

The regular meeting of the Town Council of the Town of Front Royal, Virginia was held on November 9, 2009, 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 7:05 p.m.

PRESENT: Mayor Eugene R. Tewalt
Councilman Carson C. Lauder, Jr.
Councilman Thomas H. Sayre (*arrived at 7:18 p.m.*)
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

ABSENT: Vice Mayor Bret W. Hrbek

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

Councilman Parker moved that Council approve the Regular Council Meeting minutes of October 26, 2009 as presented.

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

RECEIPT OF PETITIONS OR CORRESPONDENCE FROM THE PUBLIC

Brandy Rosser, of Downtown Front Royal (DFR), thanked the Town for allowing their organization to hold the Hometown Halloween Event on Main Street. She noted that about 4,000 people attended and the business owners could not have been more pleased with the turn out. Ms. Rosser extended thanks to Councilman Sayre and Chief Furr for their judging participation in the costume contest, adding that DFR looked forward to a successful 2010 event.

Mr. Albert Spells, Supervisor of the Harrison Lake Fish Hatchery with the United States Fish & Wildlife Services, noted that he was available for questions on that agenda item. He added that they had \$110,000 set aside to fund the project if Council approved the item.

REPORT OF THE MAYOR, COUNCIL & STAFF

Mr. Graham reported that:

- Hydrants were being installed on Monroe and 11th Street and then paving may start right after that. He added that the Town was attempting to pave as much as possible, though weather was a factor during the winter months and many streets would be paved in the spring.

- The Guard Hill Water Tank repairs commenced and water pressure may fluctuate at times.
- The Public Works Department's Yard Waste Program would end on November 18th, though it would resume in the spring of 2010.
- Staff developed a better idea for the Veteran's Day Holiday on Wednesday the 11th, as trash pickup was very heavy that day of the week. Mr. Graham stated regular trash and recycling pickup will be Wednesday, though the Town offices would be closed.
- The Riverton Dam signs were in place to address the dangerous areas and the ordinance was before Council on their current agenda.
- The Virginia Department of Transportation (VDOT) noted that the changing out of the traffic lights would soon occur, and it should be completed by January of 2010.
- VDOT also stated that the bid out for Happy Creek Road extension was moving forward and they hoped to begin construction in the spring.
- Andy Conlon, Director of Planning & Zoning, resigned to pursue other interests and Bruce Drummond would be Acting Director until the Director position was filled.

Marti Viggiano, Deputy Emergency Coordinator for Warren County, noted that the aim of Ms. Viggiano stated that they held a shelter drill in August in Skyline High School which went extremely well. She added that there were 300 confirmed H1N1 Flu cases in the Emergency Room during October, and 70 confirmed cases at the Urgent Care Center.

Councilman Sayre arrived at 7:18 p.m.

Ms. Viggiano noted that the schools have 221 confirmed cases of H1N1 and they had begun to administer H1N1 shots to the parent-approved schoolchildren. She stated that the vaccines have begun to go throughout that the State as well. She gave examples of how to prevent infection, including reviewing basic hygiene factors, and she distributed an emergency guide to members of Council developed by the Emergency Management Team of Warren County/Front Royal.

Mr. Chris Price, Executive Director with the Northern Shenandoah Valley Regional Commission (NSVRC), noted that:

- Transportation funding was the key issue for discussion throughout the State;
- A Transportation Forum would be held November 19th at Blue Ridge Shadows and he invited members of Council attend;
- The focus of the transportation planning was much different than in the past, and now every jurisdiction had been asked to identify their three highest congestion priorities and three highest safest priorities;
- New capacity projects would most like not occur anytime soon;
- Funding was available to assist transit for the regional issues in our area;
- Freight movement infrastructure was planned to accommodate future impacts coming from the Virginia Inland Port, and a study had been commissioned for the Winchester to Front Royal path (Route 522) to investigate truck and freight traffic;
- The foreclosure program had many restrictions put in place by the State and they had petitioned the State to relax the guidelines. Mr. Price noted that they did not want to

compete with the private sector, and the NSVRC had been withdrawing their contracts at times when the private sector had moved in to take care of things.

