

COUNCIL MEETING MINUTES

October 14, 2008

The regular meeting of the Town Council of the Town of Front Royal, Virginia was held on Tuesday, October 14, 2008, in the Warren County Government Center's Board Meeting Room. Mayor Tewalt 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 Eugene R. Tewalt
Vice Mayor Bret W. Hrbek
Councilman Thomas H. Sayre
Councilman Carson C. Lauder, Jr.
Councilman Thomas E. Conkey
Councilman Chris W. Holloway
Councilman N. Shae Parker
Town Manager J. Michael Graham
Town Attorney Thomas R. Robinett
Clerk of Council Jennifer E. Berry

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

Vice Mayor Hrbek moved, seconded by Councilman Conkey, that Council approve the Regular Council Meeting minutes of September 22, 2008 as presented.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)

REPORT OF THE MAYOR, COUNCIL & STAFF

Vice Mayor Hrbek asked if the Council could discuss the speed limit along John Marshall Highway during a future worksession. He stated that he had received some complaints and suggested that the Town look into other alternatives for addressing said area.

Councilman Lauder explained a new concept he hoped to implement within the Town. He noted that mentoring to the youth of the community was vitally important and expressed hope that he could work with the Town Staff, specifically the Town Human Resources Department, in order to assist with a mentoring program in Front Royal.

Councilman Sayre thanked Director of Planning & Zoning Andrew Conlon, Code Enforcement Officer Richard Kurzenknabe, and Director of Public Works Terry Seal, for their assistance in tending to the blind spot that was created at Happy Creek and Shenandoah Shores Road. He praised Chuck Richardson, the railroad supervisor, who assisted in ensuring the change took place appropriately. Councilman Sayre also thanked the railroad for removing a dead tree.

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October 14, 2008

Councilman Sayre announced that the Festival of Leaves was a very successful event. He added that the Town had made him very proud during the celebration, noting that each year the festival continued to improve.

Mayor Tewalt presented the Government Finance Officers Association (GFOA) Award to Kim Gilkey-Breeden, Director of Finance.

Mayor Tewalt announced that Pride In Performance Awards had been awarded to Sergeant Clint Keller, Corporal Steve Mauck, and investigators Kevin Nicewarner, Crystal Hirsch and David Fogle for their investigation of a house fire earlier in the year. Mayor Tewalt presented the awards to those employees in attendance.

Mayor Tewalt thanked those that were involved in the Festival of Leaves, adding that the Town Staff who cleaned the area after the event did a fantastic job.

Town Manager Graham complimented the Town crews who cleared the area of debris after the Festival of Leaves, adding that the roadway and adjacent areas were spotless on Sunday morning following the event. He noted that the crews performed an outstanding job after each festival.

Mr. Graham noted that the Town would most likely enter mandatory water restrictions in the coming days. He added that the restrictions were not uncommon during said time of the year.

Mr. Graham announced that Council had requested that Town Staff pursue the Green Government Challenge sponsored by the Virginia Municipal League (VML). He noted that of the 41 municipalities who participated, 26 obtained the qualification to be labeled a "Green Government," including the Town of Front Royal. Mr. Graham stated that they would be accepting the certification at the VML Conference next week.

Town Attorney Robinett explained that the Department of Environmental Quality (DEQ) submitted a letter regarding the old landfill on the Catlett Mountain site. He noted that County Attorney Blair Mitchell had hand delivered the letter to the Town Hall on Friday, October 10th. Mr. Robinett explained the issues relating to the receipt of the letter, adding that he had attempted to contact the DEQ author of the letter, who was on vacation. Mr. Robinett stated that the Regional Director, Ms. Owens, was also not available. He added that the Town would not be able to respond by the date within the letter as the matter, which may require a substantial financial commitment, needed to be fully explored. Mr. Robinett expressed concern with signing a document without the proper time to study it in depth.

Vice Mayor Hrbek asked if the letter was addressed to both County Administrator Doug Stanley and Town Manager Michael Graham, did the Town receive the document as well. Mr. Robinett explained that the Town had not received the document from DEQ, but rather the County Attorney had extended a copy to the Town.

Councilman Sayre asked if Mr. Stanley's signature meant that the County had agreed with the requests within the document. Mr. Robinett opined that it seemed to be clear that the County had agreed with the text of the document.

Mayor Tewalt asked if there were any proposals for additions or deletion to the agenda.

Vice Mayor Hrbek moved, seconded by Councilman Conkey, that Council add another item to the agenda, a Closed Meeting to discuss 1) the acquisition of real property and 2) the evaluation of the Clerk of Council.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)

CONSENT AGENDA:

- A) COUNCIL APPROVAL – Proclamation – Red Ribbon Week
- B) COUNCIL APPROVAL – Budget Transfer
- C) COUNCIL APPROVAL – Resolution to Authorize the Execution of the 2008 Power Sales Agreement

Vice Mayor Hrbek moved, seconded by Councilman Conkey, that Council approve the consent agenda as presented.

Vice Mayor Hrbek asked to remove Item #6C – Resolution to Authorize the Execution of the 2008 Power Sales Agreement for a separate discussion and vote.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(On the Consent Agenda, sans Item #6C)

” *Proclamation* ”

Red Ribbon Week

WHEREAS, Virginia and the Town of Front Royal value the health and safety of all our citizens; and,

WHEREAS, substance abuse is particularly damaging to one of our most valuable resources, our children, and a contributing factor in the three leading causes of death for teenagers – accidents, homicides and suicides; and,

WHEREAS, is the goal of the Virginia Red Ribbon Campaign and the Town of Front Royal to involve families, schools, businesses, churches, law enforcement agencies and service organizations in all aspects of this campaign and establish an atmosphere that supports awareness, education and on-going initiatives to prevent illegal drug use; and,

WHEREAS, the Virginia Red Ribbon Campaign theme promotes family and individual responsibility for living healthy, drug-free lifestyles, without illegal drugs or the illegal use of legal drugs; and,

WHEREAS, there are many activities planned during the Red Ribbon Campaign in the Town of Front Royal; and,

NOW, THEREFORE, Mayor Eugene R. Tewalt and Members of the Town Council of the Town of Front Royal, do hereby proclaim October 23rd to 31st, 2008 as Red Ribbon Week in the Town of Front Royal, Virginia, and urges all citizens to join in the week's activities and to work all year long to protect our community from the dangers of alcohol and other drugs.

