that they find some other way to do it. He noted they do not deny that there is a terrible problem in the community, but they think the way it is postured, passing this ordinance does not fix it, and it causes them terrible problems. Mr. Rick thanked the Council and inquired if there are questions for him. Mayor Crewe inquired if anyone has any questions for Mr. Rick. Town Attorney Kaase inquired as to some of the other jurisdictions who have dealt with this or have proposed to deal with this and then declined. Mr. Rick answered that Caroline is one of the communities. He noted he has a file back at the office, and he did not bring it. Mr. Rick remarked that he would state between five and ten localities, and he does not remember. He indicated that it has been over a period of probably 10 years. Mr. Rick explained that the first case he sent the Council was decided in 1989 by Judge Ledbetter in Caroline. Town Attorney Kaase pointed out that this case had to do with the restrictive covenants of the subdivision, not a zoning ordinance. Mr. Rick noted he understands this, and Town Attorney Kaase may want to look at the Westmoreland case, and it does deal then with the zoning ordinance. Town Attorney Kaase stated that it did not eventually though. Mr. Rick remarked to state that the case only deals with the restrictive covenants misses the main point of the case, he thinks, which is how to tell them apart. He noted he does not have appellant law on that, and noted he will not begin to pretend that they do, but these are the three circuit court cases and they are only what they are. Mr. Rick indicated that they do not want to have to go to any appellant law. Town Attorney Kaase inquired of Mr. Rick where in Section 36-97 does it state that a local government cannot deal with these issues through appropriate zoning. Mr. Rick inquired if Town Attorney Kaase minded if he stepped away to get his code book. Town Attorney Kaase provided Mr. Rick with a copy of the State Code book. Mr. Rick noted that this language is not listed in Section 36-97, and advised he gave the Town Council the wrong section. He stated this language is listed in another section. He noted he will have to get his Code book to find it. Town Attorney Kaase remarked that he was looking at Mr. Rick's letter. Mr. Rick advised that he understands what Town Attorney Kaase is looking at, and he proceeded to get his Code book. Mr. Rick indicated that he will need to find the language, and he will readdress the Council when he finds the information. Mayor Crewe noted he will call on other speakers while Mr. Rick finds the information.

Ms. Linda Hostetter was recognized and she declined to speak. She advised when she signed up to speak, she did not know there would be others to speak. Mayor Crewe thanked her for attending the meeting.

Mr. Joe Moore was recognized and he also declined to speak. He advised that there were people attending the meeting who could speak better than he could. Mayor Crewe thanked Mr. Moore for attending the meeting.

Mr. Danny McDaniel was recognized and thanked the Council for letting him speak to this issue. He noted that his basic point is intent and what was intended by the law and what the law states. Mr. McDaniel indicated that it is his belief, and he believes the belief of his neighborhood, that they do not have any problems with modular homes. He noted this is what they intend modular homes to be. Mr. McDaniel noted that as the lawyer stated, they are brought in, craned off, etc. He indicated that he contends that in most people's minds, a manufactured home, trailer, or doublewide comes in on a metal frame. Mr. McDaniel noted that he thinks this was the intent of the law when it was passed. He advised that he understands that the Uniform Statewide Building Code states something different now, and it may be built to a stronger structure, but it is not the intent. Mr. McDaniel indicated that a lot of them have covenants on their property, but the covenants were written at the intent of what a mobile home was, and a mobile home comes in on a metal frame, whereas a modular home comes in and is lifted off by crane and set up in stages like that. He noted this is basically the point he wanted to make. Mr. McDaniel advised that he would hope that this Town Council also would not buckle down under the threat of a suit because they can all have threats of suits every day, and he would hope that this Town Council is not going to do that. He noted he knows the Town Council has done this on other issues that have come before them. Mr. McDaniel indicated that he has a question for the Council. He inquired if there is a case pending, if there could be a moratorium passed to put this into effect so there will be no building permits given until this case is settled, and inquired if this is a possibility. Mayor Crewe answered he supposed a moratorium could be passed, but he asked Mr. McDaniel to keep in mind that if the Council were to change the law, it is not retroactive, so whatever the Council does will not affect the home. Mr. McDaniel indicated that he understands whatever happens is not going to be retroactive, and it is not going to take Mr. Williams' house away. Mayor Crewe noted that Town Attorney Kaase has pointed out that it is not going to affect the subdivision at all, and what the Council is looking at is a zoning issue and the classifications. Mr. McDaniel advised that he would request the Town Council to maybe consider the R-1 Residential Districts as different from R-2 Residential and R-3 Residential. He noted he understands that affordable housing needs to be in the community also, but the R-1

