

The regular meeting of the Town Council of the Town of Front Royal, Virginia was held on Monday, December 15, 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.)

Mayor Tewalt read the ruling from Judge Hupp, which noted that:

The Town Council filled the vacancy on August 11, 2008 within 45 days of July 1, 2008, the date upon which the vacancy occurred. I hold that the appointment of Mr. N. Shae Parker is valid.

Vice Mayor Hrbek moved that Council approve the Regular Council Meeting minutes of November 24, 2008 and the Special Council Meeting minutes of December 1, 2008.

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 congratulated the Tree Stewards who received First Prize for a non-profit group in the recent Christmas Parade. He expressed his appreciation to the Downtown Front Royal organization for allowing him to serve as a judge.

Councilman Parker read the following statement:

The holiday season and New Year almost upon us,
Season’s Greetings to all, as I climb from under this bus.
The corridor agreement needs work, I think we all agree,
Let’s just do the right thing, but the water can’t be free.
Other tasks are at hand, we must focus and get them done,
No more bad stories or reporters should ruin this fun.
Love thy neighbor as thyself, no more dissension in the ranks,
No frogs in chairs, tacks and other nasty pranks.
The stories which are told should be noble and true,

Just as those whom they're about and the work which they do.
As 2008 departs in just a few short weeks,
Let the rubble it's brought be brushed from our streets.
As 2009 arrives, and whatever it brings,
Let us all jump in and roll up our sleeves.
We will hold our heads high as we've treated all just and fair,
And let other communities look on with an envious stare.

Councilman Conkey noted that recent news accounts detailed the Rotary attacking the Town Manager. He stated that other news reports were attacks from Mr. Tederick against the Town Attorney. Councilman Conkey also stated that one member of Council complained to the news media that the Town had violated the Freedom of Information Act. He explained his distress in the events as they unfolded, adding that such measures took attention away from the positive aspects of the Town. Councilman Conkey noted that the Town Council was dedicated and very sincere in improving the community. He added that the current Council was compiled of a broad spectrum of individuals with various ideas and together many great ventures could be accomplished.

Councilman Sayre read the following statement into the record from an August 14th email which he sent to Council:

I have conducted some research on the 45 day issue and have come to the following happy legal conclusion (below for your convenience is the code section I cite and the pertinent part in red):

Even though Mr. Gene Tewalt took the oath of office on June 25, 2008, Mr. Tewalt did not become the Mayor until July 1, 2008 because Mr. James Eastham was still the Mayor. Under Virginia Code § 24.2-222 Mr. Tewalt did not vacate his Council seat until midnight June 30, 2008, when he became the Mayor. Therefore, on August 11, 2008 the Town Council made the selection of Shae Parker within 45 days.

Councilman Sayre explained that the code section which he highlighted read:

The persons so elected shall enter upon the duties of their offices on July 1 succeeding their election and remain in office until their successors have qualified.

Councilman Sayre opined that it would be appropriate to have the person appointed by Council to serve with full voting rights. He noted that there was a Circuit Court decision which was valid in Front Royal, that someone appointed had full voting rights.

Councilman Holloway noted that while Mr. Sayre quoted the August 2008 email, Councilman Sayre's opinion changed after the Attorney General's opinion came back. Mr. Holloway stated that many members of Council believed all along that Mr. Parker was appointed within the 45 day period. Councilman Holloway noted that he now understood while the last three members of Council did not run for re-election.

Councilman Holloway agreed with Councilman Parker, noting that the Route 522 Corridor Agreement did need some work. He requested the next worksession should have an item regarding the temporary suspension of collecting the meals and lodging portion of the

Payment In Lieu of Taxes (PILOT) fees associated with the 522 Corridor Agreement for all new and existing customers for three months; if the matter could not be discussed at the current meeting. Councilman Holloway expressed that the County should share revenue and the Town should not wait any further on the issue.

