



TOWN COUNCIL WORK SESSION MINUTES

Monday, July 7, 2014 @ 7:00pm
Front Royal Administration Building

1. Acceptance of Vehicle from Fire Department to Police Department – *Chief of Police*

Summary: The FRVFD wishes to donate a 2004 International Heavy Duty Ambulance to the Town for the Front Royal Police Dept. to be used to replace the current Emergency Services Team tactical truck.

Staff Evaluation: The current vehicle in use is over 35 years old. Numerous maintenance issues have come to light over the past year-and-a-half which has rendered the vehicle unreliable to be used in emergency situations. Several law enforcement operations have been in process when the current vehicle broke down during the operation. Budgetary constraints coupled with the high cost to replace a vehicle of this nature have made the option of replacement with a new vehicle unavailable.

Budget/Funding: No monetary needs for initial acquisition other than title transfer. Additional work to bring vehicle in-service would mostly be performed by members of the Emergency Services Team. Most equipment would transfer from one vehicle in to the new one.

Council Discussion: Chief noted that they would use asset forfeiture funding for the decaling and the light lens cover changing. Mayor Darr stated that the vehicle was very nice and the Police Department would benefit greatly for the donation.

2. Veterans Day Banners – *Town Manager*

Summary: Staff is investigating a banner sponsorship program that would allow residents to purchase a banner to be attached to our street light poles that would have “Honoring those who have served” at the top of the banner, an image of a service person, and then the name of an individual who has served or is serving in the US Armed Forces. These banners would be displayed for the month of November in observance of Veterans Day, and then would be returned to the individual who purchased the banner. Council is requested to consider approving staff developing the Veterans Day Banner program.

Staff Evaluation: As this program was not budgeted, participants would bear the full cost of the banners which the Town estimates to be between \$50 and \$100. The program would allow residents to honor family and friend in the military.

Town Manager Recommendation: The Town Manager recommends developing a participation driven Veterans Day Banner program.

Council Discussion: Councilman Tewalt asked if it was a nationwide design. Mr. Burke stated that it was stock image of a kneeling or standing serviceman and would temporarily replace the “Town of All Seasons” banner during the month of November, with the banner being turned over to the

family after the month ended. Council noted that Staff could determine if there would be community interest in the banners.

Vice Mayor Parker entered the meeting at 7:05 p.m.

3. Liaison Committee Items for July 17 Meeting

Councilman Hrbek asked that Council leave on **Property Boundary Adjustment Process** on the next agenda. Councilman Sayre noted that Shenandoah County does not have a meals tax.

Mayor Darr asked about the study on the Corridor. Mr. Napier explained that there had been no recent update from Mr. Glass, though he would obtain some details before the Liaison Meeting.

Mayor Darr stated that item the **13th Street issues** should remain. He added that the Town Manager will be drafting a letter. He stated that a the port-a-potty was relocated, though the softball association is regenerating some of their funding at this point, and he, the Mayor, continues his efforts in contacting the property owners with regard to the mailbox movement and the parking restrictions.

Vice Mayor Parker asked to add the **Luray Boat Land Restroom Facility** to the Liaison agenda.

Councilman Sayre asked about the Loop Study update. Mr. Burke stated that all three options will not work according to the County Administrator, and Staff will return this item to Council worksession in the future.

Councilman Tharpe will be our representative for Liaison and the meetings will be at the County building for the next six months, Mrs. Berry noted.

Final noted items from the Town for the July 17, 2014 Liaison Committee Agenda:

- 1) Law Enforcement of the Skate Park
- 2) Catlett Mountain Landfill Improvements
- 3) Leach Run Parkway Project
- 4) Route 340/522 Corridor
- 5) FRLP (Front Royal Limited Partnership)
- 6) Proposed Park-N-Ride Location
- 7) Property Boundary Adjustment Process
- 8) Building Inspection Software
- 9) Working with citizens on 13th Street with regard to parking and mail boxes
- 10) Corridor Loop Study

4. Consideration of a Sign Ordinance Amendment from Happy Creek Coffee/Tea – *Cman Funk*

Councilman Funk spoke to Council regarding ordinance amendments pertaining to sandwich board signs at Happy Creek Coffee/Tea. The Happy Creek Coffee & Tea representatives present noted that Mr. McIntyre with Apple House Deli had no issues with the location of the sandwich board sign.

Councilman Tharpe suggested that the signs could be looked at a case by case basis, rather than changing the Town ordinance.

Councilman Hrbek asked about the sidewalk property. Mr. Burke noted that the sidewalk was public right of way. Mr. Hrbek noted that it may be preferred to take it as a case by case, as Mr. Tharpe suggested. Mayor Darr noted that there are concerns with blocking the sidewalk and ADA compliance. He noted that he would not support the change to the ordinance as Mr. Funk proposed, though he would consider a case by case basis, especially for businesses on Main Street. Councilman Tewalt expressed concern with the Town superseding their own ordinances.