COUNCIL APPROVAL – Resolution to Authorize the Execution of the 2008 Power Sales Agreement

Vice Mayor Hrbek moved, seconded by Councilman Holloway, that Council approve a Resolution authorizing the Town Manager to sign the Member Community 2008 Power Sales Agreement with AMP-Ohio.

Vice Mayor Hrbek explained that the matter was of high importance. He stated that the effort moved the Town forward in their AMP-Ohio participation and owning portions of clean coal power plants. Mr. Hrbek voiced that the matter was one of the great successes of the prior and current Council.

Councilman Conkey noted that in 2006 the Town signed an agreement which resulted in a 66% increase in the cost of power. He stated that the rates were raised 30%, while the Town absorbed the remaining 36%. Councilman Conkey stated that the plan had been to raise the rates 18% in 2007 and 18% in 2008, though the Town Management renegotiated the contract and saved the Town and the citizenry over \$6 million, which resulted in changing the 18% increase to a 2.5% decrease. Mr. Conkey explained that the Town Manager and the Director of Energy Resources had completed incredible work regarding the power cost management of the Town.

Councilman Sayre stated that the electric rates were very important to him. He noted that a newspaper headline had once read that Council had “gambled” on the electric rates. Mr. Sayre explained that the Town had saved the citizens over \$6 million and the Town had obtained clean coal technology. He noted that the Town's electric portfolio was stable and would probably remain stable for decades to come. Mr. Sayre stated that the Director of Energy Services, Joseph Waltz, and Town Manager Graham had done a great job in their efforts relating to the Town's electrical costs.

Mayor Tewalt thanked the Staff for their hard work on the power sales agreement.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre

No – N/A

Abstain – N/A

Absent – N/A

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

RESOLUTION – AMP OHIO POWER SALES - 2008

**To Authorize The Execution Of The
2008 Power Sales Agreement With American Municipal Power-Ohio, Inc.**

WHEREAS, the Town of Front Royal, Virginia (the “Municipality”), owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric power and energy requirements of its electric utility system, the Municipality, acting individually and, along with other municipalities which own and operate electric utility systems, jointly through American Municipal Power, Inc (“AMP-Ohio”), endeavors to arrange for coordination of the purchase or other provision of electric power and energy (power supply) and for ultimate delivery to its customers; and

WHEREAS, Municipality has executed a Master Services Agreement with AMP-Ohio (AMP-Ohio Contract No. C-12-2007-6255-R), which sets forth the general terms and conditions for the provision of power supply and other services by AMP-Ohio to the Municipality; and

WHEREAS, Municipality desires to contract with AMP-Ohio to arrange for power supply and transmission service; and

WHEREAS, from time to time, it may be necessary or economical for AMP-Ohio to purchase power and associated energy on behalf of the Municipality (herein “Non-Pool Power”) to meet long term power and energy needs of the Municipality; and

WHEREAS, the Municipality may authorize AMP-Ohio to purchase Non-Pool Power pursuant to the authorization and approval procedure set forth in the 2008 Power Sales Agreement, and

NOW THEREFORE, BE IT RESOLVED By the Council of the Town of Front Royal, Virginia:

SECTION 1. That the form of the 2008 Power Sales Agreement attached hereto as Exhibit 1, including Appendices thereto, between this Municipality and AMP-Ohio be, and the same hereby is, approved substantially in the form attached hereto, subject to and with any and all changes provided herein and therein.

SECTION 2. That the Town Manager is hereby authorized to execute and deliver on behalf of this Municipality the 2008 Power Sales Agreement, substantially in the form attached hereto together with such changes or modifications of the same that are not adverse to this Municipality’s interest as determined by the Town of Royal.

SECTION 3. That the Municipality authorizes AMP-Ohio to purchase on the Municipality’s behalf, in accordance with the procedures set forth herein and in the 2008 Power Sales Agreement, Non-Pool Power and associated energy to meet any long term power and energy needs of the Municipality.

SECTION 4. That the Town Manager or his or her designee is hereby designated as Municipality’s Authorized Representative and granted the authority to approve and authorize AMP-Ohio’s acquisition of Non-Pool Power on behalf of Municipality in accordance with the approval procedures set forth in the Power Sales Agreement and acquire the Municipality’s Non-

Pool Power and energy by transacting one or more Long Term Power Purchase(s), each with a term ending no later than December 31, 2018, and each with a third party contract price (excluding any taxes, transmission costs, replacement power, financing costs, purchased power security costs, or AMP-Ohio service fees) not to exceed \$0.07200 per kWh for a 7x24 purchase and \$0.0990 per kWh for a 5x16 purchase.

SECTION 5. That it is found and determined that, to the extent required by law, all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 9. That if any section, subsection, paragraph, clause or provision or any part thereof of this ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall be unaffected by such adjudication and all the remaining provisions of this ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

SECTION 10. That this resolution shall take effect immediately.

PUBLIC HEARING – An Ordinance to Confirm the Sale of all of the Right, Title and Interest of the Town in and to 0.1558 of an Acre in the Town to Ramsey, Inc., in Exchange for a Conveyance of all of the Right, Title and Interest of Ramsey, Inc., to the said Town to Ramsey, Inc., in Exchange for a Conveyance of all of the Right, Title and Interest of Ramsey, Inc., to said Town of 1.1688 Acres

Mayor Tewalt opened the public hearing. As no one came forward, the public hearing was closed.