Mayor Tewalt presented retirement plaques to Harrison Bennett, Gary Deavers and Robert Pickrell. On behalf of the Town Council, the Town Staff and the citizenry, he thanked them for their work

Mayor Tewalt presented a Pride In Performance Award to Terry Seal, Director of Public Works. Mayor Tewalt read an email from a Front Royal citizen which highly praised Mr. Seal for his assistance to the community.

Town Manager Graham stated that he had submitted a letter to the editor of the Northern Virginia Daily and The Warren Sentinel to thank those who had shown their support to him recently. He commented that he had been overwhelmed by the amount of support that he had received in the past few weeks.

Mr. Graham noted that the Town was responding to the anticipated economic downturn, explaining that the Town was in a "caution" area financially. He explained that the Visitor's Center would be closing on Tuesdays and Wednesdays, which coincided with the State Visitor Centers. Mr. Graham stated that the Business Office would no longer be open on Saturdays beginning in January. He noted that they had tried one Saturday per month, but received very limited foot traffic.

Mr. Graham stated that the work on the Royal Village project was continuing. He asked for the residents to remain patient while the major project progressed.

Mr. Graham reminded everyone that January 1st the refuse rates would increase.

Mr. Graham noted that the Economic Development Authority report would resume in January 2009.

Chris Bell, with DMJM Harris, a consultant for the Virginia Regional Transit Authority (VRTA) presented an outline of their recommendations including:

- Demand response service in Warren County
- A fixed route service between Front Royal and Winchester;
- A fixed route service between Front Royal and Edinburg via Strasburg; and
- Peak period express service between Front Royal and Manassas.

Mr. Bell explained that the estimated local costs were just approximations and the VRTA was not requesting funding at this time. He noted that the purpose of the plan was to be proactive in understanding the transit needs in their service area for the next six years. Mr. Bell stated that it was a working, strategic document that was meant to provide a foundation between the Town of Front Royal and VRTA. He emphasized that he was there to present the results of the study only.

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

Councilman Holloway moved that Council add the Route 522 Corridor Agreement to the current agenda for discussion purposes only.

Councilman Sayre objected, and noted that the addition to the agenda would need to be unanimous.

Vote: Yes – Holloway, Hrbek, Lauder and Parker
No – Conkey and Sayre
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 – Resolution for Drinking Water Resource Management
- B) COUNCIL APPROVAL – Bid – Various Types/Quantities of Concrete
- C) COUNCIL APPROVAL – Resolution of Support – Petal High School Marching Band

Mr. Graham asked that Council remove Consent Item #6A – Drinking Water Resolution.

Vice Mayor Hrbek moved that Council approve the consent agenda as amended with Items #6B and #6C only; tabling Item #6A until a later date.

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 OF SUPPORT – Petal High School Marching Band

WHEREAS, as part of the Presidential Inaugural events being held in Washington, DC. On January 20, 2009, President-elect Barack Obama and Vice President-elect Joe Biden’s Inaugural Committee has officially extended an offer to the Petal High School Marching Band to represent the State of Mississippi in the 56th Presidential Inaugural Parade; and,

WHEREAS, the Petal High School Marching Band is the only act in the parade from the state of Mississippi and joins representatives from across the country to participate in this historical event; and,

WHEREAS, the Petal High School Marching Band consists of 158 members including Directors and Chaperones the total is 175 visiting the Town of Front Royal, and;

WHEREAS, all participants of the Petal High School Marching Band are responsible for paying their own lodging and transportation to and from Washington, D.C. and no financial request is being requested of the Town of Front Royal; and,

WHEREAS, the Petal High School Marching Band requests that the Town of Front Royal act as their Host City for this historical event; and,

NOW THEREFORE BE IT RESOLVED, that the Mayor and Town Council formally support the Petal High School Marching Band as they participate in the Inaugural Parade in Washington, D.C. on January 20, 2009 and agree to act as the Host City for the Petal High School Marching Band and, encourage all citizens of the Town of Front Royal to make them feel welcome during their stay.

