

The regular meeting of the Town Council of the Town of Front Royal, Virginia was held on August 10, 2015, in the Warren County Government Center’s Board Meeting Room. Mayor Darr led Council and those attending in the Pledge of Allegiance to the flag and a Moment of Silence. The roll was called at 7:00 p.m.

PRESENT: Mayor Timothy W. Darr
Councilman John P. Connolly
Councilman Bébhinn C. Egger
Councilman Daryl L. Funk
Councilman Bret W. Hrbek
Councilman Eugene R. Tewalt
Vice Mayor Hollis L. Tharpe
Town Attorney Douglas W. Napier
Town Manager Steven M. Burke, P.E.
Clerk of Council Jennifer E. Berry, CMC

(The above listed members represent the full body of Council as authorized in the Town Charter.)

Councilman Tewalt moved, seconded by Councilman Egger that Council approve the Regular Council Meeting minutes of July 27, 2015 as presented.

Vote: Yes – Connolly, Egger, Funk, Hrbek, 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)

RECEIPT OF PETITIONS OR CORRESPONDENCE FROM THE PUBLIC

Tom Conkey, of 403 Greenfield Road, read the following into the record on behalf of Mike Graham, Town resident:

Mr. Boisseau appreciates the work the citizen volunteers and members of the Council did clearing the trail down to the creek and hopes this will set the standards as the Town clears the trail yearly as outlines in the contract between the Town and himself.

Our major concern is about the discussion regarding the most recent proposal from the County regarding the revenue sharing in the 522 Corridor. After reviewing the proposal we find it somewhat insincere and lopsided toward the benefit of the County. To vote in favor of this would not be good for the community without investigating other options.

Over the days after the release of the offer, Mike investigated what other communities have done by talking with various State agencies and the Council on Local Governments. The one thing that quickly came to the surface was most of the people he talked with were very familiar with the 1998 522 Agreement. That agreement was a great example of local governments working together to stimulate new economic opportunity in an otherwise underdeveloped area.

The intent of the 1998 agreement was that the Town citizens would build the water and sewer infrastructure in the County that would attract new business to the Corridor. Additionally, the Town agreed that we would not take the area into the Town limits for seven years. During this time, the county would attract new businesses and at the end of the moratorium, the Town would be able to boundary adjust the area and recoup its expenses related to the development of the water system. This would also follow the State’s intent to keep high density development in the Town boundaries while allowing the Counties to protect rural environments.

This is why the County’s offer is so surprising and unappreciative of the spirit of the original agreement and it seems that there has been no support from the past and current Boards of Supervisors to follow up on the intent of the original agreement. With all this positive history, I

am surprised that neither local governments has offered up for consideration one of the most obvious solutions which is to do a friendly boundary line adjustment.

The people he spoke to also said that revenue sharing agreements along with boundary adjustments were the best and most cost effective ways to deal with these sorts of situations. He reminded me that the Town and County has recently worked through a boundary line adjustment in the Happy Creek area, so the concept should not be unfamiliar. Tonight, we would like the Council to postpone any decision on rejecting or accepting the County's proposal until an official resolution can be passed to investigate a friendly boundary line adjustment and sent to the County.

This should be a workable situation since Supervisor Carter understands the spirit of the original agreement since he was representing the Town's interest at that time. It would be great to get both the Count and the Town back together in the same spirit as they did in 1998 when the Town came to the table to help the County and come up with another win-win agreement to finish off what should had been done in 2006.

Edward Murphy, of 8009 Wolftrap Road, Dunn Loring, encouraged the Council to accept the agreement presented by Warren County regarding the 522 Corridor. He noted that he had no financial interest regarding the acceptance of the Agreement and that the businesses in the Corridor continue to suffer. Mr. Murphy explained that there were tenants willing to locate in the Corridor, though they were not willing to locate there until the matter is settled.

REPORT OF THE MAYOR, COUNCIL & STAFF

Town Manager Steve Burke:

- Noted that TOP GUN will be shown tomorrow evening for free at the Main Street gazebo sponsored by Joseph Silek; and THE THREE AMIGOS will be shown Thursday evening sponsored by Edward Jones; and
- Stated that Celebrate the River Day will be held Saturday, August 15th at Eastham Park and he invited the public and Council to attend.

Warren County Administrator Doug Stanley presented the following report to Council:

Development Review Committee – The Development Review Committee met on July 22nd. The Committee discussed projects in the County including: Divine Assistance Academy, Hidden Springs Assisted Living Facility, The Mint House, Interchange Phase II Warehouse and pending projects in the Riverton Commons Shopping Center. The Committee also discussed Town projects including: Leach Run Parkway, Angels Corner Daycare, Workforce Housing, and updates on last month's agenda items. The Committee will meet again on August 26th.

Building Inspections – Building permit activity for new homes has picked up slightly over 2015. The total for the year to-date is 55 new home starts, compared to 45 for the first six months of 2014 and 42 for the same period in 2013. Of this total, 8 are located within the limits of the Town of Front Royal. For FY2014-2015, the number of total permits was up slightly from 2,097 to 2,158 in addition to the total inspections that were also up slightly from 7,521 to 7,533.