Councilman Sayre moved, seconded by Councilman Holloway, that Council adopt on its first and final reading an ordinance to confirm the sale of all of the right, title and interest of the Town in and to 0.1558 of an acre in the Town to Ramsey, Inc., in exchange for a conveyance of all of the right, title and interest of Ramsey, Inc., to the said Town of 1.1688 acres on land located between Lot 1 in Happy Creek Knolls, Section 1 Subdivision and Happy Creek Road.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(By Roll Call)

⌘ ORDINANCE – Ramsey Property Exchange ⌘

An Ordinance To Confirm The Sale Of All Of The Right, Title, And Interest Of The Town Of Front Royal, Virginia, In And To 0.1558 Of An Acre In The Town To Ramsey, Inc., In Exchange For A Conveyance Of All Of The Right, Title, And Interest Of Ramsey, Inc., To The Said Town Of 1.1688 Acres

WHEREAS, the Town Council of the Town of Front Royal, Virginia, has, by Resolution dated September 8, 2008, authorized the sale of all of the Town’s right, title, and interest in and to a small parcel of property containing 0.1558 of an acre, and identified as “Parcel 2” on a certain plat of survey prepared by Wayne E. Niskanen, Land Surveyor, dated July 22, 2008, in exchange for a deed conveying all of the right, title, and interest of Ramsey, Inc., in and to another parcel of real estate, containing 1.1688 acres, and identified as “Parcel 1” on the same said plat of survey, together with all of its right, title, and interest in the land lying between Lot 1, Happy Creek Knolls, Section 1 Subdivision and Happy Creek Road; and,

WHEREAS, the said Council, consistent with the terms of the aforesaid Resolution, continues to find that the exchange of the aforesaid parcels between the Town and Ramsey, Inc., will facilitate the future construction by the Virginia Department of Transportation of much needed improvements to Happy Creek Road within said Town, thereby contributing greatly to the safety and welfare of all of the people of Front Royal, and that the parcels in question and the interests in same to be exchanged are of approximately equal value; and,

WHEREAS, the said Council has, this day, conducted a Public Hearing, after due advertisement thereof, of its intention to sell the aforesaid real property in exchange for a conveyance of the aforesaid property by Ramsey, Inc., and to adopt this Ordinance confirming said sale; and,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Town Council of the Town of Front Royal, Virginia, that the sale of the real estate hereinabove described to Ramsey, Inc., is hereby ratified and confirmed in exchange for the conveyance by Ramsey, Inc., of the real estate hereinabove described as belonging to it; and, **BE IT, FURTHER, ORDAINED AND ENACTED** that the Town Attorney shall cause the preparation a good and sufficient deed exchanging such real estate between the Town and Ramsey, Inc., and that the Mayor is, hereby, authorized, on behalf of the Town, to sign said deed, which shall include a copy of the aforesaid plat of survey and a certified copy of this Ordinance and of the Resolutions of September 8, 2008, and that such documents shall be delivered and recorded as required by law.

This ordinance is designated as “routine” for purposes of Section 4-4 (E) of the Town Code, and shall be effective on adoption.

COUNCIL APPROVAL – An Ordinance to Amend and Re-enact Section 158-13 of the Town Code by Adding a New Subsection (C) Pertaining to Royal Avenue in said Town (1st Reading)

Mayor Tewalt opened the public hearing. As no one came forward, the public hearing was closed.

Councilman Holloway moved, seconded by Councilman Conkey, that Council affirm on its first reading an Ordinance to amend and re-enact Section 158-13 of the Town Code by adding a new subsection (C) pertaining to Royal Avenue in said Town.

In response to a sunset provision question presented by Vice Mayor Hrbek, Mr. Robinett noted that the Town could place an expiration date within the ordinance if they chose to do so. Mr. Hrbek noted that a two year time period would give the public an opportunity to respond once the matter went to effect, as no member of the public spoke during the public hearing portion of the meeting.

Vice Mayor Hrbek moved, seconded by Councilman Conkey, that the motion be amended to include a two year expiration date within the ordinance.

Councilman Conkey voiced his support of the ordinance and the amendment offered by Vice Mayor Hrbek.

Mr. Robinett clarified that Vice Mayor Hrbek had moved to amend the ordinance to have it expire on November 1, 2010. Vice Mayor Hrbek noted that Mr. Robinett's summary was accurate.

Councilman Sayre asked about the South Street turning review. Councilman Conkey stated that the Planning Commission had not discussed the matter during a Planning Commission meeting; however, he had spoken to some Planning Commission members and they were comfortable with the change.

Vice Mayor Hrbek stated that he had asked during a worksession if sufficient turn space was available for turns from Commerce Avenue onto South Street, and Staff had indicated that the space was adequate.

Councilman Parker indicated that he spoke with truck drivers who would use the route and the consensus was that if a driver could not make the turn, they should not be driving a truck.

Vote: Yes – Conkey, Hrbek, Lauder, Parker and Sayre
No – Holloway
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(By Roll Call, to amend the motion with a two-year expiration date)

Councilman Lauder noted that he would speak against the ordinance. He explained that many problems had existed at Commerce and N. Royal Avenue and he had worked hard for the signal improvements on said site. Mr. Lauder noted that the light had reduced the accidents at the corner of Commerce and Royal. He stated that more problems would be created if trucks were routed around Royal Avenue and forced onto Commerce Avenue.

Councilman Sayre asked if the ordinance had appropriate safeguards for those making Town deliveries within the restricted area. Mr. Graham noted that the ordinance did contain such safeguards.

Vote: Yes – Conkey, Holloway, Hrbek, Parker and Sayre
No – Lauder
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(By Roll Call, on the motion as amended)

PUBLIC HEARING – An Ordinance to Amend Town Code to Extend Existing Electric Utility Base Rates for Residential and Commercial Customers to June 30 2009, and to Add a New Subsection to Allow a Power Cost Adjustment (PCA) Charge to be Added to Those Rates and to Continue Existing Dusk-to-Dawn Light Rates to June 30, 2009 and to Re-number the Remaining Existing Subsections of Said Section (1st Reading)

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

Vice Mayor Hrbek moved, seconded by Councilman Lauder, that Council affirm on its first reading an Ordinance to Town Code to extend existing electric utility base rates for residential and commercial customers to June 30, 2009, and to add a new subsection to allow a Power Cost Adjustment or PCA charge to be added to those rates and to continue existing dusk-to-dawn light rates to June 30, 2009 and to re-number the remaining existing subsections of said section effective 12:01a.m. on November 1, 2008.

Vice Mayor Hrbek asked if the Town would be passing on the cost of increased expenses to the citizenry. Mr. Waltz agreed, and noted that the Town was not making a profit, but rather passing on the increased costs to the end user, as they were no longer able to absorb them. He stated that a public information meeting was held on October 7, 2008, though no citizens attended to ask questions or state their views on the PCA Charges. Mr. Waltz stated that he could be reached at 540 635-3027 should any member of the public wish to contact his office with their questions.