COUNCIL APPROVAL – An Ordinance to Grant to the Potomac Edison Company, d/b/a Allegheny Power, the right to Occupy and Use the Streets of the Town, to Erect Wires for the Purpose of Transmitting and Distributing Electric Current. (1st Reading)

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

Councilman Sayre moved that Council affirm on its first reading an Ordinance to grant to the Potomac Edison Company, d/b/a Allegheny Power, and its successors and assigns, the right to occupy and use the streets, avenues, etc., of the Town of Front Royal, Virginia, for the term and upon the conditions therein stated to erect, construct, maintain, etc., wires, cables, etc., for the purpose, among other things, of transmitting and distributing electric current.

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 – Resolution of Support of the Town Manager

Vice Mayor Hrbek moved that Council approve the resolution supporting the Town Manager.

Vice Mayor Hrbek read the resolution in full for the public.

Councilman Sayre commented to Mr. Graham that he was sorry that the matter occurred. He expressed hope that Mr. Graham could put the concern behind him and move forward.

Vice Mayor Hrbek noted that as a member of Rotary, he felt it was regrettable that the events were confirmed by the Rotary Club. He expressed his full support of Mr. Graham and noted his respect for his decisions and advice on issues. Vice Mayor Hrbek expressed hope that the Town would be fortunate enough to have Mr. Graham on board for many more years. Mr. Hrbek stated that to bring Mr. Graham in as Town Manager was a risk, and a risk

which has paid off handsomely. He noted that he was embarrassed for the Town of Front Royal and the Rotary Club.

Town Attorney Robinett complimented Assistant Town Attorney George Sonnett for the preparation of the resolution in support of the Town Manager.

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 OF SUPPORT – Town Manager

WHEREAS, it has come to the attention of the Town Council of the Town of Front Royal, Virginia, that the Front Royal Rotary Club, acting by and through its President, Glenn Murphy, and on behalf of its Board of Directors, has, on and about November 26, 2008, through the use of the local media and otherwise, publicly brought into question the integrity of the Town Manager, J. Michael Graham, impugning his reputation, and,

WHEREAS, the said Council believes that the Town Manager’s integrity to be of the highest order and beyond refute, that the statements made against him are unfounded and unfortunate, and wishes to express its full confidence in the Town Manager in the strongest possible terms, and,

NOW, THEREFORE, BE IT, HEREBY, RESOLVED by the Town Council of the Town of Front Royal, Virginia, that it believes the Town Manager’s integrity to be of the highest order and beyond refute, that he enjoys the full confidence of the Town Council in the performance of his duties as Town Manager, and this Council rejects any accusations or innuendo to the contrary.

RENDER A DECISION ON THE BOARD OF ARCHITECTURAL REVIEW APPEAL – Michael V. Greenan – 227 S. Royal Avenue

Vice Mayor Hrbek moved that Council approve the appeal requested by Mr. Greenan.

Councilman Lauder noted that the only issue significant relating to the home was that the home was not that significant. He stated that the home was not a very historic structure and had been significantly changed over the years. Councilman Lauder noted that the home was a nice structure, but it was not very historic. He expressed his support of Mr. Greenan’s request.

Councilman Conkey explained that his son lived in a home in the historic district in old town Alexandria in a home clad with German lap siding. He stated that his son has become well versed in replacing pieces of siding as they rotted. Mr. Conkey noted his concern was maintaining the integrity of the historic district. He commented that the Board of

Architectural Review (BAR) was correct in their decision, adding that he recognized and sympathized with the financial aspects of the appeal. Councilman Conkey stated that many buildings within the historic district have moved away from their original historic nature, though a line should be drawn at some point to not continue the changes.

Mr. Robinett suggested that motion be corrected to have Council Approve the Certificate of Appropriateness, to be clear. Vice Mayor Hrbek and the Council accepted the change to the motion.