Residential District may stand out a little bit differently because of the other limitations for R-1 residences. Mayor Crewe thanked Mr. McDaniel for his comments. He inquired if anyone has any questions for Mr. McDaniel. There being none, Mayor Crewe thanked Mr. McDaniel for attending the meeting.

Mr. Rick was recognized again and noted he found the two sections in the Code book for Town Attorney Kaase, and this is why he did not find it in the beginning. He requested Town Attorney Kaase to review Section 36-98, and the first paragraph states, "There is hereby promulgated a Uniform Statewide Building Code." He noted the next sentence states, "Such Code shall supersede the building codes and regulations of counties, municipalities, and other political subdivisions." Mr. Rick pointed out that the Town of Wytheville is a municipality. He indicated that the definitions in Section 36-97 is where it happens, and it is under the definition of "Building Regulations." Mr. Rick advised that the first several sentences state the following things about building regulations, and, of course, this prior section states "are superseded by the Statewide Building Code." He noted the last sentence states, "The term 'building regulation' does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in construction, alteration, or repair of any building." Mr. Rick noted if Town Attorney Kaase reads these sections together, this is what he thinks he will get. Town Attorney Kaase thanked Mr. Rick for his help. Mayor Crewe thanked Mr. Rick for his comments.

Mr. George Zuurbier was recognized and stated he comes with two hats on his head, and one is as a citizen of the Town of Wytheville. He noted he lives at the end of Wytheview Drive. He noted the other hat he wears is that of an engineer and a technical person, and one who just happens to currently be practicing in the world of manufactured homes, inspections, etc. Mr. Zuurbier indicated that he expects to dive under two doublewides tomorrow and inspect them and give them a passing or not passing inspection for HUD. He pointed out that he is quite familiar with the codes, and he would like to address that point the representative of the manufactured homes brought. Mr. Zuurbier advised that the law states the Code will not dictate the type of construction, and this seems fair enough. He noted the Code cannot state no steel, no concrete, or no wood, and the Code has to allow them all. Mr. Zuurbier indicated that the Code does not address the matter of aesthetics or the effect of these buildings on local properties. He pointed out that the general trend of these buildings is these buildings on frames come in only one package. Mr. Zuurbier explained that they are limited to the restriction of bridge heights and highway lane widths. He indicated that they do come with dormers and they do not come with extensions or any other variations, but they come as matchbox things readily identifiable by anyone who drives into a neighborhood and states, "Well, look, they've got a doublewide in this neighborhood." Mr. Zuurbier indicated he does not think this is fair. He continued that the State law does not address that, and noted he thinks they have the right to address it themselves. Mr. Zuurbier noted that he feels like Mr. Danny McDaniel in that these buildings have their place and they have a market, and they should be allowed in certain places, but not in R-1 Residential zoned areas. He reiterated that he thinks the Town has the right to zone them out of these areas and let them into the next one in line, which is what they do now. Mr. Zuurbier remarked that the Town currently lets lower class homes exist in the next class of zoning. He noted he is not against letting manufactured homes or on-frame modular homes into this area, but he is only proposing that the Town not let them into the R-1 Residential zones. Mr. Zuurbier remarked that the meeting was started with a prayer for justice, and advised that this is what they are looking for. He noted this is what he would like to ask the Town Council to consider. Mayor Crewe thanked Mr. Zuurbier, and inquired if anyone has any questions for him. There being no questions, Mayor Crewe thanked Mr. Zuurbier for attending the meeting.