Councilman Lauder noted that citizens were very aware of the great increase in utility charges and the small charge should not be a surprise to most. Mr. Waltz explained that the average residential bill may increase about \$2.51. He further noted that the language regarding dusk-to-dawn lights was a “housekeeping matter” to clear up the Town Code.

Councilman Sayre asked if the issue regarding light bulbs had changed. Mr. Waltz explained that as the prices had come down relating to the sale of CFL light bulbs at area retailers, and it would not serve the Town financially to sell the bulbs to citizens.

Mr. Waltz reiterated the energy savings the public could participate in; noting that 22% of an electric bill was due to lighting. He encouraged everyone to use the energy efficient bulbs to produce an impact in their utility bill.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(By Roll Call)

PUBLIC HEARING – Amendment to the FY 2008-2009 Budget to Increase the Budget Amount

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

Councilman Holloway moved, seconded by Vice Mayor Hrbek, that Council approve an amendment to the FY 2008-2009 Budget to increase the budget amount by \$6,850,686.11 for a total budget of \$42,577,871.11.

Vice Mayor Hrbek clarified that the funds were to re-appropriate funds which had previously been budgeted. Director of Finance Kim Gilkey-Breeden stated that he was correct, adding that it was an annual housekeeping matter the Council tended to in order to re-appropriate outstanding purchase orders.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(By Roll Call)

COUNCIL APPROVAL – An Ordinance to Amend and Re-Enact Town Code Sections 175-74 through 175-84 Pertaining to the Establishment of Floodplain Districts by Requiring the Issuance of Permits for Development, and by Providing Factors and Conditions for Variances to the Terms of the Ordinances (2nd Reading)

Councilman Conkey moved, seconded by Vice Mayor Hrbek, that Council adopt on its second and final reading an Ordinance to amend and re-enact Town Code Sections 175-74, 175-75, 175-76, 175-77, 175-78, 175-79, 175-80, 175-81, 175-82, 175-83 and 175-84 pertaining to the establishment of Floodplain Districts by requiring the issuance of permits

for development, and by providing factors and conditions for variances to the terms of the ordinances.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(By Roll Call)

ORDINANCE – FLOODPLAIN DISTRICTS

An Ordinance To Amend And Re-Enact Town Code Sections 175-74, 175-75, 175-76, 175-77, 175-78, 175-79, 175-80, 175-81, 175-82, 175-83, And 175-84 Pertaining To The Establishment Of Floodplain Districts By Requiring The Issuance Of Permits For Development, And By Providing Factors And Conditions For Variances To The Terms Of The Ordinances.

BE IT AMENDED AND RE-ENACTED by the Town of Front Royal, Virginia, as follows:

Notwithstanding any other ordinance or other enactment heretofore adopted and currently in force in this jurisdiction, the following is hereby adopted and ordained to be effective as set forth herein below:

ARTICLE I – 175-74 – GENERAL PROVISIONS.

Section 1.1. A. Statement of Intent, Purpose

Floodplains are a valuable resource that provide, in addition to flood passage, agricultural land, recreational land, and wildlife habitat. In addition, they provide groundwater recharge and pollution protection services. As such, the Town Plan calls for protecting currently undeveloped floodplains from incompatible development.

B. Purpose,

The purpose of these provisions is to prevent: the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- A.** 1. **R**egulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
- B.** 2. **R**estricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

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~~C.~~ 3. ~~R~~requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; ~~and,~~

~~D.~~ 4. ~~p~~Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

~~BC.~~ ~~Section 1.2~~ Applicability.

These provisions shall apply to all lands within the jurisdiction of ~~the Town of Front Royal~~ and identified as ~~a being in the 1% annual chance of a flood~~ (Special Flood Hazard Area) by the Federal Insurance Administration.

~~ED.~~ ~~Section 1.3~~ Compliance and Liability.

~~A.~~ 1. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

~~B.~~ 2. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the Floodplain District or that land uses permitted within such district will be free from flooding ~~or flood damages.~~

~~C.~~ 3. Records of actions associated with administering this ordinance shall be kept on file and maintained by the ~~zoning Zoning administrator~~ Administrator.

~~D.~~ 4. This ordinance shall not create liability on the part of ~~the Town of Front Royal~~ or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

~~DE.~~ ~~Section 1.4~~ Abrogation and Greater Restrictions.

This ordinance supersedes any ordinance currently in effect in flood-prone districts. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

~~EF.~~ ~~Section 1.5~~ Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby ~~declared to be severable.~~

~~§ 175-75~~ **ARTICLE II** — DEFINITIONS.

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◆ A. Base flood - The flood having a one percent chance of being equaled or exceeded in any given year.

B. Base flood elevation - The Federal Emergency Management Agency designated as the Special Flood Hazard Area.

◆ C. Basement - Any area of the building having its floor sub-grade (below ground level) on all sides.

◆ ~~1~~ sides.

◆ D. Board of Zoning Appeals - The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

◆ E. Breakaway wall - A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

◆ F. Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

◆ G. Elevated building - A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

◆ H. Encroachment - The advance or infringement of uses, plant growth, fills, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

~~H.~~ Flood or flooding -

⊖

~~1.~~ 1. A general or temporary condition of partial or complete inundation of normally dry land areas from:

~~1.~~ a. The overflow of inland or tidal waters; or,

◆

~~2.~~ b. The unusual and rapid accumulation or run-off of surface waters from any source.

⊖

~~2.~~ 2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.

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♦ J. Floodplain or flood-prone area - Any land area susceptible to being inundated by water from any source.

♦ K. Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

♦ L. Freeboard - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. —“Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

M. Flood-proofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.;



N. Historic structure - Any structure that is

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or;

4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either

by an approved state program as determined by the Secretary of the Interior; or;

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~~of~~ ~~directly by the Secretary of the Interior in states without approved programs.~~

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~~Lowest floor—The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.~~

N. Lowest floor – The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

~~P.O. Manufactured home—A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.~~

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New construction - For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial Flood Insurance Rate Map on or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

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~~R.P.~~ Recreational vehicle - A vehicle which is:

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~~1.~~ 1. Built on a single chassis;

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~~2.~~ 2. 400 square feet or less when measured at the largest horizontal projection;

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~~3.~~ 3.d Designed to be self-propelled or permanently towable by a light-duty truck; and,

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4.

~~Designed~~ primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, ~~or~~ seasonal use.