Councilman Parker noted that Government should not intrude too much into how one manages their own property. However, he noted, citizens should be aware of the law and the procedures to make changes to structures in the historic district. Mr. Parker stated that as Mr. Greenan had worked on another structure in the Town, he must have been aware of the approval process for said work. Councilman Parker stated that it was not fair to ask forgiveness, rather than permission, especially as the applicant had begun a multitude of work, including changing the windows. Mr. Parker stated that the Virginia Department of Historical Resources stated that they were aware that the building had asphalt siding, though they were unsure of what was underneath the siding. Councilman Parker stated that Mr. Greenan should have checked with the Town before beginning his work, however; he voiced concern with the government being too involved with an individual's private property.

Councilman Conkey noted that the argument that the government does not have the right to authorize work on private property, devalues the entire Zoning Section 175 of the Town Code. He stated that the Town had a zoning code as there was the need for the government to address some areas of zoning. Councilman Conkey noted that the good of the community was more important than the convenience of one person. He stated that the historic district adds value to the community as a whole.

Vice Mayor Hrbek stated that he had great concern when the government attempted to tell property owners how to hang their shutters or paint their houses. He noted that if the historic district needed to be revised he would entertain the discussion to do so. Vice Mayor Hrbek stated that following rules and procedures was important, however; if the government was attempting to dictate such measures he had concerns with that as well. He noted that it was not his job to determine what was historical. Vice Mayor Hrbek voiced his support of the motion to approve the applicants request for a Certificate of Appropriateness.

Councilman Conkey stated that the Town had a responsibility to the owner of the home and the community. He noted that he would fight to hold onto the historic district. Councilman Conkey stated that the Board of Architectural Review members were quite knowledgeable on historic property and now the Council may overturn their decision.

Vice Mayor Hrbek stated that the Board of Architectural Review was an extension of the Town Council.

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

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

AUTHORIZE TO ADVERTISE FOR A PUBLIC HEARING – Amendment of Town Code Section 175-84 – Board of Architectural Review – Establishment and Terms of Office

Councilman Conkey moved that the Town Council leave the Town Code as written.

Councilman Parker noted that he understood the Planning Commission's concerns. He added that he was troubled that only one Board of Architectural Review (BAR) member spoke on the matter, though several are outside of the Town limits. Councilman Parker voiced support of having those that are appointed by the Town Council be qualified voters of the Town of Front Royal.

Councilman Holloway expressed his agreement with Councilman Parker regarding being qualified voters of the Town. He stated that the members of the Planning Commission had to be residents of the Town, therefore BAR members should also be residents of the Town.

Vice Mayor Hrbek noted that Council should hold a public hearing on the matter to determine the thoughts of the community.

Councilman Conkey noted that there were many individuals who own property down in the Historic District, who are not Town residents, though they have the same interests in preserving the Historic District. He added that some of the said individuals may actually have more qualifications as well. Mr. Conkey explained that during candidate interviews the Town looked at the applicant's ties to the Historic District and the downtown area. He commented that allowing those that lived in Warren County provided the Town more flexibility, and he expressed support of the Planning Commission's recommendation that the code remain as is.

Councilman Holloway asked if the Town required individuals to take training when they are appointed to the BAR. Councilman Conkey stated that they did not require training. Mayor Tewalt added that the training was optional.

Mr. Conlon, Director of Planning, stated that there was an annual conference dealing with historic properties. He noted that one BAR member has attended the conference for last two years, though the conference was not required. Mr. Conlon noted that there was a certification program available to the Board of Zoning Appeals and the Planning Commission, but not for the BAR. Mr. Conlon stated that the conference attended by the BAR member was geared towards the restoration community, as it was a broad conference dealing with preservation issues, and not focused on Boards of Architectural Review.

Councilman Sayre asked why the Planning Commission recommended that the Code not be changed. Mr. Conlon stated that the Planning Commission felt that many individuals had deep interest in the Town, though they were not residents of the Town. He added that also,

the Planning Commission felt many others were able to provide expertise in areas of historic preservation, though they were not Town residents.