EnerGov Software – Staff continues to work towards configuring the EnerGov software and with each passing day continues to see the complexity of what they do on a daily basis. With implementing each possibility of permit or conditional/

special use permit the critical paths that are needed to be followed are extremely complex. These items are being reviewed on an hourly basis by all the staff involved and the progress has become very time consuming. At this time our onsite User Acceptance Training has been pushed out to the next acceptable time of September 21st and then pushing our Go-Live date out to November 2nd. It is critical that we take every precaution to have the system well tested before presenting to the public so that the final transition is favorable.

Rockland Historic District – A follow up public hearing on the proposed Rockland Historic District will be held at the Rockland Community Church on August 11, 2015 at 6:00 p.m.

Toray Plastics – The Warren County Planning Commission, at its meeting on July 8th, approved a site plan for Toray Plastics for a 16,889 square foot addition to their manufacturing facility. Toray will add approximately 18 jobs with the expansion.

Project Update

Warren County Government Center – The County has awarded a contract to Lantz Construction of Winchester (LCW) to renovate the Commissioner of the Revenue and Treasurer’s Office spaces to provide security upgrades. The project will also include the installation of sound panels in the Board meeting room to improve acoustics.

Leach Run Parkway – Bids were received on June 18th. The EDA received a total of five bids. Based on the fact that the apparent low bid is 60% over the \$8,000,000 construction budget, the project is currently being value engineered to evaluate options to proceed with the project. We continue to work with Town and EDA staff and the project engineer to reduce the project scope and cost to more closely fit the available funding. We hope to be able to sit down to discuss a path forward by September 1st.

2nd Middle School – The School Board has awarded a contract in the amount of \$32,223,000 to Howard Shockey & Sons Construction. The site plan for the project will be on the Town Planning Commission agenda at its meeting on August 19th for consideration. Shockey is prepared to start as soon as necessary permits have been obtained.

Health and Human Services Complex – LCW is substantially completed with the parking lot project and is continuing with work on the interior renovation of the building. Based on the current schedule, substantial completion of the interior renovations should be achieved by December 1st.

Eastham Park Trail (Phase III) – The County has received final environmental clearance from VDOT and we will be able to bid the project in the next several

weeks. The plan is to construct the project and have it open to the public in fall 2015.

Skyline Soccerplex – County staff has completed work on the next phase of capital improvements at the Soccerplex. Staff has completed two of the new soccer fields and the additional parking on the south side of the facility. The remaining field will be completed once we obtain sufficient topsoil from other projects. The two new fields should be in playing condition by fall 2015.

Morgan Ford Bridge – The project is currently in the right-of-way phase. VDOT plans to have the project out to bid by spring 2016.

Warren County Courthouse – Court Holding – The County is out to bid for renovation to portions of the former Warren County Jail to use for holding cells for the Warren County Courthouse. The County has reduced the scope of the project and performed demolition work after bids last year came in over budget. Bids are due on August 13, 2015.

Public Safety Building (PSB) Cell Antennae – Verizon is currently working to place a cell antenna on the PSB communications tower. The antennae should improve cell service on the southern end of Town for Verizon customers. The project is estimated to be completed by September 13th.

Project	Ad/Bid Date	Cost	Estimated Completion Date	Status
Gooney Creek Bridge	11/20/13	\$14,664,392	Fall 2015	Under Construction
South Fork Bridge	9/2013	\$74,700,000	Fall 2017	Under Construction
Success Road/Hard Surfacing	N/A	\$100,000	Fall 2015	Fall Construction
Health and Human Services Complex – Renovation	Summer 2014	\$3,988,000	Winter 2015	Under Construction
Health and Human Services Complex – Parking Lot	Spring 2014	\$1,178,000	Spring 2015	Substantially Complete
Courthouse HVAC/Re-roofing	Summer 2014	\$430,821.66	Spring 2015	Completed
Court Holding Renovation	Summer	Unavailable	Winter 2015	Out to Bid
Rockland Park – Recreation Access Project	Spring 2014	\$600,000	May 2015	Completed
Rockland Park – Playground/Shelter/Parking Lot Project	Spring 2014	\$300,000	May 2015	Completed

Rockland Park Disc Golf Course	N/A	\$15,000	May 2015	Completed
2 nd Warren County Middle School	Winter 2015	\$44,100,000	Summer 2017	September Start
Freezeland Road Kiss-n-Ride	Fall 2014	Unavailable	Summer 2015	Site Plan Approved by PC 3/11/15
Shenandoah Farms Boat Landing	N/A	\$75,000	Summer 2015	Site Plan on PC Agenda 8/12/15

Doug Stanley reminded all those transferring materials to the Bentonville site to cover their refuse loads, as there was debris recently from a truck that flew off and caused injury and damage.