~~S. Shallow flooding area - A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.~~

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~~U.Q. Special flood hazard area - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any ~~given~~ year, commonly known as the one-hundred year (~~100-year~~ floodplain).~~

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~~R. Start of construction - The date the building permit was issued, provided the actual start of construction, ~~r~~ repair, ~~re~~ reconstruction, rehabilitation, addition, placement, ~~sub~~ substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction ~~of~~ a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; ~~of the placement of a manufactured home on a foundation.~~ Permanent construction does not include land ~~pre~~ preparation, such as clearing, grading and filling; nor does it include the installation on the property of accessory ~~build~~ buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a ~~sub~~ substantial improvement, the actual start of the ~~con~~ construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not ~~that~~ alteration affects ~~the~~ external dimensions of the building.~~

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~~S. Substantial damage - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or ~~ex~~ceed 50 percent of the market value of the ~~str~~ structure before the damage occurred.~~

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~~T. Substantial improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the ~~ma~~ market value of the structure before the ~~start of construction~~ of the improvement. This term includes structures which have incurred *substantial damage* ~~regardless~~ of the actual repair work performed. The term does not, however, include ~~either~~.~~

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~~1.~~any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

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~~2.~~any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

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U. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

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~~§ 1175-76~~ **ARTICLE III** ESTABLISHMENT OF ZONING FLOODPLAIN DISTRICTS.

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~~Section 3.1~~ Description of Districts

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~~AA.~~ Basis of Districts.

The various floodplain districts shall include special flood hazard areas. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) for the Town of Front Royal prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated June 3rd, 2008, as amended. ~~(NOTE: Those communities that had FIS prepared by the Department of Housing and Urban Development should delete FEMA and add HUD).~~

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~~a)~~

B. -The Floodway District is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the Special Flood Hazard Area without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 4.4 of the above-referenced Flood Insurance Study and shown on the accompanying Flood Boundary and Floodway Map or Flood Insurance Rate Map.

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~~b) C.~~ -The Flood-Fringe District shall be that area of the Special Flood Hazard Area not included in the Floodway District. The basis for the outermost boundary of the District shall be the Special Flood Hazard Area elevations contained in the flood profiles of the above-referenced Flood Insurance Study and as shown on the accompanying Flood Boundary and Floodway Map or Flood Insurance Rate Map.

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~~e)~~

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d) ~~The Special Floodplain District shall be those areas identified as either an AE Zone or A1-30 zone on the maps accompanying the Flood Insurance Study for which one hundred (100) year flood elevations have been provided but for which no floodway has been delineated.~~

e) ~~—~~

f) D. ~~—~~The Approximated Floodplain District shall be those areas identified as an A ~~or A99~~ Zone on the maps accompanying the Flood Insurance Study. In these zones, no detailed flood profiles or elevations are provided, but the Special Flood Hazard Area boundary has been approximated.

~~a. The Shallow Flooding District shall be those areas identified as Zone AO or AH on the maps accompanying the Flood Insurance Study.~~

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~~F. § 175-77 Overlay Concept OVERLAY CONCEPT. 175-77~~

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A. ~~—~~The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning ~~—~~Ordinance Map, and as ~~—~~such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

B. ~~—~~If there is any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

C. ~~—~~In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

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~~§ 175-78 Section 3.2 Official Zoning Map Floodplain District Boundaries FLOODPLAIN DISTRICT BOUNDARIES.~~

A. The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Boundary and Floodway Map and/or Flood Insurance Rate Map which is declared to be a part of this ordinance and which shall be kept on file at the ~~the~~ Town of Front Royal Planning offices.

~~Section 3.3 District Boundary Changes.~~

B. ~~—~~The delineation of any of the Floodplain Districts may be revised by the ~~the~~ Town of Front Royal where ~~—~~natural or man-made changes have occurred and/or where more ~~—~~detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such ~~—~~change. However,

prior to any such change, approval must be obtained from the Federal Insurance Administration.

~~Section 3.4 Interpretation of District Boundaries,~~

~~C. Initial Interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Administrator~~

~~Officer~~ Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. ~~The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.~~

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~~§ ARTICLE IV, 175-79 DISTRICT PROVISIONS.~~

~~Section 4.1 Permit and Application Requirements~~

~~—~~

~~D)A. Permit Requirement,~~

All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, as amended, and the ~~(the Town of Front Royal)~~ Subdivision Regulations. Prior to the issuance of any such permit, the Zoning ~~Officer~~ Administrator shall require all applications to include compliance with all applicable state and federal laws.

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~~E)B. Site Plans and Permit Applications.~~

All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

~~a) —~~

~~1. For structures to be elevated, the elevation of the lowest floor (including basement).~~

~~2.~~

~~e) For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.~~

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~~Section 4.2 175-80 General Standards GENERAL STANDARDS,~~

In all special flood hazard areas the property owner is ultimately responsible for insuring -the following provisions ~~shall apply~~ have been considered:

~~➤ A. New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.~~

~~➤ B. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are~~

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~~not limited to, use of over the top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.~~

~~B~~—New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

C. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

D. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during econditions of flooding.

E. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into ~~the~~ systems and discharges from the systems into flood waters.

G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

H. Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of ~~the~~ “new construction” as contained in this ordinance.

I. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ~~the~~ ordinance, shall be undertaken only if ~~the~~ said non-conformity is not furthered, extended, or replaced.

J. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations).

~~F~~Furthermore, notification of the proposal shall be given by ~~the~~ applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain ~~the~~ Management) and the Federal Insurance Administration.

~~K~~K. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

~~§ Section 4.3~~ **175-81** ~~Specific Standards~~ **SPECIFIC STANDARDS**

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In all special flood hazard areas where base flood elevations have been provided in the Flood Insurance Study or generated according to ~~Article 4, section 4.4 (A)~~ Section 175-81.1(A), the following provisions shall apply:

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~~A.~~ A. Residential Construction.

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New construction or substantial improvement of any residential structure ~~(including manufactured homes)~~ shall have the lowest floor, including basement, elevated no lower than ~~one (1) foot~~ above the base flood elevation.

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~~B.~~ B. Non-Residential Construction.