Vice Mayor Hrbek asked if the current requirement was to be a resident of Warren County, not necessarily a voter. Mr. Conlon noted that Mr. Hrbek was correct. Vice Mayor Hrbek asked if the Town could move to have a public hearing on the matter which stated that that they must be a registered voter within the Town or own property within the Town.

Mr. Robinett, Town Attorney, noted that it would be a much different amendment than what the Planning Commission received from the Council originally. He added that as the Council was dealing with Chapter 175 of the Town Code, the Zoning Ordinance, all amendments must go to the Planning Commission.

Vote: Yes – Conkey, Lauder and Sayre
No – Holloway, Hrbek and Parker
Abstain – N/A
Absent – N/A
No – Tewalt to break the tie
(By Roll Call, On motion to leave Town Code as is)

Vice Mayor Hrbek moved that the Town Council authorize a public hearing for the Code amendment.

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

AUTHORIZE TO ADVERTISE FOR A PUBLIC HEARING – A Special Election

Councilman Sayre moved that the Council have a public hearing regarding a special election.

Councilman Sayre stated that, taking into consideration the decision issued by Judge Hupp, the only issue currently was whether Mr. Parker had full voting rights, as he was an appointed rather than an elected member. Mr. Sayre expressed hope that eventually members appointed would have full voting rights.

Councilman Sayre moved to table the matter.

Vice Mayor Hrbek suggested that perhaps the Council should look to amend the Town Charter. He noted that obeying the law and the constitution was important to the Town Council, adding that he felt that the Council had followed both. Mr. Hrbek suggested an

amendment to the Town Charter may resolve the special election issue, and it should be placed on a future worksession.

Councilman Parker stated that he would not be opposed to having the Charter amended rather than having an expensive special election. He noted that perhaps the Charter could read that when a sitting Councilman runs for the office of Mayor and wins, whoever received the next highest number of votes in line would then obtain the vacant seat, and would be "elected."

Councilman Parker stated that he does not believe the citizens mind having a councilman who could not tax them.

Councilman Sayre stated that the public did not understand the significance and implications of the judge's ruling. He explained that it took four members of Council to pass some issues, and with only five who can vote on those issues, two people could hold the Council hostage.

Vice Mayor Hrbek asked what the super majority votes were, which Mr. Sayre just mentioned. Mr. Robinett noted that the simple majority applies to appropriations over \$500, taxation, budget matters, even bonds, etc. Mr. Robinett stated that there was a Circuit Court decision which was limited to bonded indebtedness, which was the law in the 26th Circuit. He noted that there were two areas that he is aware of which require a certain vote: the sale of Town property, which requires a 3/4th's elected majority; and special assessments which required a 2/3rd's elected majority.

Councilman Sayre added that approving the budget takes four council members.

Councilman Parker noted that the Council needed to work together to have a consensus to obtain the best solution for aspects, whether some individuals can vote on the issues or not. Councilman Conkey expressed his strong agreement with Mr. Parker. He noted that Mr. Parker had compelling arguments on many issues and while in some cases he may not have a vote, he would have a voice.

Councilman Lauder noted that Delegate Athey stated that he would remedy the problem by requiring special elections to be held with all Town Council vacancies. He stated that it would not fix the problem. Mr. Lauder opined that the General Assembly should make a change noting that those who were appointed by other Council members would have full voting rights as if they were elected.

Councilman Sayre withdrew his motion to table.

Councilman Sayre moved to move the matter to a worksession.

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)

COUNCIL DIRECTION – Funds Related to Molly Denton Will

Mr. Robinett explained that the aid and guidance portion of the motion was inaccurate. He suggested that the wording be changed to file an “interpleader.”

Councilman Parker moved that Council direct the Town Attorney to file a complaint seeking an interpleader with the Warren County Circuit Court as to the Molly Denton Will.