Finance Director Kim Gilkey-Breeden, presented a quarterly report to Council:

- Noted that the Town’s auditors would submit their draft by the end of October and that would be sent on to the Council;
- Stated that monthly financial reports would soon be submitted to Council;
- Announced that the Finance Department continues to work on RFP’s related to large vehicle purchases, including the securing of loans;
- Noted that Staff was working on the data gathering for automatic meter reading, with another meeting to be held soon;
- Stated that the meals and lodging tax online payments may soon be available for business owners; and
- Mrs. Breeden complimented her Finance Department staff for their ongoing work to remedy situations for citizens.

Councilman Hrbek read Clare Schmitt’s comments into the record:

Several weeks ago I spoke in front of this council regarding the 522 corridor agreement. The response from Councilwoman Egger was clear/concise and answered many issues that were very confusing to many of us in our community.

I have been on a mission over the last 6 months to bring to light and clarify the misinformation that has been in our community in regards to the 522 corridor agreement between the Town of Front Royal and Warren County. Through my research it is clear that all parties were working together in 1998 in crafting an agreement that would help the County jump start the economic growth in the corridor area with the help of funding the water/sewer infrastructure. From Board and Council meeting minutes leading up to the passing of the agreement, it was confirmed that in the spirit of team work certain problems would

be corrected especially relating to double taxation. This was supported by former supervisor Matt Tederick's statements that certain services belong in the county, as Town Council person Egger outlined in her response to the questions presented to the Town Council several months ago.

I am back tonight because I am very concerned after reading the offer that the county sent to the council in regards to the 522 agreement which seems to be more beneficial for the county and flies in the face of the information we exposed to the public from the answers to the questions the last time I was here.

I am worried that some members of this Council have not looked at other possibilities and are considering passing this to get it over with, to gain political votes for future elected offices or being told what to do by outside interest.

At this point I believe it's time to return to the spirit of the original agreement that both local governments work together in coming up with a solution that works for both parties. I believe that the idea of a friendly boundary line adjustment has not been properly vetted. I could not find any information that indicates that the Town and county has taken this option seriously.

Also, has the Town received the completed Glass report that the Town paid so much money for 2 years ago? If not how could this Council even consider voting on this offer until the full report has been received?

If a friendly boundary line adjustment is an instrument that is supported by the Virginia State statutes to be used by communities to have the least cost with the greatest benefit to the citizens, has the town officially pushed the County in this direction?

Why would both the current Town and county leadership not be willing to work out revenue agreements supporting a friendly boundary line adjustment instead of the agreement you are looking at today?

One of the frequently asked questions of the Council of Local Government is why more local governments do not pursue the option of a friendly boundary line adjustment versus a formal annexation. Their response was enlightening, in that most of the time it comes down to either the elected leader's ego or personal self-interest over what was good for the community.

This is why I am somewhat surprised that the county and Town has allowed this progression of agreements to go back and forth ending in the submission of this final offer as a solution for our community. I would have thought that the County would have received better insight from one of the original signers of the 1998 agreement and current county supervisor, Mr. Tony Carter. Mr. Carter was on the Town Council at that time and represented the town's interest while understanding the spirit of the agreement. Where is this insight and understanding from Mr. Carter as he guided the supervisors towards these agreements?

It is my hope that that the Council rejects this current offer from the County and seriously consider the friendly boundary line adjustment as a viable community option. It would be very disappointing to hear that if this is passed that the County would justify next year's county tax increase because of the money having to be paid to the Town. It has taken 15 years to get here so why not take a little longer and do what is good for the community. Thank you.

Clare Schmitt, 719 W 13th Street

Mayor Darr thanked Council for the use of the Royal Trolley for the Waggin' for Dragons fundraiser event recently. He also noted that the National Night Out was a great success, and he thanked the local law enforcement for their efforts in making the night a good event.

Councilman Hrbek moved, seconded by Councilman Egger, that Council move Items #14, 15 & 16 before 13 on the agenda.

Councilman Funk noted that he did not intend to support the motion. Councilman Hrbek stated that asking for the public hearing on the MOA by eliminating the option to hold the public hearing indicates that the public's comments are not important.

Councilman Funk stated that the public is very aware that Council has been discussing the matter and those individuals could have spoken at any time. Councilman Hrbek stated the Council has not asked specifically asked about this item (the MOA).

Councilman Egger stated that keeping a logical order of items makes sense and she intends to support the matter.

Vote: Yes – Egger, Hrbek and Tewalt
No – Connolly, Funk and Tharpe
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(Roll Call Vote; MOTION FAILED)

Mayor Darr asked if there were any other proposals for additions or deletions to the agenda.

CONSENT AGENDA ITEMS -- None

PUBLIC HEARING – Receive Comments from Public Pertaining to a Possible Vacation of a Public Right-of-Way on South Fork Drive *(1st Reading)*

Summary: Council is requested to receive comments and concerns from the public pertaining to the possible vacation of a 6,346 square foot public right away located on a portion of South Fork Drive at its intersection with Kesler Road per attached plat dated 10/10/14; and, to consider the possible sale of said property by means of bids to a private owner. Council is further requested to set a return date for the bids, as well as, to set a date to accept or reject the bid offers and possibly vacate the property at an upcoming regular Council meeting. Council approved a Resolution July 27, 2015 pertaining to the Sale of this Town Property.

