

The SPECIAL meeting of the Town Council of the Town of Front Royal, Virginia was held on Monday, January 19, 2009, in the Warren County Government Center’s Board Meeting Room. The roll was called at 7:00 p.m.

**PRESENT:** Mayor Eugene R. Tewart  
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.)

**COUNCIL APPROVAL – Authorize the Town Attorney to Prepare and File and Litigate to Conclusion, if he be so advised, a Complaint seeking Declaratory Judgment on the Town’s behalf, either as part of the suit styled *Applebee’s, et als v. Town of Front Royal*, or as separate litigation involving the same parties**

*Councilman Parker moved that Council authorize the Town Attorney to Prepare and File and Litigate to Conclusion, if he so be advised, a Complaint seeking Declaratory Judgment on the town’s behalf, either as part of the suit styled Applebee’s, et als v. Town of Front Royal, or as separate litigation involving the same parties.*

*Councilman Sayre moved to amend the motion to include the following text:  
And appropriately advise Council of important developments and not engage in any settlement talks without first placing the issue on an agenda for a vote by Council to approve such action.*

Councilman Parker explained that the amendment was self-explanatory, and he would be unable to support the amendment. Councilmen Lauder, Conkey and Holloway expressed their agreement with Councilman Parker. Councilman Conkey added that tying the Town Attorney’s hands would unreasonably limit his authority.

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

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Vice Mayor Hrbek explained that he would support the motion, though he had concern with requesting the court to clarify an issue when there was not a case pending before them. Mr. Hrbek noted that several weeks prior he had spoken with the Town Attorney requesting that

if the matter could be resolved by allowing the complainants to pass on the PILOT fees to the consumer, than the option should be pursued.

Councilman Sayre explained that some confusion existed regarding meals tax rates within Virginia. He noted that it was possible that the court would find the request reasonable.

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, On Main Motion to seek a Declaratory Judgment)

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**CLOSED MEETING** – 1) Pending Litigation, specifically *Applebee’s, et als v. Town of Front Royal*

*Vice Mayor Hrbek moved that Council convene in a Closed Meeting to discuss pending litigation specifically Applebee’s, et als v. Town of Front Royal, with the Town Attorney pursuant to Section 22.2-3711(A)(7) of the Code of Virginia, 1950, as amended.*

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)

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*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)

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**COUNCIL APPROVAL** – **Authorize Town Attorney to Retain Legal Counsel for the Town**

*Councilman Parker moved that Council authorize the Town Attorney to retain Carter Glass to represent the Town regarding pending litigation, specifically Applebee’s et als v. Town of Front Royal or separate litigation involving the same parties.*

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)

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There being no further business, the Mayor declared the meeting adjourned at 7:42 p.m.

APPROVED:

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Jennifer E. Berry  
Clerk of Council