Mr. Robinett explained that the Town had received the use of the investment of the funds, though the Town never actually owned the funds. He noted that the Town never had any right to the funds, nor did they have any right to the funds at the present time, according to the terms of the will.

Mr. Robinett stated that with an interpleader, the Town would be stating to the Court that they had funds which did not belong to the Town. He added that the Town would ask the Court to bring in the named defendants to have them litigate their claims to the funds. Mr. Robinett stated that the Town no longer had any entitlement to the funds as they were not teaching the swimming lessons. He noted that Warren County and the three children of Molly Denton shall be named as defendants.

Vice Mayor Hrbek noted that the Town had an obligation to return the funds to the estate; however, he would be willing to send it to the Court to bring closure to the matter.

Councilman Sayre opined that the Town should look to the beneficiaries to determine what should be done with the fund. He stated that sending the children of Molly Denton a letter to determine which direction they would prefer would be helpful. Mr. Sayre explained that the swimming lessons had been the original intent for funds and that was the path the Town should take.

Councilman Conkey stated that the smart, political thing to do would be to turn the funds over to the County. He noted that the Town Attorney’s responsibility was to protect the interests of the Town. Mr. Conkey stated that while it may be the convenient thing would be to turn the funds over to the County, though it would be potentially placing the Town at some risk. Councilman Conkey commented that it was the responsibility of the Council to do the right thing, not the convenient thing. He expressed support in sending the matter to a judge for direction.

Vice Mayor Hrbek stated that the heirs would not have a say in the matter, but rather the executor of the estate that would have the say on how it would be distributed. Mr. Hrbek stated that he would like to bring closure to the matter.

Councilman Holloway stated that he agreed with Councilman Conkey, noting that going forward with the advice of the Town Attorney was appropriate. Mr. Holloway stated that the funds were not used within a three year period as stated within her will and obtaining the Court’s opinion was the prudent option.

Councilman Sayre stated that sending the matter to the courts was the most cautious way to move forward; however, he opined it was sending the wrong signal to those who may wish to bequest money to the Town through their will.

Councilman Lauder apologized for the delay in the dealings. He voiced support of having the court decide the matter.

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)

COUNCIL APPROVAL – Town Attorney’s Filing of the Recent Attorney General’s Opinion in Circuit Court

Mr. Robinett noted that he requested that the Town Manager’s Assistant place the matter on the agenda on December 4th. He stated that he filed the suit December 5th. Mr. Robinett stated that the Town had the memo noting the Circuit Court decision, though he was unsure if the judge had signed the court order. He explained that it was theoretically possible for the Council to non-suit the matter, or to withdraw the matter.

Mr. Robinett suggested that the Council retroactively approve the authorization to file the suit.

Vice Mayor Hrbek moved that Council approve the Town Attorney’s filing of the recent case.

Councilman Parker noted that he would abstain on the matter as it directly affected him.

Vice Mayor Hrbek stated that in the news media recently a reporter implied that the Town violated that Freedom of Information Act by having a secret meeting to give Mr. Robinett direction and instruction on the matter. He stated that Mr. Robinett phoned and obtained advice on a matter. Mr. Hrbek noted that he and Mr. Robinett mentioned that, as Chief Legal Officer for the Town of Front Royal, Mr. Robinett had the authority to move forward on the matter. Mr. Hrbek stated that perhaps it should be on the agenda just to publicly bless Mr. Robinett’s decision, though he did not feel that Mr. Robinett needed their blessing on such a matter. Vice Mayor Hrbek reiterated that he had not voted on any matter over the telephone, nor did the Council have a special or secret meeting.

Councilman Sayre voiced his agreement with Mr. Robinett. He asked if Mr. Robinett planned to non-suit the case. Mr. Robinett stated that if Council voted to non-suit the case at this stage, it could be possible as the final order has not been signed by the judge.

Councilman Sayre stated that he received a letter from David Griffin which requested that the Town follow the law by holding public meetings.