Councilman Conkey noted that the library was continuing to add programs and attract new patrons, including a music program. He stated that computer classes were given weekly, and the children's staff was working on programs for special needs children and home schoolers. Councilman Conkey added that they would soon begin a book club as well.

Councilman Conkey congratulated Downtown Front Royal for the outstanding number of attendees they had for the Hometown Halloween on Main Street recently.

Councilman Conkey commented on the Northern Virginia Daily editorial about the proposed solar project. He stated that the public needed to understand that the solar project was a moving target and the Town was exploring any and all options. Mr. Conkey added that the public should be assured that the Town was working with all resources to obtain the best options for the citizenry of Front Royal, and they cannot negotiate in public or through the newspapers.

Councilman Lauder noted that the Hometown Halloween event this year was well done, and was clean, safe and easy to reach. Mr. Lauder noted that it was great seeing the stores open for such an event and he looked forward to next year.

Councilman Sayre noted that the Hometown Halloween was a great success. He thanked Chief Furr and the owner of the Main Street Daily Grind for their participation in the merchant's costume contest.

Councilman Sayre added that he was unable to hear the solar presentation at 6 p.m., as he was handling a trial in court.

Mayor Tewalt presented a Pride In Performance Award to James E. Swindell (E.J.) for his dedication in receiving his commercial drivers license. He noted that Mr. Swindell had sought out other training opportunities to advance his knowledge and skills.

Mayor Tewalt asked about lights on the new bridge. Mr. Burke noted that the Town had to work through the Virginia Department of Transportation (VDOT), and the bids for fixtures would be due on Friday. Mr. Burke stated that they would then be ordered and installed by the Electrical Department.

Mayor Tewalt expressed his delight that the Happy Creek Road Project would soon begin and he encouraged Mr. Graham to keep the Council informed as to the progress.

Councilman Sayre stated that Martins gas station was being worked on and it would be a welcome addition to the community.

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

Councilman Holloway moved that Council add an item to the Closed Meeting all ready scheduled at the end of tonight’s agenda specifically: a Discussion of the Performance and Office of Town Manager.

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

CONSENT AGENDA:

- A. COUNCIL APPROVAL – Budget Amendment - “Go Green Virginia” Award
- B. COUNCIL APPROVAL – Resolution Regarding Resolutions of Abandonment of the Undeveloped Right-of-Way and Authorize Conveyance of an Undeveloped Portion of W. 8th Street to William M. Biggs and William J. Biggs
- C. COUNCIL APPROVAL – Virginia Department of Forestry Grant Application – Urban Forestry Advisory Commission (UFAC)

Councilman Conkey moved that Council approve the consent agenda as presented.

Mayor Tewalt asked if any item on the Consent Agenda should be removed for discussion and a separate vote.

Councilman Sayre asked that Consent Item A, Budget Amendment for “Go Green Virginia” Award, be discussed and voted on separately.

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

RESOLUTION – BIGGS PROPERTY

Resolution Regarding The Resolutions Of Town Council Dated May 23, 2005, And August 10, 2009, To Abandon The Undeveloped Right-Of-Way And Authorize Conveyance Of An Undeveloped Portion Of W. 8th Street To William M. Biggs And William J. Biggs

WHEREAS, the Town Council of the Town of Front Royal, Virginia, adopted a Resolution on May 23, 2005, after first conducting a duly advertised Public Hearing, as required by law, which authorized the, then, Mayor to execute a Quitclaim Deed to William M. Biggs and William J. Biggs (hereinafter “Biggs”), as tenants in common, for a portion of West 8th Street in said Town, measuring approximately 9,000 square feet, less and except a 20-foot wide easement for a sewer line, in exchange for the payment of the sum of