Dr. Donald Nance was recognized and stated he lives at 600 Wytheview Drive. He noted he joins with his other colleagues in stating that if there is a zoning restriction, it probably should be in R-1 Residential zones. Dr. Nance remarked that the home he lives in is not the first home he owned in that development, and the one beside it where Mr. Joe Moore lives is his first home, and it was one of the first homes built. He pointed out that it never dawned upon him in his wildest imagination that a mobile home, a doublewide, would be moved in the community of that structure. Dr. Nance indicated that the home he lives in presently has wood, steel, brick, siding, and it has all of these things, and it is not restricted in that manner. He noted he lives in a community that provides for their community a good tax base. Dr. Nance indicated that he had a son who lived in a doublewide mobile home in North Carolina, and he knows the value of that home did not accelerate, and it depreciated. He advised that his son did not get out of the home what he put in it, but he had good land it was on, and so that helped him sell it. Dr. Nance remarked that he is concerned about their community, which is Wytheview. He noted he is concerned about Wytheville, and he is concerned about its tax base. Dr. Nance stated he is concerned that the Council not break laws, but he is concerned that they maintain the beauty, the structure, and the dignity that all they had possessed in the past will continue in the future in an orderly fashion. He thanked the Council for letting him address them. Dr. Nance stated he

knows the Council has good minds, and he knows the Council's decisions will prevail. Mayor Crewe inquired if there are any questions for Dr. Nance. There being none, he thanked Dr. Nance for attending the meeting.

Mr. and Mrs. Herb Craft were recognized, and Mayor Crewe advised that they had a question mark by their name if they wanted to address the Town Council. Mr. Craft indicated that he thinks the comments have been well said, and he declined to speak. Mayor Crewe thanked them for attending the meeting.

Mayor Crewe stated unless he has missed something on the sign up sheets, everyone has been recognized. He inquired if there are others who wanted to speak during the public hearing who have not been given the opportunity to speak.

Mr. Eddie Williams noted he had indicated he would like to speak. Mayor Crewe noted on the sign up sheet, it appeared that Mr. Williams' name had been scratched through and this is why he thought Mr. Williams had changed his mind. Mr. Williams was recognized and stated he will be brief. He noted he wanted to bring up a couple of points. He noted he noticed in the minutes of the Planning Commission meeting that they referred to the house on Van Mar Drive in the Wytheview Subdivision. Mr. Williams stated that to clarify this, this house is not in the Wytheview Subdivision. He noted it is in the Birdland Subdivision. Mr. Williams explained that the houses on Van Mar Drive are in the Birdland Subdivision, and the houses on Wytheview are in the Wytheview Subdivision. He noted these are distinct and separate and have different restrictions and covenants. Mr. Williams noted another thing is that some of the major concerns are two things. He indicated that number one is the quality of the home, and he will address this first. Mr. Williams advised that as most of the Council knows, this past weekend there was a very powerful windstorm in which a lot of houses and trees got damaged. He noted that today, he decided he would check this out in his neighborhood, and he took some photographs of houses in his neighborhood. Mr. Williams stated he will tell the Council that the last picture they will see is his home. He presented the photographs to the Council and advised that the Council will see different damage to each house, some being very minor and some being more substantial, especially to the roofing shingles. Mr. Williams pointed out that on his house, he did not lose a single shingle off the roof of his house. He stated as far as the depreciation of value of the homes around it, today, he went on VAMA Net to check out the latest appraisal of houses in his neighborhood, and they ranged anywhere from \$240,000 down to \$136,000. Mr. Williams indicated that the appraisal for his house came somewhere in the middle. He noted that these are the only points he wanted to bring up. Mr. Williams thanked the Town Council for their time and remarked that he would like to have the photos back when the Council is through looking at them. Mayor Crewe thanked Mr. Williams for attending the meeting. He inquired if any of the Council members have any questions for Mr. Williams. There being none, he thanked Mr. Williams for his comments.