Mayor Darr opened the public hearing. As no one came forward to speak, Mayor Darr closed the public hearing.

Councilman Connolly moved, seconded by Councilman Tewalt that Council approve the return date of Thursday, September 3, 2015 for bid offers for a 6,346 square foot public right of way located on a portion of South Fork Drive at its intersection with Kesler Drive per attached plat. He further moved that Council accept or reject bid offers and possibly vacate this property during its regular meeting of Monday, September 14, 2015.

Councilman Tewalt noted that the survey plat should reflect that the parcel should be an integral portion of the lot. He stated that it must be attached, rather than a separate building lot.

Vote: Yes – Connolly, Egger, Funk, Hrbek, 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)
(By Roll Call)

⌘ RESOLUTION South Fork Drive ⌘

SALE OF TOWN PROPERTY

WHEREAS, at its regular meeting held on July 13, 2015, **August 10, 2015** the Town Council of the Town of Front Royal, Virginia (“Town Council”) received comments and concerns from the public that the public may have as to the possible vacation of a 6,346 sq. ft. portion of South Fork Drive public right of way (the Property), at its intersection with Kesler Road, located in North River Magisterial District, Town of Front Royal, Warren County, Virginia, per plat dated 10/10/14, prepared by Joseph G. Brogan, Sr., Land Surveyor, recorded in the Warren County Circuit Court Clerk’s Office in Slide 154 C, and to consider the possible sale of said Property by means of the receipt by the Town of bids for the sale thereof to a private owner, pursuant to Town Code Section 1-22. A. and the Town’s written Vacation of Streets/Alleys policy; and

WHEREAS, at the conclusion of which public hearing at the Town Council determined that the Town has no foreseeable use for said Property and its vacation and sale to a private owner would not inconvenience the public.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Town Council of the Town of Front Royal, Virginia, in accordance with Section 1-22 of the Code of the Town of Front Royal, as follows:

The Town Council may authorize the acceptance, or rejection, of the best bid offered by members of the public during a regular meeting, with a date to be determined later. Publication of this bid will be advertised on the Town website, www.frontroyalva.com, and in the Public Notices section of the Northern Virginia Daily.

COUNCIL APPOINTMENTS – Planning Commission

Councilman Egger moved, seconded by Vice Mayor Tharpe, that Council appoint Jacob Meza to the Front Royal Planning Commission to an unexpired term, said term to expire August 31, 2017. She further moved to reappoint David Gusbee and Robert Ballentine to 4-year terms, said terms to expire August 31, 2019.

Vote: Yes – Connolly, Egger, Funk, Hrbek, 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)

COUNCIL APPROVAL – Budget Amendment for VDOT Grant for Commerce Avenue Pedestrian Improvements

Summary: Council is requested to approve a budget amendment in the amount of \$127,531 for the purchase of materials and equipment to complete pedestrian access improvements along Commerce Avenue at various locations. This project is partially funded through the Virginia Department of Transportation (VDOT)

Transportation Alternative Project with local funds to match.

Budget/Funding: Total project \$164,414.00 (VDOT-\$127,531 + Match-\$36,883)

9401- 7025 (VDOT Crosswalks) \$127,531

9401 – 3410209 (VDOT Reimbursement) \$127,531

Councilman Tewalt moved, seconded by Councilman Funk that Council approve a budget amendment in the amount of \$127,531 for the purchase of materials and equipment to complete pedestrian access improvements along Commerce Avenue at various locations.

In response to Councilman Tewalt’s questions, Mr. Burke noted that it would be continuing north from South Street, which is Stonewall Drive, Happy Creek Road’s double intersection, Water Street, and 6th Street.

Vote: Yes – Connolly, Egger, Funk, Hrbek, 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)
(By Roll Call)

COUNCIL APPROVAL – Budget Amendment for Gazebo Flicks

Summary: Council is requested to approve a budget amendment in the amount of \$2,450 from various sponsors for the Gazebo Flicks to be held at the Gazebo located at Main and Chester Streets every Thursday evenings from August 6 – September 24, 2015.

Councilman Connolly moved, seconded by Vice Mayor Tharpe that Council approve a budget amendment in the amount of \$2,450 from various sponsors for the Gazebo Flicks to be held at the Gazebo located at Main and Chester Streets every Thursday evenings from August 6 – September 24, 2015.

In response to Mr. Hrbek’s question, Mr. Napier clarified that it was perfectly acceptable for Councilman Hrbek to vote on the matter, even though he would be sponsoring one evening of the movies. Councilman Tewalt noted that the donations were being given to the Town and the budget amendment was to accept the funding into the appropriate account. Councilman Connolly thanked all of the area sponsors, noting that it was a wonderful opportunity for downtown and for the entire community.