Councilman Funk noted that it seems that there was Council consensus for exceptions based on case by case basis and he would work on language to that effect.

5. ~~Recreational Vehicle Parking Discussion~~ — *Vice Mayor Parker*
Removed at this time, per Mr. Parker's request.

6. Reinstatement Pilot Fees in Rt. 522 Corridor — *Councilman Hrbek*
Councilman Funk made note of a disclosure prepared by Mr. Napier:

TO: HONORABLE DARYL FUNK, TOWN COUNCIL MEMBER
FROM: DOUGLAS W. NAPIER, TOWN ATTORNEY
DATE: JULY 7, 2014
RE: RT. 522 CORRIDOR CONFLICTS OF INTEREST QUESTION

You asked me if you have impermissible conflicts of interest in the matter of consideration of annexation of property in the Route 522 Corridor from the County of Warren into the Town of Front Royal. Likewise, you ask me a similar question should the Town consider the issue of consolidation into one governmental unit with the County.

For reasons which I will explain, I am of the opinion that you may participate in an annexation or consolidation matter or matters which may come before Town Council concerning the Route 522 Corridor, either because you have no legal conflict of interest at all; or even if you do if you have a statutory "personal interest in a transaction", you may still participate, as these are matters which affect the public generally, even though your personal interest, as a member of the public, may be affected by that transaction.

The Virginia State and Local Conflicts of Interest Act (the "Act") provides when a local government officer has a conflict of interest, and if so, what must be done by the local government officer, and under what circumstances.

I understand that you or members of your law firm have provided, or are, or in the future may be, providing legal services to commercial entities in the Route 522 Corridor. These legal services would not be related to annexation or consolidation, but rather would be related to contract, land use, or other legal matters not connected to annexation or consolidation.

Based on the facts available to me, I am of the opinion that you do not have a "personal interest in a transaction" under the Act. What is a "personal interest in a transaction" is a somewhat complicated, three part statutory definition. Va. Code § 2.2-3101 provides that a "[p]ersonal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the

transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.

That same Code Section further defines "[p]ersonal interest" as meaning a financial benefit or liability accruing to an officer or employee of the local government or to a member of his immediate family. Such interest shall exist, among other things, by reason of salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business that exceeds, or may reasonably be anticipated to exceed, \$10,000.00 annually.

The Code also defines "transaction" as meaning any matter considered by a governmental agency, on which official action is taken or contemplated.

In my opinion, I cannot tie any relationship between you or your firm's representation of clients in the Route 522 Corridor with any financial benefit that accrues to you or your firm as a result of annexation or consolidation of any of those clients into the Town of Front Royal.

Further, even if there was such relationship tie, having a personal interest in a transaction is not ground for automatic disqualification. Virginia Code § 2.2-3112 provides that:

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if (i) the transaction has application ***solely*** to property or a business or governmental agency in which he has a personal interest ... or (ii) he is unable to participate pursuant to subdivision 2, 3 or 4 [of this statute] ***[emphasis added]***.

Based on the facts available to me, it does not appear that you are, as a matter of law, disqualified from participating in the above referred matters as having an impermissible conflict of interest. You and your firm do not yourselves have any personal interest in the commercial entities in the Route 522 Corridor itself itself. Even if you or your firm did, you and your firm and the entities they own are not the only property owners who would be impacted by the annexation or consolidation- at least three other property owners would also be impacted. For all these reasons, it appears to me that even if you do have a personal interest in the transactions involving the annexation or consolidation, you and your firm are members of a group of three or more persons of which are affected by the transaction. Therefore, if you make the declaration required by Virginia Code § 2.2-3115. G., you may lawfully and ethically participate in the transaction(s) pending before Town Council.

The declaration required by Virginia Code § 2.2-3115. G. is:

An officer or employee of local government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes of his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

In my opinion, there is nothing I am aware of that would create an appearance of impropriety on your part under these circumstances.

Please let me know if I have misunderstood any of the relevant facts or if you need additional clarification.

Sincerely, Douglas W. Napier

Mr. Hrbek noted that he would like the Town to move forward with collecting the meals and lodging taxes due to the Town and he would ask that Council reconsider the resolution that was passed in 2010. Councilman Tharpe expressed his agreement, as long as the businesses could pass the amounts through.

Mayor Darr noted that the Town has attempted to work through the issue repeatedly and the Town needs to move forward with the matter in order to revive Front Royal economically. He stated that this would be for the businesses coming online after the lawsuit, and the unfair playing field, which may have been created, was not created by the Town.

Councilman Hrbek expressed his interest in obtaining the EDA input and any legal advice deemed necessary, adding that there was no need to rush the matter.