Mr. Mark Mills was recognized and stated he did not think he could add anything else to what his prior colleagues have stated. Mayor Crewe thanked him for attending the meeting.

Mayor Crewe inquired if there are others who wished to address the Town Council during the public hearing that he has not given the opportunity to speak. There being none, he declared the public hearing closed. Mayor Crewe advised that the Town Council will come back to this topic later in the meeting to take action on it.

RE: CITIZENS' PERIOD

Mayor Crewe stated the next agenda item is Citizens' Period. He inquired if there are persons present who wished to address the Council during Citizens' Period on some topic other than an agenda item. He noted that the Council always has a Citizens' Period on the agenda so that anyone who desires can speak about any topic. There being no one who desired to address the Council during Citizens' Period, Mayor Crewe proceeded with the agenda.

RE: OLD BUSINESS

Under Old Business, Town Manager Sutherland reported the following:

1. The Public Works Committee will not meet this week or next week, but the Budget and Finance Committee will meet both weeks on their regular day and time.

RE: BUDGET AND FINANCE COMMITTEE REPORT

Councilman Jones, reporting for the Budget and Finance Committee, reported that the Town has received a letter from the Wythe Arts Council seeking action by the Town on a number of

matters relating to the annual Chautauqua Festival. He indicated that a copy of the letter from the Wythe Arts Council is enclosed, and the Arts Council is completing the necessary paperwork for the Request for Waiver of Fees through the Community Center. Councilman Jones advised that this year, the opening parade will be held on June 21, and the final day of the Festival, including fireworks, will be held on Saturday, June 28. He noted that again this year, the Arts Council has requested that certain fees for use of the Park and the Community Center be waived as well as certain Business License fees. Councilman Jones advised that the Committee has reviewed the requests by the Arts Council and find them to be essentially the same requests that have been made for many years. He stated the Committee does not anticipate a problem with any of these items. Councilman Jones remarked that the Committee would note that the Town has, again this year, applied for grant funds on the Arts Council's behalf. He advised that as such, for all of the areas where fees are being requested to be waived, the Arts Council will need to pay these fees (up to \$5,000) and then be reimbursed by the Town, provided they receive the grant funds. Councilman Jones advised that the Town applauds the Wythe Arts Council's continued effort in bringing quality entertainment to the citizens. He stated it is the recommendation of the Budget and Finance Committee that the Council approve the request of the Wythe Arts Council with the stipulations noted earlier and contingent on the receipt of the Request for Waiver of Fees application. A motion was made by Councilman Jones and seconded by Vice-Mayor King that the Council approve the requests of the Wythe Arts Council and that the Arts Council will need to pay these fees (up to \$5,000) and then be reimbursed by the Town, provided they receive the grant funds, and contingent on the receipt of the Request for Waiver of Fees application. Mayor Crewe inquired if there is any discussion on the motion. There being none, the motion was approved with the following voting in favor and there being no opposition: For: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert. Against: None. A copy of the Budget and Finance Committee report is attached and made part of these minutes. ([Attachment](#)).