Mr. Robinett stated that when he spoke with Mr. Griffin, he indicated that he was representing the Northern Virginia Daily. He noted that information which Mr. Griffin had been given appeared to be inaccurate. Mr. Robinett stated that he explained to Mr. Griffin that he had acted according to 2.2-3710 B, which authorizes telephonic communication to ascertain the official position of elected officials. He noted that he had phoned five individuals before he filed the suit and the sixth member of Council after he filed the suit. Mr. Robinett stated that he told each member that he was filing the suit due to a phone call he had received from a Northern Virginia Daily reporter the previous day. He explained that the reporter stated that Mr. Tederick had intended to file a lawsuit in order to unseat Councilman Parker.

Mr. Robinett noted that he responded to that direct threat by defending the Council's decision in court and for that reason he filed the lawsuit.

Councilman Sayre noted that a concern he had was that the Town voted on the matter on August 11th to not send the matter to the judge. He stated that the Council had also voted not to move forward with sending the issue to the judge a second time in November. Councilman Sayre commented that if there was going to be a change in the vote, the matter should have come back to public meeting for proper debate and discussion.

Mr. Robinett stated that on August 11th the Town did not have the Attorney General's opinion indicating that the 45 time limit applied. He noted that when they voted down the idea of filing the lawsuit, there was, at that time, no particular reason to move forward on the matter as no one at that time believed the 45 day rule applied. Mr. Robinett stated that on November 17th when the matter was voted on a second time, the Town did not have the information regarding Mr. Tederick's intent. He stated that the information regarding Mr. Tederick was what caused him to telephone each member of Council to advise them that he was moving forward with the suit.

Councilman Sayre noted that he received the call at 4:31 at his office and he had already left the office for the weekend. Mr. Sayre stated that he heard the results of the case through the Northern Virginia Daily reporter.

Mr. Robinett asked Mrs. Berry to read the following from the Town Code into the record:

**Town Code Section 4-40
SUITS, PROSECUTIONS AND DEFENSE DUTIES**

It shall also be the duty of the Town Attorney to commence and prosecute all actions and suits to be brought by the town before any tribunal in this state and to appear, defend and advocate the rights and interests of the town or any officer of the town in any suit or prosecution for any act in the discharge of his official duties or wherein any estate, right, privilege, ordinance or acts of the town government may be brought in question. He shall appear before the County Court and prosecute on behalf of the town any person or persons charged with violation of any ordinance of the town when requested so to do by the Mayor or Town Manager. He shall also prosecute or assist in the prosecution before the Circuit Court of all appeals of criminal cases from the County Court to the Circuit Court of the county.

Mr. Robinett stated that that code section authorizes the Town Attorney to move forward on such issues without the advice or consent of the Town Council. He noted that he and the Assistant Town Attorney routinely appear in court on behalf of the Town. Mr. Robinett noted that he moved forward with the matter as a threat was presented.

Vice Mayor Hrbek stated that he appreciated the actions of the Town Attorney for holding the Council's options open.

Councilman Sayre noted that he did some research and there were very limited times when telephonic meetings could occur.

Councilman Conkey stated that the individual calls from Mr. Robinett did not qualify as a conference call. Mr. Sayre and Mr. Hrbek expressed their agreement. Councilman Conkey stated that the calls did not qualify as a meeting either.

Councilman Sayre read various code sections and Mr. Robinett noted that the code sections were not relevant to the actions he took. Mr. Robinett stated that there were sections which specifically authorized the Staff to ascertain the position of the elected members of the governing body. He stated that he did not request a vote from any member of Council, but rather he informed them that he was proceeding to file a lawsuit on the matter. Mr. Robinett stated that the Freedom of Information Advisory Council in Richmond had noted that the procedures he followed were appropriate, proper and legal.