\$30,000.00, and the conveyance by Biggs of an 1,860 square foot right-of-way at the intersection of Shenandoah Avenue and Kendrick Lane; and,

WHEREAS, Counsel for the proposed Grantees in said Quitclaim Deed has now indicated that he is unable to obtain title insurance on the property to be conveyed unless the proposed Deed to his clients is upgraded to a conveyance with Special Warranty; and,

WHEREAS, the said Council now desires to reaffirm all portions of the aforesaid Resolutions and, acting on the advice of the Town Attorney, to direct and authorize the Town’s present Mayor to execute and deliver the aforesaid Special Warranty Deed in exchange for the payment described above and the conveyance described above.

NOW, THEREFORE, BE IT, HEREBY, RESOLVED by the Town Council of the Town of Front Royal, Virginia, that the said Resolutions of May 23, 2005, and August 10, 2009, are, hereby, reaffirmed in all particulars, EXCEPT THAT the Deed to the said William M. Biggs and William J. Biggs shall be an ordinary conveyance with Special Warranty; AND

BE IT, FURTHER, RESOLVED that Eugene R. Tewalt, Mayor, is hereby authorized to execute and deliver, on behalf of the Town, the aforesaid Special Warranty Deed, and to execute, on behalf of the Town, as evidence of its acceptance of the conveyance, a Deed from the said William M. and William J. Biggs for the 1,860 square-foot right-of-way at the intersection of Shenandoah Avenue and Kendrick Lane, as aforesaid, all of this to be done upon delivery of the said sum and delivery of the said right-of-way Deed.

COUNCIL APPROVAL – Budget Amendment – “Go Green Virginia” Award

Councilman Sayre moved that Council approve the budget amendment in the amount of \$1,000 from Mosely Architects for winning the “Go Green Virginia” Award from the Virginia Municipal League’s “Green Government Challenge.”

Councilman Sayre commended the Town Staff for their work on the project. He thanked Staff for their efforts and reiterated that their devotion led to the award.

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

PUBLIC HEARING – An Ordinance to Amend & Reenact Code Sections 75-44 and 160-5 Pertaining to Delinquent Real Estate and Personal Property Tax Lists – Mailing of Bills, and to “License Year” for Town Motor Vehicle Licenses (1st Reading)

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

Councilman Holloway moved that Council affirm on its first reading an Ordinance to amend and re-enact Town Code Sections 75-44 and 160-5 pertaining to delinquent real estate and personal property tax lists – mailing of bills and to “License Year” for Town Motor Vehicles, effective January 1, 2010.

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

No – N/A

Abstain – N/A

Absent – Hrbek

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

(By Roll Call)

COUNCIL APPROVAL – Budget Amendment and Bid for Recycling Ramp

Councilman Conkey moved that Council approve a budget amendment in the amount of \$35,360 so that Council can approve the award of a bid to David R. Dill Concrete in the amount of \$35,360 for the construction of a new recycling ramp located at the end of Manassas Avenue across from the Wastewater Treatment Plant.

Councilman Sayre noted that he was pleased to go to the site when he dropped off recycling items. He inquired as to whether this would impact the ability of the public to drop off their recyclables. Mr. Graham noted that the recycling ramp’s timbers had deteriorated significantly, and they needed to be repaired. He added that there would be no changes with the recycling drop off.

Councilman Conkey noted that the winning bid was quite low and questioned the amount, adding that he assumed that the Staff was comfortable that the company could perform effectively at that low price. Terry Seal, Director of Public Works, explained that the project packets were identical, and the Staff would closely monitor their progress. He noted that they had never used the company before.

Councilman Holloway expressed concern, as Mr. Conkey had. He noted that the vast amount differences did seem quite odd.

Mayor Tewalt asked that the project be carefully monitored to ensure the Town was received an acceptable repair.