RE: PUBLIC WORKS COMMITTEE REPORT

Councilman Lambert, reporting for the Public Works Committee, reported that at the most recent Joint Governing Bodies meeting held in Rural Retreat, several citizens were present noting that there was a need for public water in a number of areas throughout the county. He stated the presiding official at the meeting, Mayor Tim Litz, appointed a committee to review the potential for extending water to other locations throughout Wythe County. Councilman Lambert advised that this past week, the committee convened to discuss this matter. He stated the committee consists of Wythe County members Bucky Sharitz and Cellell Dalton, Rural Retreat members Tim Litz and Raymond Matney, and from the Town of Wytheville Judson Lambert and Wayne Sutherland. Councilman Lambert noted it was the consensus of this committee that the feasibility of a countywide water system should be evaluated. He commented that Mr. Dalton noted that the Virginia Department of Health may have grant funding available, and he anticipated the cost of the study was approximately \$75,000. Councilman Lambert stated it was suggested that the committee request the governing bodies' support of applications for grant funds from the Virginia Department of Health or other sources to study a consolidated water system. He advised that the committee agreed it would forward this information to all of the governing bodies seeking support for these grant funds to determine the feasibility. Councilman Lambert noted that the committee acknowledged that there were obvious positives and negatives associated with such a consolidation, but that without an engineering feasibility study, it would not be possible to fairly evaluate the potential. He stated it is the recommendation of the Public Works Committee that the Town Council take action supporting an application to the Health Department seeking funding for the study. Mayor Crewe noted he will take this as a motion from the Committee that already has a second, because he knows Councilman Weisiger was present when this was discussed. He inquired if there is any discussion on the motion to support the application to the Health Department for funding this water study. There being none, the motion was approved with the following voting in favor and there being no opposition: For: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert. Against: None. A copy of the Public Works Committee report is attached and made part of these minutes. ([Attachment](#)).

RE: APPOINTMENTS – PLANNING COMMISSION

Mayor Crewe stated the next agenda item is the notification of appointments to the Wytheville Planning Commission to fill the expiring terms of Mr. Richard Martel and Dr. William Snyder whose terms expire March 2, 2008. He advised that Dr. Snyder had indicated a willingness to serve again and is eligible for reappointment. Mayor Crewe indicated that Mr. Martel has indicated that he did not desire to serve again, but he would serve until a replacement can be found. A motion was made by Vice-Mayor King and seconded by Councilman Jones to reappoint William Snyder to the Planning Commission. Mayor Crewe inquired if there is any discussion on the motion. There being none, the motion was approved with the following voting

in favor and there being no opposition: For: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert. Against: None.

RE: APPOINTMENT – BOARD OF ARCHITECTURAL REVIEW

Mayor Crewe stated the next agenda item is the notification of an appointment to the Board of Architectural Review to fill the expiring term of Mr. Keith Storms whose term expires February 27, 2008. He noted that Mr. Storms is eligible for reappointment. A motion was made by Councilman Lambert and seconded by Councilman Jones to reappoint Mr. Keith Storms to the Board of Architectural Review. Mayor Crewe inquired if there is any discussion on the motion. There being none, the motion was approved with the following voting in favor and there being no opposition: For: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert. Against: None.

RE: ORDINANCE NO. 1224 – REZONING OF PROPERTIES AT CORNER OF PEPPERS FERRY/COVE ROADS

Mayor Crewe presented Ordinance No. 1224, an ordinance amending Ordinance No. 640, generally known as the Zoning Ordinance, to rezone from M-1 Industrial to B-1 Business with Conditions the three properties (King, Gordon, and JRJ Properties) located on the west side of Peppers Ferry Road between Cove Road and Interstate 81 (corner of Peppers Ferry and Cove Roads) on first reading. A motion was made by Councilman Jones to suspend the rules and adopt Ordinance No. 640, generally known as the Zoning Ordinance, to rezone from M-1 Industrial to B-1 Business with Conditions the three properties (King, Gordon, and JRJ Properties) located on the west side of Peppers Ferry Road between Cove Road and Interstate 81 (corner of Peppers Ferry and Cove Roads) on first and final reading, and the conditions would be to allow mini storage facilities, equipment and material storage without cover, and parking of construction equipment and machinery. The motion was seconded by Vice-Mayor King. Mayor Crewe inquired if there is any discussion on the motion to adopt the ordinance on first and final reading, which would make it effective immediately. Councilman Lambert noted he still has some confusion in his mind as to whether the Council is talking about the north side, the east side, or the west side. He pointed out if the Council is talking about Peppers Ferry Road, that probably would be the west side. Mayor Crewe indicated that if he is looking at the plat correctly, for the plat that is in package, north is at the top. He noted it is the north side of Peppers Ferry Road and the east side of Cove Road. Councilman Lambert noted he agreed. Mayor Crewe inquired if this sounds correct. Councilman Lambert remarked that it sounded correct to him. Mayor Crewe inquired if there is any other discussion. There being none, the motion was approved with the following voting in favor and there being no opposition:

FOR: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert

AGAINST: None

ABSTENTIONS: None

Ordinance No. 1224 was adopted on first and final reading. Mayor Crewe noted that the ordinance is effective immediately.

RE: ORDINANCE NO. 1225 – ON-FRAME MODULARS

Mayor Crewe presented Ordinance No. 1225, an ordinance amending Ordinance No. 640, generally known as the Zoning Ordinance, to amend Article III – Definitions; and to amend the following Zoning Ordinance sections to restrict the use of on-frame industrialized building units (on-frame modulars): Article VI – Residential District R-1, Section 6-1.1; Article VI-M – Residential District R-1M, Section 6-2.1M; Article VII – Residential District R-2, Section 7-1.1; Article VII-A – Residential District R-2FH, Section 7-1.1A; and, to amend the following Zoning Ordinance sections to allow the use of on-frame industrialized building units (on-frame modulars): Article VIII – Residential District R-3, Section 8-1.1; Article VIII-A – Residential District R-3MH, Section 8-1.1A, on first reading. He noted there are eight amendments to the Zoning Ordinance proposed that is in the packet of information. Mayor Crewe advised that what it would do is, and this is a summary, not allow on-frame modulars in R-1 Residential Districts. Town Manager Sutherland advised that this is the ordinance that had been before the Planning Commission, and it also does not permit on-frame modulars in R-2 Residential Districts as well. Mayor Crewe noted it comes to the Town Council with no recommendation. Town Manager Sutherland stated that is correct. Mayor Crewe noted that Town Manager Sutherland is correct, and this ordinance disallows on-frame modulars in R-1 and R-2 Residential Districts. A motion was made by Councilman Jones that the Town Council approve Ordinance No. 1225 regarding