Vote: Yes – Connolly, Egger, Funk, Hrbek, 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)
(By Roll Call)

COUNCIL APPROVAL – Resolution to Reinstate Meals and Lodging Tax in Route 522 N Corridor

Summary: The Town of Front Royal has been providing water and sewer service to out-of town commercial customers in the Route 522 Service Area through PILOT Agreements as authorized in the 1998 Annexation Settlement Agreement

with Warren County. On March 8, 2010, the Town Council approved a resolution to suspend collection of the Meals and Lodging Tax components of the PILOT fees. Since that time, the Town and Council have attempted to arrive at a fair solution for revenue from the Corridor. Council is requested to consider a resolution to direct the Director of Finance to include the Meals and Lodging Tax components of PILOT fees in the monthly bills for commercial businesses in the Route 522 Service Area and to begin collection of these fees with the October 2015 billings, as presented.

*Councilman Hrbek moved, seconded by Councilman Egger that the Town Council approve the Resolution Regarding Meals & Lodging Tax Collection from PILOT Contracts as presented and further move to direct the Director of Finance to include the Meals and Lodging Tax components of PILOT fees in the monthly bills for commercial businesses in the Route 522 Service Area and to begin collection of these fees with the **January 2016** billings, as presented.*

Councilman Hrbek noted that it has been postponed many times with ongoing discussions. He stated that the back and forth review of the matter has been lengthy. He stated that this is a contract that the businesses in the Corridor signed. Mr. Hrbek added that the Town taxpayer expected to collect this funding as this was what those businesses agreed to when the Town taxpayer put in the water system.

Councilman Hrbek noted that he adjusted the motion to state the January 2016 date to give those businesses a bit more time to prepare for the PILOT fees, though he added that they signed these contracts and knew what they were fully going into.

Councilman Egger noted that she was a bit torn as to whether to vote for the motion; however, it was clear that when the matter was voted on in 1998 everyone was aware of what they were voting on. Ms. Egger stated that each side expected the Town to receive meals and lodging tax from the businesses in the Corridor. She added that she was torn on voting on the matter only because the lost revenues are not included.

Councilman Egger stated that she was not in favor of imposing extra taxes, though this proposal was the spirit of the original agreement. Ms. Egger noted that County Board of Supervisors Member Mr. Carter has explained to her that he did not realize that meals and lodging taxes were paid by the customer – Ms. Egger noted that she is young though she was not born yesterday. She added that her first reaction is to vote for this motion as presented.

Councilman Funk stated that he is an employee of a firm that represents some businesses in the Corridor, and he has asked Mr. Napier to file the previous disclosure with the minutes for record. Mr. Funk noted that the affects that these taxes would place those businesses at a severe competitive disadvantage and this could be quite a destruction to their business. He noted that the Town is dependent on the PILOT fees from said businesses. Councilman Funk stated that he had never intended to support this motion and he was glad that it has come to the table as it has allowed him to confirm his commitment to the citizens.

Councilman Egger noted that a portion of Councilman Funk's statements are reasons why the Town and County should look at a boundary adjustment. She noted that it would create a level playing field for all businesses with everyone paying the same for meals and lodging and split said amount with Warren County. Councilman Egger added that this was not a tax raise for the

taxpayer of Front Royal, but rather a tax raise on someone wanting to drive out to the County to support their businesses rather than staying in Town to support our businesses.

Councilman Hrbek stated that by not moving forward, they continue to have out of town businesses subsidizing in town businesses and in town taxpayers. He noted that those that vote against this measure and then turn around and vote *for* the County’s MOA will effectively be voting for an increase in County taxes by one-half cent because that is what the County will have to do in order to make up the for the amount they will be sending to the Town through that agreement. Councilman Hrbek noted that if the Town did not receive this revenue then taxes will need to be raised, because the Town taxpayer invested the funding into the Corridor for the entire area to be created.

Councilman Tewalt noted that Warren County did not make this decision, it was done by Judge Hupp when he prevented the Town from collecting certain taxes in the Corridor. Mr. Tewalt stated that he agreed with Ms. Egger, noting that Mr. Carter was on the Town Council and then Mr. Carter went on board with the County and he proposed the meals tax and Mr. Carter is on the shady side in his opinion. Councilman Tewalt noted that the lodging tax issue was caused by Judge Hupp.

Councilman Connolly opined that the threat of landing in court again is ever present and probable. He noted that it will be more expensive than ever, which will affect the Town taxpayers, and he has no intention of going along that route.

Councilman Hrbek stated that when the County implemented the meals tax is when the problems began. Mr. Hrbek also clarified that the Town did not lose the court case, but rather with regard to the language, it was noted that the language of the contracts was to be amended. He added that there was a resolution to be discussed later in the meeting that could resolve all the matters related to a level playing field and lower taxes, as Councilman Egger pointed out, a friendly boundary adjustment. Mr. Hrbek explained that the boundary adjustment was more beneficial to the County through a revenue sharing agreement which was even better than the contract which is being presented this evening.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call)

Councilman Hrbek asked to change his vote to “NO” in order to bring the matter forward at a later time. Mayor Darr noted that he did not believe once votes were tallied that was possible. Councilman Hrbek asked to be called last in the future. Mayor Darr noted that order of votes could be discussed during a worksession if need be, noting that they are currently alphabetical. He added that the Council would continue with current protocol at this time.