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

No – N/A

Abstain – N/A

Absent – Hrbek

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

COUNCIL APPROVAL – An Emergency Ordinance to Enact Code Section 154-10 Pertaining to Town-Owned Dam on the North Fork of the Shenandoah River

Councilman Parker moved that Council adopt an Emergency Ordinance to enact Front Royal Town Code Section 154-10 pertaining to the Town-Owned Dam on the North Fork of the Shenandoah River and instruct the Town Manager to mark the Dam and the areas adjacent to the Dam with appropriate signage.

Councilman Sayre noted that perhaps the dam removal process should have come before this item on the agenda.

Mr. Graham stated that the dam removal would take over a year, and the ordinance would protect the Town and to assist with keeping people away from the structure. He added that the signs had already been placed.

Mr. Robinett noted that the ordinance’s primary purpose was to allow the Police Department to enforce the trespass sign measures which are in place currently.

Councilman Conkey noted that the issue was a matter of public safety, adding that recently a lady had walked across the structure with a child. He stated that he supported the legislation which would give the Police Department the opportunity to enforce the measures.

Councilman Sayre noted that he supported the legislation as it would be protecting the Town.

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

No – N/A

Abstain – N/A

Absent – Hrbek

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

(By Roll Call)

☞ EMERGENCY ORDINANCE ☞
North Fork Dam on the Shenandoah River

An Ordinance To Enact Front Royal Town Code Section 154-10 Pertaining To The Town-Owned Dam On The North Fork Of The Shenandoah River

WHEREAS, the Code of Virginia and the Town Charter of the Town of Front Royal, Virginia, expressly authorizes the Town Council to enact Ordinances which declare that entering upon on certain property owned by the Town is trespassing; and

WHEREAS, the said Town Council has considered the danger presented to Citizens of the Town who, for any reason, might seek to walk upon or otherwise touch or use in any way the dam formerly used by the Town for the generation of electric power, located on the North Fork of the Shenandoah River, just east of the U.S. Route 340/522 bridge; and

WHEREAS, after studying such dangers and the potential for liability presented by anyone who makes any use of the dam or goes anywhere near it, the said Council has determined that it is in the best interests of public safety and of the Citizens of Town of Front Royal, Virginia, to declare that anyone who goes near the said structure is trespassing on Town-owned property, and to, further, instruct the Town Manager to mark the dam and the areas adjacent to the dam with appropriate signage, as described in Section 29.1-509 of the Code of Virginia.

NOW THEREFORE, BE IT ENACTED by the Town Council of the Town of Front Royal, Virginia, that Section 154-10 of the Front Royal Town Code is hereby enacted as follows:

Section 154-10 TRESPASSING ON THE SHENANDOAH RIVER DAM.

(A) Any person who shall walk upon, use, or touch the Town-owned dam on the North Fork of the Shenandoah River, located just east of the U.S. Route 340/522 bridge, shall be guilty of trespassing on Town property and, upon conviction, shall be punished as provided in Section 154-2 of this Code.

(B) The Town Manager shall cause appropriate signage and, where required, buoys, to be installed upon the dam and in the areas above and below the dam and on the banks immediately adjacent to the dam, all as described in Section 29.1-509 (F) of the Code of Virginia, 1950, as amended, which shall give notice to the general public of the provisions of subsection (A) hereof and which shall warn the public of the hazards posed by the dam.

Pursuant to Section 4-4 (F) of the Town Code, this Ordinance is considered an Emergency Ordinance and shall take effect immediately upon its passage.

COUNCIL APPROVAL – Riverton Dam Removal Process

Councilman Holloway moved that Council approve the process to move forward on the removal of the Riverton Dam by instructing Staff to contact the United States Fish and Wildlife Services and begin the necessary paperwork to receive funding for the removal.

Councilman Sayre noted that the United States Fish & Wildlife Services would allot the Town up to \$100,000 of the funds to remove the dam as it was a high hazard structure with no cost to the Town. Mr. Graham noted that Mr. Sayre was correct.