New construction or substantial improvement of any commercial, industrial, or non-residential building ~~(or manufactured home)~~ shall have the lowest floor, including basement, elevated to no lower than ~~one (1) foot~~ above the base flood elevation. Buildings located in all ~~A1-30~~, AE, and AH zones may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the Base Flood Elevation (BFE) plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.

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~~C.~~ C. Elevated Buildings.

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Enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

~~1.~~

~~2.~~ 1. ~~Not~~ be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;

~~2.~~

~~b~~Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

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~~3.~~ in the Coastal High Hazard District, follow the standards for elevation outlined in Article 4, Section 4.9.

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4. ~~i~~ Include, in Zones A ~~and AO, AE, and A1-30,~~ measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

~~a-~~

~~a.a.~~ Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

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~~e-b.~~

~~d.~~ The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.

~~e.~~ c. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

~~f-~~

~~d.~~ d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

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~~h-~~

~~i.~~ e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

~~j-~~

~~k.~~ f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

~~D.~~ D. Standards for **Manufactured Homes and RR** Recreational Vehicles.

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~~B.—~~

~~1. All manufactured homes placed, or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must meet all the requirements for new construction, including the elevation and anchoring requirements in Article 4, section 4.2 (A) and (B), and section 4.3 (A).~~

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~~2. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that~~

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~~a.the lowest floor of the manufactured home is elevated no lower than {___feet} above the base flood elevation; or,~~

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~~b.the manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above the grade;~~

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~~c.the manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement;~~

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All recreational vehicles placed on sites must either

~~a.be on the site for fewer than 180 consecutive days;~~

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~~—~~

be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); ~~or,~~

~~meet all the requirements for manufactured homes in Article 4, section 4.3 (D). § Section 4.4, 175-81.1, Standards for Approximated Floodplain~~**STANDARDS FOR APPROXIMATED FLOODPLAIN,**

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~~A. —~~

~~B. A. When base flood elevation data or floodway data have not been provided, the {Zoning administrator/Administrator} shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or any other source, in order to administer the provisions of Article 4this section. When such base flood elevation data is utilized, the {Zoning aAdministrator} shall obtain~~

~~1.~~

~~2. 1. The elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures; and,~~

~~3.2.~~

~~4. If the structure has been flood-proofed in accordance with the requirements of Article 4, Section 4.3 (B)Section 175-81(B) of this ordinance, the elevation in relation to the mean sea level to which the structure has been flood-proofed.~~

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~~B.~~ When the data is not available from any source as in ~~Article 4, Section 4.4 (A)~~ Section 175-81.1(A), the lowest floor of the structure shall be elevated to no lower than one ~~(~~1~~ foot)~~ above the highest adjacent grade.

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~~C.~~ C. Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals that exceed fifty lots or five acres, whichever is the lesser.

~~§ Section 4.5, 175-83 Standards for the Special Floodplain District~~

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~~The following provisions shall apply within the Special Floodplain District:~~

~~Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE on the Flood Rate Insurance Map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the {community}.~~

~~Development activities in Zones A1-30, AE, and AH, on the {community's} Flood Insurance Rate Map which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the {developer or applicant} first applies with the {community's} endorsement for a conditional Flood Insurance Rate Map revision, and receives the approval of the Federal Emergency Management Agency.~~

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~~Section 4.6, 175-84 81.2 Standards for the Floodway District~~ **STANDARDS FOR THE FLOODWAY DISTRICT,**

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The following provisions shall apply within the Floodway District:

~~A.~~ Encroachments, including fill, new construction, substantial improvements and other developments are prohibited unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. ~~The preceding uses, activities and development occurring within any floodway district shall be undertaken only upon the issuance of a special use permit. Development activities in which an increase in the water surface elevation of the base flood may be allowed, provided that the {developer or applicant} first applies with the {the Town of Front Royal} endorsement for a conditional Flood Insurance Rate Map and floodway revision, and receives the approval of the Federal Emergency Management Agency. However, other activities such as demolition in which there is not an increase in the water surface elevation,~~

will ~~not require a special use permit~~ require a zoning permit in lieu of a special use permit.

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~~B. If Article 4, Section 4.6 (A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4.~~

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~~C. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.~~

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~~§ Section 4.7 – Standards for the Shallow Flooding District~~

~~The following provisions shall apply within the Shallow Flooding District:~~

~~A. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than two feet (recommend ≥ one foot freeboard) above the highest adjacent grade.~~

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~~B. All new construction and substantial improvements of non residential structures shall~~

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~~1. have the lowest floor, including basement, elevated to or above the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet (recommend ≥ one foot freeboard) above the highest adjacent grade; or,~~

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~~2. together with attendant utility and sanitary facilities be completely flood-proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.~~

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~~C. Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.~~

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~~Section 4.8. Standards for Subdivision Proposals~~

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~~A. All subdivision proposals shall be consistent with the need to minimize flood damage;~~

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~~B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;~~

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~~C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and~~

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~~D. Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.~~

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~~ARTICLE V 175-85 §1.3 FLOODPLAIN VARIANCES: FACTORS TO BE CONSIDERED.~~

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In passing upon applications for Floodplain Variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- ~~A.~~ The showing of good and sufficient cause.
- ~~B.~~ The danger to life and property due to increased flood heights or velocities caused by ~~y~~-encroachments. No variance shall be ~~_~~granted for any proposed use, development, or activity within any Floodway District that will cause any increase in the Special Flood Hazard Area elevation.
- ~~C.~~ The danger that materials may be swept on ~~to~~ other lands or downstream to the injury of others.
- ~~D.~~ The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- ~~E.~~ The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- ~~F.~~ The importance of the services provided by the proposed facility to the community.
- ~~G.~~ The requirements of the facility for a waterfront location.
- ~~H.~~ The availability of alternative locations not subject to flooding for the proposed use.
- I. The compatibility of the proposed use with existing development

and development anticipated in the foreseeable future.

J. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

- K. The safety of access by ordinary and emergency vehicles to the property in time of flood.

- L. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

~~M. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.~~

~~N-M.~~ Such other factors which are relevant to the purposes of this ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variations shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variations shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief from exceptional hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the Special Flood Hazard Area elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

This ordinance shall become effective upon passage.

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COUNCIL APPROVAL – Direction of Deed of Encroachment – 32 W. 11th Street

Councilman Holloway moved, seconded by Councilman Parker, that Council direct the Town Attorney to begin the process of the Deed of Encroachment of a fence for 32 W. 11th Street.