COUNCIL APPROVAL – Memorandum of Agreement for PILOT Meals and Lodging Taxes with the County of Warren

Summary: The Town and County have been conducting negotiations to develop a funding agreement to offset the revenue that the Town does not realize from commercial businesses in the Route 552 Corridor due to the March 8, 2010 action by Council to suspend collection of the Meals and Lodging Tax component of the PILOT Contracts. The negotiations have resulted in a proposed Memorandum of Agreement (MOA) that commits to the County annually, appropriating the equivalent of thirty percent (30%) of the Meals Tax collected in the Corridor by the County and the equivalent of five percent (5%) of the Lodging Tax collected in the Corridor by the County during the previous fiscal year, to the Town, as presented. The Town agrees, as part of the MOA, to not reinstate collection of the Meals and Lodging Tax component of the PILOT contracts for the duration of the MOA and to not approve filling for annexation of the Route 522 Corridor. The Town Attorney has identified contract language revisions that do not substantially change the basis of the agreement and that will need to be resolved with the County of Warren.

Councilman Connolly moved, seconded by Councilman Funk that the Town Council approve a Memorandum of Agreement (MOA) with the County of Warren to establish an agreement whereby the County commits to annually appropriate the equivalent of thirty percent (30%) of the Meals Tax and the equivalent of five percent (5%) of the Lodging Tax collected in the Corridor by the County during the previous fiscal year to the Town, as presented. He further move that Council authorize the Mayor, Town Manager, and Town Attorney to execute a Memorandum of Agreement (MOA) with the County of Warren to include any non-substantive changes as identified by the Town Attorney.

Councilman Hrbek moved seconded by Councilman Egger that Council postpone, until a public hearing could be held on the matter.

Councilman Egger stated that as Councilman Hrbek pointed out, the MOA was in direct violation of the Town’s water Code. She noted that if Council was choosing to violate a section of the Town’s Code that required a public hearing, then the Council should hold a public hearing to do so.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call, On Motion to Postpone; MOTION FAILED)

Councilman Egger explained her sincere concerns about this offer. She noted that the largest concern as the inclusion of Crooked Run II, as currently the Town does not have to provide water to Crooked Run II under the Corridor Agreement, though if the Town approves this, as presented tonight, then the Town would extend water into Crooked Run II. Councilman Egger noted that once Crooked Run II is developed with water, hotels, and other businesses, then the Town has no recourse.

Councilman Egger explained her reasoning by reading from past minutes, noting that the Town was going to make the exact same mistake that was made in January 1998. She stressed that if water is already provided to the area then the customer is to be provided water. She noted her

serious concern, explaining that the Town already shot themselves in one foot, and if this is approved, then now the Town is in essence shooting the other foot. She stated that Mr. Carter was with Mr. Athey pushing the matter through, and Mr. Athey was the Mayor at the time, and then Mr. Athey goes on to represent the shopping center that this benefits. She noted that the conditional use permit has expired as well and Warren County is not looking out for what was best for the Town taxpayer. She suggested the Town Council remember who they were working; the Town citizens, and the small and large businesses of the Town of Front Royal.

Councilman Egger noted that this is not a give and take relationship, and she added that the Town citizens were also citizens of the County as well and the Corridor Agreement is now lopsided and voting for this MOA makes it even more lopsided. She reiterated that once the water is extended to the area it would be connected to Crooked Run II. Ms. Egger suggested taking Crooked Run II out of the equation, or at the very least, wait before finalizing this vote.

Councilman Connolly noted that the agreement before Council had been discussed repeatedly and discussed in the last closed session in detail. He added that either party can walk away from the agreement, as it is not a contract. He stated that he does not see that the Town is not protected as the Town can walk away from the agreement at any time.

Councilman Hrbek stated that practically and politically there would never be a Town Council that would ever walk away from \$250,000 or more in revenue for a 50/50% shot at annexation. He noted that it was a “pretty picture” and typical of what government does. Mr. Hrbek stated that it was standard of what occurs, government *could* walk away, though there is no way that they can walk away practically.

Councilman Hrbek moved, seconded by Councilman Egger, to remove Item #10 – Crooked Run II from the MOA.

Councilman Egger stated that once water is extended and once Crooke Run II is developed, the County can vote to not pay the Town meals and lodging tax. She questioned what the Town would do what the Town would then do if the County chose to stop paying those monies.

Councilman Funk stated that then the Town could impose double water and sewer fees or re-impose the meals taxes that Council voted down this evening. He added that should the County choose to stop paying the funds to the Town of Front Royal it would certainly bolster an annexation if it came to that point. Councilman Funk added that this agreement was beneficial to the Town of Front Royal and the Town had recourse in the event the County stops their end of the agreement. He reiterated that double water and sewer would definitely be a viable option if the PILOT fees were not coming into the Town.