Mr. Graham stated that one question arose early on as to whether the removal of the dam would affect the properties nearby. Mr. Albert Spells with United States Fish & Wildlife Service noted that problems with back stabilization downstream had not been an issue with other projects which he had participated in. He added that the amount for the dam removal would be enough to restore the project location riverbanks once the dam was removed.

Mayor Tewalt expressed concern with having the Town involved in repair work upstream. Mr. Spells reiterated that though he had never had such occurrence during his dam work, he could not say for absolute certain that problems will not occur.

Councilman Lauder noted that he had issue with removing the dam, noting that perhaps it could be repaired for the \$110,000 amount, rather than being removed.

Vote: Yes – Conkey, Holloway, Parker and Sayre

No – Lauder

Abstain – N/A

Absent – Hrbek

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

Mayor Tewalt voiced opposition to tearing out the dam in support of Councilman Lauder's position on the issue.

COUNCIL APPROVAL – Budget Amendment and Donation to Humane Society

Councilman Parker moved that Council approve a budget amendment in the amount of \$8,380.00, so that Council can approve a donation in the amount of \$8,380.00 (water \$5,580.00 and sewer \$2,800.00) to the Warren County Humane Society, in an amount sufficient to cover their water and sewer connection fees for their facility located in Happy Creek Industrial Park, to uphold a previous Council's motion made September 23, 2002 and instruct staff to process a check to the Humane Society for them to pay these fees so that the liens can be released.

Councilman Sayre reiterated the situation in full for members of public to understand. Mr. Graham explained that it would be their option to use the money in that amount back to the Town, and he would assume that it would be given back to the Town, though they have not been required to do so, as it was a donation.

Councilman Sayre asked for further clarification. Mr. Robinett explained that Council was voting to give a donation and it was up to the recipient to determine how to use the funds.

Councilman Holloway asked why the amount was not paid originally in 2001. Mr. Graham noted that then Town Manager was supposed to follow up and that did not occur. He noted that the Humane Society had requested that a separate instance of this type of agreement take place, though the Town had never fully followed through with the prior instance, and needed to do so before addressing their most recent project.

Councilman Holloway asked if the lien was preventing them from proceeding with the next phase of their project. Mr. Robinett noted that perhaps it had delayed them, though he was not certain.

Councilman Sayre asked if a waiver was received in 2001. Mr. Robinett noted that water and sewer tap fees can not be waived, though the Town may donate the funds and then receive them back from the organization.

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

No – N/A

Abstain – N/A

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

COUNCIL APPROVAL – Closing of Streets - Veterans Day Ceremony – American Legion

Councilman Sayre moved that Council approve the request from the American Legion to close the following streets on Wednesday, November 11, 2009, to hold a Veterans Day Ceremony on the Courthouse Square from 11:00am – 11:45am: East Main Street @ Crescent Street; North Royal Avenue @ First Street; West Main Street @ Royal Avenue; South Royal Avenue @ Jackson Street.

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

CLOSED MEETING – Consultation with Legal Counsel and 2) Personnel Matter

Councilman Holloway moved that Council convene in a Closed Meeting for the purposes 1) of consulting the Town Attorney the lawsuit styled Applebee’s Restaurants, etc. et als v. Town of Front Royal, being actual litigation, as such consultation would adversely affect the Town’s litigation posture if done in open meeting, pursuant to Section 2.2-3711 (A)(7) of the Code of Virginia, 1950, as amended; and 2) Discuss Performance and Office of the Town Manager pursuant to Section 2.2-3711 (A)(1) of the Town Clerk and the Town Attorney are the only persons to attend this portion of such Closed Meeting.

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

Councilman Holloway 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 meeting was convened; were heard, discussed or considered during the closed meeting 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, Lauder, Parker, Sayre and Tewalt
No – N/A
Abstain – N/A
Absent – Hrbek

(By Roll Call)

There being no further business, the Mayor declared the meeting adjourned at 9:50 p.m.

APPROVED:

Jennifer E. Berry
Clerk of Council