on-frame industrialized building units (on-frame modulars) on first reading only, to restrict the use of on-frame industrialized building units (on-frame modulars) in R-1, R-1A, and R-1M Residential Districts. Mayor Crewe noted that this language would be struck from the R-2 Residential Districts, which is Section 7-1.1. Councilman Jones pointed out that this is for first reading only. Mayor Crewe noted that is correct. He advised that on the Definitions section, Town Attorney Kaase is suggesting that on Page 2, Section 3-45A, where it refers to manufactured homes defined in §36-85.3, the language “of the Code of Virginia of 1950, as amended” be inserted so everyone will know what Code section is being referred to. Mayor Crewe inquired if this is part of Councilman Jones’ motion as well. Councilman Jones answered that is correct. Mayor Crewe inquired if there is a second to the motion to prohibit on-frame industrialized building units (on-frame modulars) in R-1, R-1A, and R-1M Residential Districts. The motion was seconded by Vice-Mayor King. He stated the motion is on first, but not final, reading. Mayor Crewe explained that what would normally happen is the ordinance would be read three times, and at any point, the Council could suspend the rules and adopt it on first and final reading, which is what the Council did on the other rezoning, and the Council did it all at one time on the previous ordinance. He pointed out that the motion on the floor at this time is to do this on first, but not final, reading, so it would be on the next two Council meeting agendas, normally, and it would be adopted on third and final reading. Mayor Crewe advised that it would be at the first meeting in March because there is one more meeting in February. He noted that at any point, any Council member could move to adopt the ordinance on first and final, or second and final reading. Mayor Crewe indicated that the motion at this meeting is first, but not yet final, reading to exclude on-frame industrialized building units (on-frame modulars) from R-1, R-1A, and R-1M Residential Districts. He inquired if there is any other discussion on the motion. Councilman Jones advised that he wanted to state the fact that he understands Mr. Rick’s point about the Uniform Statewide Building Code, and the fact that there could be a pending lawsuit. He noted he also has to understand that with the passage of this ordinance, this has no effect on Mr. Eddie Williams whatsoever because his house is already in, and this ordinance does not go back retroactively. Councilman Jones advised that it is a no-win situation, but he feels it is not unreasonable to not have on-frame modulars in R-1 Residential Districts. He noted he feels, as someone pointed out, the Town should allow them somewhere because housing gets more expensive, and the Town needs to be able to provide housing for people who can afford this type of home. Councilman Jones indicated that this is his line of reasoning. Mayor Crewe inquired if Town Attorney Kaase wants to make any comments on the wording. Town Attorney Kaase remarked that if he understood the litigation to which Mr. Rick made reference, it does not have anything to do with zoning. He stated it had to do with the covenants of a subdivision, and it is not applicable. Town Attorney Kaase noted that Mr. Rick can correct him if he misunderstood. He explained that he has looked at the statutes to which Mr. Rick has made reference at this meeting, and he does not see anything, and Section 15.2-2280 of the State Code, which provides for zoning generally, states that “in each district, it may regulate, restrict, permit, prohibit, and determine the following: the size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of a structure; enactment of zoning ordinances and amendment of text or a zoning classification is a purely legislative function which must be exercised, in this case, the Council of the Town, that cannot be delegated to any other entity or private citizen.” Town Attorney Kaase stated he thinks from the best he can tell and just using the information given to him at this meeting, the Town Council has the authority to deal with this as a zoning matter. Mayor Crewe inquired as to what would be the difference in this kind of a situation and classifying buildings by square footage. He continued that the Town can allow certain size buildings in R-1 Residential, and there are certain size buildings that can fit in an R-2 Residential District that would be too small to be approved in R-1 Residential Districts. Town Attorney Kaase advised that the Town Council is not directing how the building is constructed elsewhere, but the Council is directing its use of property in the premise of their zoning, and this is his understanding. Mayor Crewe thanked Town Attorney Kaase for his comments. He inquired if there are any further questions, comments, or discussions on the motion. Councilman Lambert inquired if the motion is to adopt the ordinance on first, but not final, reading. Mayor Crewe stated that is correct. Councilman Lambert indicated that he would like to express a concern he has. He stated he feels that the Town is in a situation where the manufacturing housing industry is being the “tail” wagging the community interest, being the “dog.” Councilman Lambert noted he thinks this may have to be addressed through the legislature in some way. He advised that this is just a comment, and he is concerned about this. Mayor Crewe advised that he shares Councilman Lambert’s concerns. He noted this is a problem he is sure the Town is not the only one facing. Vice-Mayor King inquired if on Wytheview Drive, right now, a modular home could not come in there and inquired if that is correct. Mayor Crewe stated he hesitated to answer this question because he thinks it would be disallowed because of the restrictive covenants and not because of the Zoning Ordinance. Vice-Mayor King stated this is what she was thinking was because of the covenants. Mayor Crewe noted that is correct but not because of any action the Town did or did not take. Vice-Mayor King stated that is correct. She noted but on Van Mar Drive, the modular homes could be placed there because there are no covenants there and inquired if that is correct. Town