Vice Mayor Hrbek spoke out against the Deed of Encroachment, noting that Staff had opined that a similar fence could be constructed out of the right-of-way. He voiced his opposition to making exceptions when the rules had been broken.

Councilman Sayre asked if the Council voted for the Deed of Encroachment, would a limitation be included which required that the fence be removed if there was a change in ownership. Mr. Graham agreed that Councilman Sayre was correct.

Councilman Holloway noted that he viewed the structure and stated that the Kizer's property was the nicest on the street and such matters should be considered on a case by case basis. He added that as a hazard did not exist with the structure in the right-of-way, he would vote for the motion.

Councilman Conkey explained that he had also visited the location and the fence was well maintained and was not a hazard. He expressed concern that perhaps Council was sending a message encouraging others to not follow proper procedure for requesting permits; however, he voiced support of the Deed of Encroachment process.

Councilman Sayre questioned the set back of the property, noting that if it had been built in the current year the setback would have been much greater. He stated that while it may not be fair to those that had followed the rules, in his opinion this situation warranted a Deed of Encroachment.

Vote: Yes – Conkey, Holloway, Lauder, Parker and Sayre
No – Hrbek
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)

COUNCIL APPROVAL – Board of Architectural Review Appointment

Councilman Holloway moved, seconded by Councilman Lauder, that Council appoint Michel L. Landry to the Board of Architectural Review (BAR) to fill an unexpired term, said term to expire November 13, 2011.*

*The summary of this agenda item cover sheet contained the accurate term expiration date of November 13, 2011, the proposed/suggested motion on the agenda item cover sheet did not; said motion was read by Council and voted on. The accurate motion is reflected above – Mr. Landry's BAR term expires November 13, 2011, per Council's original intent.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A

Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)

COUNCIL APPROVAL – Liaison Committee Mission Statement and Policies

Vice Mayor Hrbek moved, seconded by Councilman Parker, that Council approve the Liaison Committee Mission Statement and Policies as described in the agenda packet.

Vice Mayor Hrbek noted his concerns had been alleviated by having the agenda approved before each meeting and he had changed his opinion on the issue.

Councilman Sayre asked if Vice Mayor Hrbek’s motion was appropriate. Mr. Robinett stated that the motion was specific enough.

Councilman Sayre noted that he had great reservations with having a Liaison Committee Meeting. He expressed that it was not within the Town’s best interest to hold such meetings, and noted concern with the meetings beginning in a positive tone and eventually veering off course in the coming months.

Councilman Parker pointed out that the entire Mission Statement and Policies were designed around a “just discussion” format, with no concrete decisions being made. He added that the entire meeting would be subjected to the terms of the Freedom of Information Act (FOIA) and minutes would be taken for the permanent record. Mr. Parker reiterated that in no way would the events be secret meetings and he was pleased with the document as written.

Councilman Conkey voiced his support of dialogue between the two governmental bodies. He noted that it was a positive step in the right direction for the groups.

Councilman Sayre restated his earlier concerns.

Vice Mayor Hrbek explained that the safeguards were in place to keep everything in order and every individual member of the participating bodies informed on the process and the discussions held.

Councilman Lauder noted that the meetings were long overdue, adding that the policies could always be adjusted if need be.

Mayor Tewalt assured those in attendance that the chair of each meeting could adhere to the policies in order to keep the meetings flowing in the manner they were designed to go. He clarified that minutes would be taken at each meeting and each body would be kept abreast of the matters discussed.

Councilman Sayre stated that two issues would likely surface in the near future: tipping fees and the issue of Business Professional and Occupational Licensing (BPOL).

Vote: Yes – Conkey, Holloway, Hrbek, Lauder and Parker

No – Sayre
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(By Roll Call)

⌘ RESOLUTION – LIAISON COMMITTEE ⌘

**Front Royal and Warren County Liaison
Committee Mission Statement and Policies**

PURPOSE OF THE LIAISON COMMITTEE

The purpose of the Front Royal-Warren County Liaison Committee is to offer a venue whereby the leadership of the Town of Front Royal and the County of Warren can discuss issues of mutual interest and inform each other of positions taken and decisions made by each public body that may affect both localities. The Committee is NOT designed to be an environment where decisions are made, but one where issues are discussed and Board and Council members take them back to their respective bodies for further discussion and recommendation.

MEMBERSHIP

The Liaison Committee shall include the Mayor of the Town of Front Royal, The Chairman of the Warren County Board of Supervisors, the Front Royal Town Manager, Warren County Administrator, one (1) Front Royal Town Council member and one (1) Warren County Board of Supervisors member. The latter two (2) members shall rotate between its various members alphabetically from meeting to meeting.

MEETING SCHEDULE

Meetings shall be held on the third Thursday of each month at 1:00 p.m. unless otherwise agreed upon by the Town and County. The meetings shall be rotated monthly between the Town and County. Wherever the meetings are held, the host shall be responsible for the preparation of the agenda will provide a person who will take formal minutes of the meeting.

MEETING AGENDA

Meetings of the Liaison Committee shall at all times be subject to the terms of the Virginia Freedom of Information Act.

Meeting agendas shall be provided by the Town Manager and County Administrator upon consultation with the Mayor and Board Chairman respectively. Any request to place an item on the agenda shall be made by 1:00 p.m. on the Thursday prior to the meeting. All requests to place an item on the agenda must be accompanied by a written summary of the request which can be placed in the agenda packet. The agendas shall be distributed on the Friday prior to the Liaison Committee meeting to be held on the following Thursday.

In order for an item to be formally discussed on the Liaison agenda, it must be first approved by a majority vote of the Town Council and Board of Supervisors.

MEETING POLICY AND PROCEDURES

The Mayor of Town shall be Chairman of The Committee when the meetings are hosted by the Town, and the Chairman of the Board of Supervisors shall be Chairman of the Committee when the meeting is hosted by the County.

The Chairman shall make procedural or parliamentary decisions which may be overruled by a majority vote of the Committee.

Where as no legal presence shall be in attendance at the Committee meetings said meetings shall be deemed to be held in an informal capacity.

This mission statement and policies shall be adopted by a majority of the Board of Supervisors and the Town Council. They may be amended by a majority vote of the Town Council and Board of Supervisors.