Councilman Hrbek stated that having Crooked Run II included is in direct violation of the Code. He stated that the agreement grants water that the County and property owner must approach the Town with a boundary request and this was a direct, blatant violation of the Town Code.

Councilman Egger noted that the County can simply stop paying their meals and lodging portion and stressed her desire to remove Crooked Run II from this agreement to protect the Town citizens.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe

Abstain – N/A

Absent – N/A

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

(By Roll Call, on Motion to Remove Crooked Run II; MOTION FAILED)

Councilman Egger moved, seconded by Councilman Hrbek to postpone the vote on this agreement until the full information from Attorney Carter Glass is received.

Councilman Tewalt noted that he would support the matter as all the information has not been received in full. He added that he did not wish to jump into a matter without full review. He stated that he would like it back on the agenda within 30 days.

Vote: Yes –Egger, Hrbek and Tewalt

No – Connolly, Funk and Tharpe

Abstain – N/A

Absent – N/A

Mayor Darr noted that it had been discussed a great deal. He stated that he would vote against the motion to postpone and should the information from Mr. Glass change anything, then the Town Council could choose to cancel the MOA at that time.

No – Mayor Darr

(By Roll Call, on Motion to Await Glass Information; MOTION FAILED)

Councilman Hrbek moved, seconded by Councilman Egger, to add a new Item #13 to the end of the agreement stating that Warren County would pay the Town of Front Royal half of all new revenue from the meals and lodging taxes.

Councilman Funk asked about text on paragraph #3 of the agreement, where it states “the equivalent of thirty percent of the meals tax collected in the Corridor by the County and the equivalent of five percent of the lodging tax collected in the Corridor by the County during the previous fiscal year to be remitted to the Town;” he asked if the County were able to increase its meals tax, would it not still be 30% of the additional revenue. Mr. Napier noted that it seemed it would be correct, though he would like to see the actual language.

Councilman Hrbek noted that his intention pertained to the lodging tax, as he was unsure if they could raise their meals tax. He stated that he believed they are at the limit for meals at this time perhaps.

Councilman Connolly asked if the County would need to go to a referendum on the matter. Mr. Napier noted that he would need to research that.

Vote: Yes – Egger and Hrbek

No – Connolly, Funk, Tewalt and Tharpe

Abstain – N/A

Absent – N/A

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

(By Roll Call; On Motion re: Meals/Lodging 50% Increase, MOTION FAILED)

Councilman Egger stressed that Council was making a huge mistake. She stated that she was not against growth and not against Chik-Fil-A. She noted that she did not want to see Spelunkers go out of business. Ms. Egger noted that Council was there to protect Front Royal, the people of Front Royal, and the businesses of Front Royal. She stated that she would like a different deal for Crooked Run II and she did not want the Town vulnerable or to see the Town in jeopardy.

Councilman Hrbek moved, seconded by Councilman Egger, that all monies received under this MOA would be used to fund economic development within the Town of Front Royal, including, but not limited to an economic development position.

Councilman Hrbek stated that if the Town was going to help build the competition to our own in-town businesses, then the Town should use that revenue to start building our own economic development and redevelopment within our own Town borders.

Councilman Tewalt noted that he would not support the full amount of the money being used this way, though perhaps Council should have this discussion at a worksession in detail. Councilman Funk stated that he agreed with Mr. Hrbek in principle, but the discussion should not take place this evening, but rather should be at a worksession.

Councilman Egger noted that it was important to go towards economic development. Councilman Tewalt stated that it was over a year before monies would be received and he was not willing to make such a vote this evening.

Councilman Hrbek stated that the discussion should be debated publicly at a regular meeting.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tewalt and Tharpe
Abstain – N/A
Absent – N/A

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

(By Roll Call; On Motion re: Use of Funds for Eco. Development, MOTION FAILED)

Councilman Connolly noted that he was told many times that the Town and County should work together and work out differences during his campaign. He stated that this MOA was an excellent way for the Town to realize a portion of the revenue that has been denied us since the court ruling, and set a framework for the future.

Councilman Egger stated this is a façade of working together with the County and the Town has been giving repeatedly and the Town is going to be disappointed greatly regarding this issue.

Councilman Funk noted that the Town could take the option, take a friendly boundary option (though the County will not do such a measure), or even annexation. Mr. Funk stated that the Town could end up with higher taxes, or even shut down the Corridor. He noted that the Town is making money off PILOT fees, is it the amount of money we thought we would make – no, though it is enough to assist the Town in great ways. Councilman Funk stated that there were many great things going on through the Town with new restaurants and fewer vacant buildings and there were other areas that needed improvement.

Councilman Egger stated that the County may say no to a friendly boundary adjustment, but why. She suggested that the Town should have them answer, rather than make decisions without having the full answers. She noted that the Town should do nothing else to create dense commercial areas outside of the Town. Ms. Egger added that no one can pretend that Wal-Mart did not shut K-Mart down.