Manager Sutherland interjected that he would be of the opinion on Wytheview Drive that a person could put a modular home there at this time, and he does not think there is anything to prohibit it. Vice-Mayor King inquired regarding the covenants. Town Manager Sutherland indicated that he did not think there are any covenants for modular homes. Mayor Crewe stated it has been a while since he read the covenants, but he knows that mobile homes are prohibited, but by definition and State law, they are not talking about mobile homes, but they are talking about on-frame modulars, which are different. Vice-Mayor King noted that is correct from the sub floor down. Mr. McDaniel remarked that they do have modular homes in their neighborhood, but their definition of a modular home is not a manufactured home. Mayor Crewe noted Mr. McDaniel is referring to not on-frame modulars, but they are off-frame modulars. Mr. McDaniel stated that is correct. Mayor Crewe inquired if there is any further discussion. There being none, the motion was approved with the following voting in favor and there being no opposition:

FOR: Trenton G. Crewe, Jr., Jacqueline K. King, John W. Jones, Jr., H. Judson Lambert

AGAINST: None

ABSTENTIONS: None

Ordinance No. 1225 was approved, as amended, on first, but not final, reading. Mayor Crewe noted there would be two more readings that would normally be required.

RE: ADJOURNMENT

There being no further business to be discussed, a motion was duly made, seconded, and carried to adjourn the meeting (7:50 p.m.).

Trenton G. Crewe, Jr., Mayor

Sharon G. Corvin, Chief Deputy Clerk

BUDGET AND FINANCE COMMITTEE REPORT

FEBRUARY 11, 2008

1. We have received a letter from the Wythe Arts Council, Ltd. seeking action by the Town on a number of matters relating to the annual Chautauqua Festival. A copy of the letter from the Wythe Arts Council is enclosed, and the Arts Council is completing the necessary paperwork for the Request for Waiver of Fees through the Community Center. This year, the opening parade will be held on June 21, and the final day of the Festival, including fireworks, will be held on Saturday, June 28. Again this year, the Arts Council has requested that certain fees for the use of the Park and the Community Center be waived as well as certain Business License fees.

We have reviewed the requests by the Arts Council and find them to be essentially the same requests that have been made for many years. We do not anticipate a problem with any of these items. We would note that the Town has, again this year, applied for grant funds on the Arts Council's behalf. As such, for all of the areas where fees are being requested to be waived, the Arts Council will need to pay these fees (up to \$5,000) and then be reimbursed by the Town, provided they receive the grant funds.

We applaud the Wythe Arts Council's continued efforts in bringing quality entertainment to our citizens. It is the recommendation of the Budget and Finance Committee that the Council approve the request of the Wythe Arts Council with

the stipulations noted earlier and contingent on the receipt of the Request for Waiver of Fees application.

Jacqueline K. King

John W. Jones, Jr.

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PUBLIC WORKS COMMITTEE REPORT

FEBRUARY 11, 2008

1. At the most recent Joint Governing Bodies meeting held in Rural Retreat, several citizens were present noting that there was a need for public water in a number of areas throughout the county. The presiding official at the meeting, Mayor Tim Litz, appointed a committee to review the potential for extending water to other locations throughout Wythe County. This past week, the committee convened to discuss this matter. The committee consists of Wythe County members Bucky Sharitz and Cellell Dalton, Rural Retreat members Tim Litz and Raymond Matney, and from the Town of Wytheville, Judson Lambert and Wayne Sutherland. It was the consensus of this committee that the feasibility of a countywide water system should be evaluated. Mr. Dalton noted that the Virginia Department of Health may have grant funding available, and he anticipated the cost of the study was approximately \$75,000. It was suggested that the committee request the governing bodies' support of applications for grant funds from the Virginia Department of Health or other sources to study a consolidated water system. The committee agreed that it would forward this information to all of the governing bodies seeking support for these grant funds to determine the feasibility. The committee acknowledged that there were obvious positives and negatives associated with such a consolidation, but that without an engineering feasibility study, it would not be possible to fairly evaluate the potential. It is the recommendation of the Public Works Committee that the

Town Council take action supporting an application to the Health Department seeking funding for the study.

William B. Weisiger

H. Judson Lambert

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