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

No – N/A

Abstain – Parker

Absent – N/A

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

(By Roll Call)

RECEIPT OF PETITIONS OR CORRESPONDENCE FROM THE PUBLIC

Matthew Tederick, of 21 Edgemont Street, stated that he was confronting the Council as a concerned citizen. He opined that the Mayor had lost control of the Council and the Staff. He noted that the comments that Mr. Robinett was the Chief Legal Officer of the Town and could move forward with a lawsuit the Town had voted twice to remain out of was startling. Mr. Tederick noted that he supported Councilman Parker in the general election, though the issue at hand was the need for that position to have full voting rights. He asked the Council to exhaust all opportunities to do what they could to have Mr. Parker have full voting rights.

Mr. Tederick expressed concern with the Council having excessive secret meetings, as it was a serious matter. He noted that the Council was a public body, not a private board of directors. He stated that it was in the citizen's best interest to have everything in writing. He read the letter from the legal counsel for the Northern Virginia Daily. Mr. Tederick pointed out that Mr. Griffin was asking the Council to publicly apologize.

Mr. Tederick noted that the Town should be embarrassed by how the Molly Denton Will issue had been handled. He encouraged Council to do the morally right thing and obtain control of what was taking place.

Mr. Tederick stated that he was pleased to see the Council take a vote in favor of the resolution of support of the Town Manager. He expressed that perhaps some issues reside with the fact that Mr. Graham has no municipal government experience. He offered the following solutions to ease the turmoil within the Town:

- Consider publicly apologizing to the community;
- Suggested that the Council take the Freedom of Information Advisory Council class;
- Call for a Special Election;
- Find a retired Town Manager who could mentor Mr. Graham;
- Give the funds to Warren County in order to resolve the Molly Denton will issue;
- Ask Council to take on the personal mission with the crisis within the corridor; and
- Requested that Council hold public meetings with Warren County.

David Silek, of 165 Hickerson Hollow Road, Front Royal, noted that some members of the Board of Architectural Review may have had obligations which prevented them from attending the Planning Commission to express their views. He stated that there had been problems filling the positions requiring the policies to be changed to only require Warren County citizenship. Mr. Silek stated that the Historical District was, in essence, a property owner's association. He noted that BAR members should either own property in the district, or the Town should continue to allow those who reside in Warren County to serve as well.

Mr. Silek stated that the Molly Denton matter was laughable. He expressed concern with causing the Denton family to incur legal expenses and suggested that the Town pay their legal expenses. Mr. Silek noted that it was unfair to the Denton heirs, as well as being unethical and wrong.

Mr. Silek noted that the Town's Freedom of Information Act violation was shocking. He stated that attorneys had a duty not to exceed the authority granted to them by their clients. Mr. Silek stated that if the Town voted twice to take a certain legal position on a matter, and the Town Attorney did something contrary to that position, the attorney client duty had been violated. He stated that it was malpractice and a violation of the rules of professional responsibility.

Mr. Silek noted that it was good that the Town Manager came from outside government, even though it created problems. He stated that he did not really care for Mr. Graham; however, he still felt that it was a good idea to have a Town Manager from outside of government serving the Town.

Steve Burke, Director of Environmental Services, extended a happy holiday to the Town Council and the citizenry.

CLOSED MEETING – 1) Consultation with Town Attorney regarding Potential Litigation with Cracker Barrel Restaurant and Others

Vice Mayor Hrbek moved that Council convene in a Closed Meeting to consult with the Town Attorney 1) regarding potential litigation with Cracker Barrel Restaurant and others, such consultation in open meeting would adversely affect the negotiating or litigating posture of the Town, pursuant to Section 22.2-3711(A)(7) of the Code of Virginia, 1950, as amended.

Councilman Sayre asked if it was possible if the matter could be hold in open session. Mr. Robinett stated that should the motion not carry by a majority vote the matter could be discussed in open session.

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

Vice Mayor Hrbek moved 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 individual member be taken by roll call and recorded and included 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 10:22 p.m.

APPROVED:

Jennifer E. Berry
Clerk of Council