Vote: Yes – Connolly, Funk, Hrbek, Tewalt and Tharpe
No – Egger
Abstain – N/A
Absent – N/A

(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call; On MOA, MOTION CARRIED)

COUNCIL APPROVAL – Resolution to Request a Joint Public Work Session with the County of Warren Pertaining to a Friendly Boundary Line Adjustment

Summary: Council is requested to consider a Resolution requesting a joint work session with the Warren County Board of Supervisors to discuss a friendly boundary line adjustment of the annexation immunity area as specified in the 522 Corridor Agreement, as presented.

Councilman Hrbek moved, seconded by Councilman Egger that Council approve a Resolution requesting a joint work session with the Warren County Board of Supervisors to discuss a friendly boundary line adjustment of the annexation immunity areas as specified in the 522 Corridor Agreement, as presented.

Councilman Hrbek noted that the County has never formally asked about such a boundary line. He stated that his intention would be to discuss and identify the terms of a friendly boundary line adjustment of the Annexation Immunity Area that would result in a revenue neutral impact to the County of Warren of a better financial situation than the proposed MOA currently being offered would provide. Mr. Hrbek stated that the County and Town have demonstrated that they can work together and they have completed projects together, such as the Front Royal Limited Partnership boundary line adjustment and the recent agreement related to the Middle School. He noted that they were good examples projects for the betterment of the community and those that were important to the future of all area citizens.

Councilman Egger voiced her support regarding such meetings. Councilman Tewalt noted that he would like to wait until after the election and after the first of the year. Councilman Funk noted that perhaps eventually we will work in the direction of a boundary adjustment and tonight is a step in the right direction of working as one community.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tharpe, and Tewalt
Abstain – N/A
Absent – N/A

(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call; on motion to hold Worksession w/ County; MOTION FAILED)

COUNCIL AUTHORIZATION TO ADVERTISE FOR PUBLIC HEARING to Repeal Town Code Section 134-1.C.

Summary: Town Council is requested to consider conducting a public hearing to repeal Town Code Chapter 134-1.C. This section of the Town Code establishes the Town’s policy for the extension of water and sewer service beyond the Town limits into the County of Warren. The policy was established at the request of the County and was codified in 2012.

Councilman Hrbek moved, seconded by Councilman Egger, that Council authorize staff to advertise for a public hearing to repeal Town Code Chapter 134-1.C.

Councilman Tewalt moved, seconded by Councilman Funk, to send the discussion to worksession for full discussion.

Councilman Egger noted that if Council had an issue with their water policy then Council should not approved the MOA that directly violated said policy. Councilman Hrbek stated that the Town Council just violated their own Code. He suggested that the Town should just remove that section of the Code entirely.

Vote: Yes – Connolly, Funk, Tharpe, and Tewalt
No – Egger and Hrbek
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call; On Motion to Send to Worksession)

Councilman Egger should not approve something that directly violates our Code. Councilman Tewalt noted that he was not an attorney, though he opined that it did not violate Town Code. Councilman Egger read from the Town Code, which in summary states that requests for Town water must be made in writing by County and the property owner to be boundary adjusted into the Town’s corporate limits and that the Town will decide on a case by case basis whether to provide water and sewer to parcels.

COUNCIL AUTHORIZATION TO ADVERTISE FOR PUBLIC HEARING Pertaining to the Memorandum of Agreement with the County of Warren

Summary: Council is requested to authorize Town Staff to advertise for a public hearing to receive public input regarding the Memorandum of Agreement (MOA) with the County of Warren.

Councilman Hrbek moved, seconded by Councilman Egger, that Council authorize Town Staff to advertise for a public hearing to receive public input regarding the Memorandum of Agreement (MOA) with the County of Warren.

Councilman Hrbek noted that he would encourage Council to invite the public to tell them they have no interest in hearing what they have to say. He added that it would be detrimental to the taxpayers of Front Royal, and we are raising their taxes by one half cent to pay for this MOA and Council does not care what the taxpayers think about what they think about the matter.

Councilman Funk stated that Council has had time to bring that matter forward for a public hearing and he would have supported such a request. He noted that requests for public hearings

have been made in the past and items have moved forward without those hearings, just as has occurred this evening.

Councilman Egger wondered why Mr. Funk would agree to the public hearing previously ~~now~~, but not at this time ~~earlier~~. She noted that Council owed it to the public to hear what they had to say.

Councilman Funk noted that Mr. Hrbek has reserved the right to bring the matter back to another agenda by his affirmative vote.

Vote: Yes – Egger and Hrbek
No – Connolly, Funk, Tharpe, and Tewalt
Abstain – N/A
Absent – N/A
(Mayor Darr did not vote as there was no tie to require his vote)
(By Roll Call; On motion to hold a public hearing; MOTION FAILED)

There being no further business, the Mayor declared the meeting adjourned at 8:41 p.m.

APPROVED:

Jennifer E. Berry
Clerk of Council