FURTHERMORE

On the first regular meeting of each month of the Front Royal Town Council the Warren County Administrator shall give a oral report of the County to the Council, and on the first regular meeting of each month of the Warren County Board of Supervisors the Front Royal Town Manager shall give an oral report of the Town to the Board.

COUNCIL APPROVAL – An Ordinance to Amend and Re-enact Section 4-19 of the Town Code Pertaining to the Order of Business and Submission of Agenda Items for Town Council Meetings

Councilman Holloway moved, seconded by Councilman Conkey, that Council adopt on its first and final reading an ordinance to amend and re-enact Section 4-19 of the Town Code pertaining to Order of Business and Submission of agenda items for Town Council Meetings.

Vice Mayor Hrbek stated that there could come a time with a future Mayor who wished to block a particular Councilmember’s agenda item for a number of reasons. He noted that in order to protect the integrity of the Council and their ability to place items on the agenda he would like to offer an amendment using the language suggested by Councilman Conkey at a prior worksession.

Vice Mayor Hrbek moved, seconded by Councilman Holloway, to amend the motion to amend paragraph D to read:

“A Town Council member, the Town Manager or the Mayor may place the following items on a Council Agenda for a regular meeting provided they are delivered to the office of the Town Manager no later than 12:00 noon on the Tuesday before the next scheduled meeting. The Mayor shall schedule the item on the earliest meeting possible provided, however, that the item shall appear on the agenda no later than three meetings after the item is properly

submitted for inclusion on the agenda. In the event the Council member believes the item is of a time-critical nature, he/she shall identify it as such and the Mayor shall place it on the agenda for the next meeting unless there is a compelling reason for not including it. In that case, the mayor shall contact the requestor and notify him/her why the item cannot be added to the agenda and tell the requestor when the item will be added to the agenda.”

Mr. Robinett asked if Mr. Hrbek wished for the same language to pertain to worksessions. Vice Mayor Hrbek noted that he did not, adding that his main concern was that of formal meetings where votes took place.

Mayor Tewalt asked the Council was ready to vote on the matter at the current meeting.

Councilman Sayre moved, seconded by Vice Mayor Hrbek, to table the item until it could be discussed at the next worksession.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)
(To Table)

COUNCIL APPROVAL – Deed of Easement for Grading at the Eastham Park Parking Lot – County of Warren

Councilman Conkey moved, seconded by Councilman Sayre, that Council approve a Deed of Easement for Grading at the Eastham Park parking lot for the County of Warren.

Mr. Graham explained that the grading would be done at no expense to the Town, adding the Town was merely granting permission for the County to perform the work for the parking lot on the site.

Mr. Robinett stated that when Council reviewed the document during their worksession, language was within the document pertaining to “perpetual in nature,” which was unconstitutional. He explained that Assistant Town Attorney George Sonnett discovered the error and the Clerk had distributed the correct easement to Council prior to the meeting. Mr. Robinett noted that the easement would give the County a two year time period to complete the grading.

Councilman Sayre clarified that the easement was only giving the County permission to perform grade work. Mr. Robinett noted that was accurate.

Councilman Sayre asked if a letter could be written that stated that they had permission. Mr. Robinett stated that it would not have been legal to do so, and the document before Council was what was required.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)

COUNCIL APPROVAL – Refer to Planning Commission – Request to Amend Town Code Section 175-84 – Board of Architectural Review – Establishment and Terms of Office

Councilman Holloway moved, seconded by Councilman Parker, that Council refer to the Planning Commission amendments to Town Code Section 175-84(A)(1) – Historic District – Board of Architectural Review – Establishment of Terms and Office as presented.

Councilman Sayre asked about current members of the Board of Architectural Review and whether they would be “grandfathered” in. Councilman Holloway noted that they would be until their term expired.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)

RECEIPT OF PETITIONS OR CORRESPONDENCE FROM THE PUBLIC

Tony Frazier, of 1002 Goodview Drive, commended the Staff for their efforts in improving the safety within the Town limits. He explained that his main reason for addressing the Council at the meeting related to the Route 522 Corridor Agreement. He expressed his disappointment that the growth in said area had slowed and in some cases ceased entirely. Mr. Frazier noted that he had no other agenda other than to speak as a citizen asking the Council to correct the bad decisions which had been made pertaining to the agreement. He noted that it was an excessive tax within the 522 corridor which was being imposed and was unfair to businesses. Mr. Frazier voiced his support of the “Save our Shopping Centers” organization which was recently formed. He asked the elected officials to respond to the needs of the community.

Rick Caricofe, of 575 Cresthaven Court, thanked the Town, the Town Manager and Chief Williamson for addressing some issues he had brought forth. He detailed that their efforts assisted with parking issues on Elsea Drive, moving a speed limit near Criser Road and traffic control at the intersection of Skyway and Cresthaven. Mr. Caricofe thanked the Town for their cooperation and speedy work.

CLOSED MEETING – 1) Evaluation of the Clerk of Council; and 2) Acquisition of Real Property

Vice Mayor Hrbek moved, seconded by Councilman Conkey, that Council convene in a Closed Meeting for the purpose of evaluating the work performance of the Town Clerk

COUNCIL MEETING MINUTES

October 14, 2008

pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended, and to discuss the acquisition of real property for a public purpose, as discussion of such subject in an open meeting would adversely affect the bargaining position or negotiating strategy of the Council, pursuant to Section 2-2.3711 (A)(3) of the same said Code.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker and Sayre
No – N/A
Abstain – N/A
Absent – N/A
(Mayor Tewalt did not vote as there was no tie to require his vote)

Vice Mayor Hrbek moved, seconded by Councilman Conkey, that Council certify that, to the best of each Council member's knowledge as recognized by each Council member's affirmative vote, that only public business matters as were identified in the motion by which the preceding closed session was convened; were heard, discussed or considered during the closed session of the Council; and, that the vote of each member be taken by roll call and recorded in the minutes of this meeting.

Vote: Yes – Conkey, Holloway, Hrbek, Lauder, Parker, Sayre and Tewalt
No – N/A
Abstain – N/A
Absent – N/A

(By Roll Call)

There being no further business, the Mayor declared the meeting adjourned at 8:50 p.m.

APPROVED:

Jennifer E. Berry
Clerk of Council