Vice Mayor Parker noted that the Town should obtain what was promised; however, his concern was those with two separate contracts with two different rates/the pass through. He stated that the Town could potentially have litigation. He stated that the Town could go to those with the old contracts and invite them onboard. Mr. Parker noted that they could invite the businesses to meet with the Town in order to let them know the original intent of the agreement and lay everything out on the table and to list their options.

Councilman Tharpe noted that the restaurants have been invited to multiple meetings and they never showed up. He stated that they have not been interested in whether matters are a level playing field. Mayor Darr stated that the businesses needed to be invited to the table to educate them on the history of what took place. Mr. Hrbek reiterated that the matter should not be rushed onto an agenda. Mayor Darr noted that the businesses should not panic or think things will immediately change.

Councilman Tewalt stated that litigation that could come forward would most likely not be covered by VML. Mr. Hrbek asked about determining whether the Town has to charge the equal amount they are charge in Town in the Corridor, or whether they can stagger the amount.

Mr. Napier explained the difference in the old and the new contract, regarding the out of Town user (the Corridor). He noted that the pass through matters have been addressed by Carter Glass in emails on file.

Vice Mayor Parker asked about it being a pass through fee; specifically whether the Town could offer the businesses a revenue sharing portion of the intake collected. Mayor Darr noted that it could be looked into.

Councilman Tewalt stated that previously, when he met with the three large restaurants they were not even remotely willing to consider a pass through matter. Mayor Darr noted the most current

contracts were on solid ground it appeared. He added that Staff needed to meet and come up with various ideas, the Town needs to speak with the EDA and the Town will need to eventually educate the businesses in the Corridor about sustaining revenue.

Vice Mayor Parker asked what type of revenue they were planning to generate. Mayor Darr stated that it would bring in about \$168,000 initially. Mr. Parker asked about the amount that was lost many years ago. Mr. Burke stated that it was about \$600,000 that was lost in revenue in the Corridor.

Council looked at a deadline of September to determine a Staff outline on this issue.

7. Council Discussion/Goals

Vice Mayor Parker suggested that Council look at Economic Development Grants. He noted that if a restaurant was to come to the Town and build in the Town, then they could possibly support the business and eventually this could assist with economic development in the community. He asked that Council consider brainstorming on the matter. Mayor Darr stated that the Economic Committee has been working on their goals and they would be bringing goals to Council to consider, and some may be similar ideas as suggested by Mr. Parker.

Councilman Sayre asked about goals developed for the Royal Phoenix property. Mayor Darr noted that the parcel of land was discussed specifically this evening, and they noted that laying out what the Town would like to see in certain areas. Councilman Tewalt chimed in that the specific areas for types of development is precisely what he has been saying for some time. Mr. Burke added that Mr. Camp has noted that the Planning Commission will be discussing those areas of definition, per se, at their next meeting.

Councilman Sayre suggested that roads get built sooner, rather than later with developments.

8. Closed Meeting – Acquisition of Real Property and Consultation with Legal Counsel

Motion to Go Into Closed Meeting

Vice Mayor Parker moved, seconded by Councilman Tharpe, that Council convene and go into Closed Meeting for the purpose of discussion or consideration of the acquisition of real property for a public purpose, namely, property for Leach Run Parkway, where discussion in an Open Meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711 A. 3. of the Code of Virginia; and, pursuant to Virginia Code § 2.2-3711.7 for the purpose of consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel, namely, terms of the acquisition of property for Leach Run Parkway .

Vote: Yes – Funk, Hrbek, Parker, Sayre, Tewalt and Tharpe

No – N/A

Abstain – N/A

Absent – N/A

(Mayor Darr did not vote as there was no tie to require his vote)

Motion to Certify Closed Meeting at its Conclusion

Vice Mayor Parker moved, seconded by Councilman Funk, that Council certify that to the best of each member's knowledge, as recognized by each Council member's affirmative vote, that only such public business matters lawfully

exempted from Open Meeting requirements under the Virginia Freedom of Information Action as were identified in the motion by which the Closed Meeting was convened were heard, discussed or considered in the Closed Meeting by Council, and that the vote of each individual member of Council be taken by roll call and recorded and included in the minutes of the meeting of Town Council.

Vote: Yes – Darr, Funk, Hrbek, Parker, Sayre, Tewalt and Tharpe
No – N/A
Abstain – N/A
Absent – N/A

(By Roll Call)

Present: Mayor Darr, Vice Mayor Parker (*arrived at 7:05*), Councilman Funk, Councilman Tharpe, Councilman Tewalt, Councilman Sayre, Councilman Hrbek, Town Manager Burke, Planning Director Camp, Finance Director Breeden, Chief Shiflett, Town Attorney Napier, Clerk of Council Berry, members of the press and public.