



Joint Town Council and Board of Supervisors Meeting Minutes

Tuesday, August 13, 2019, 6 p.m.
Warren County Community Center, Villa Avenue



Dan Murray, Chairman of the Board of Supervisors, called the meeting to order at 6 p.m.

Mayor Tederick moved, seconded by Councilman Tewalt, to elect Dan Murray as Chair for the Joint Meeting.

Yea: Carter, Fox, Glavis, Sayre, Murray; Gillispie, Holloway, Meza, Sealock, Thompson, Tewalt, Tederick

Nay: 0

Abstain: n/a

Absent: n/a

Mayor Tederick moved, seconded by Councilman Meza, to Adopt the Rules of the Meeting as presented in the agenda.

Yea: Carter, Fox, Glavis, Sayre, Murray; Gillispie, Holloway, Meza, Sealock, Thompson, Tewalt, Tederick

Nay: 0

Abstain: n/a

Absent: n/a

Opening Comments – Chairman Dan Murray/Mayor Matthew Tederick

Chairman Murray opined that the Economic Development Authority (EDA) should also be sitting at the table with Town Council and the Board of Supervisors. He noted that the three groups needed a solid action plan before the cart is put before the horse, and he defined an action plan as who, what, when, where, why, and how. Chairman Murray noted that then a full evaluation of action plan's effectiveness should be conducted. He stated that those present and the public needed to understand that information pertaining to lawsuits and court actions cannot be discussed at this meeting, and he expressed hope for a productive meeting.

Matthew Tederick, the Town's Interim Mayor, noted that he echoed the sentiments of Chairman Murray, and this meeting would be a time to ask questions and obtain answers, as well as set a timeframe for more answers in the future. He noted that the Town desired a strong partnership with the County of Warren and they do not wish to tread over old ground. Mayor Tederick noted that the legal process and the special grand jury will work itself out and true justice will be obtained. He stated that the two governing bodies must move forward in the meantime.

Mayor Tederick noted that the Town objected to a presentation by the EDA at this first joint Town/County meeting, as it is the first recent gathering, and a time for just the two governing bodies to meet. He added that this is a time for information to be brought forward. Mayor Tederick commented that it is the Town, and the County's desire that more economic development will go forward and more economic development is needed. He expressed hope for area jobs and increased commercial industry as well, though he is unsure what the picture will look like.

Mayor Tederick explained that when he was appointed Mayor he made it a point that the dissolution of the EDA needs to be discussed, though his intent was not to portray that the EDA definitely needs to be dissolved. He clarified that the dialogue should be held to determine if the EDA is insolvent and if the brand is not to be trusted in the community. He noted that moving forward the economic engine needs to be examined in full.

Mayor Tederick reported the Town Staff has completed a tremendous amount of research, not only for this meeting but also the civil suit, and it is not uncommon for there to have been various forms of what the EDA looks like. He commented that the EDA has taken many forms over the last couple of decades. He encouraged the Board of Supervisors to seek the CEDAC document from County Staff and thoroughly read through, as it is an excellent document. Mayor Tederick noted that when CEDAC put together their report there was great reorganization within the EDA.

Mayor Tederick reminded those present that the Town has an open mind and they want to work as partners with Warren County. He noted that there are sentiments that when the Town backed out of the financial aspect of the EDA that the Town abdicated the Town's interaction as it relates to economic development and he noted that was a false pretense, considering the Town has many assets with the EDA, just as Warren County.

Mayor Tederick noted that it was imperative that the EDA Board Members and EDA Executive Director, Mr. Parsons, know that he felt there were good people on the EDA Board, and Mr. Parsons was a fine man, and there are no comments disparaging the EDA as an organization, but rather what does the EDA look like moving forward.

Supervisor Sayre asked if the two bodies could stand for the Pledge of Allegiance as listed on the meeting agenda.

Future of the EDA

i. How can the Town and County join forces for not only the betterment of the community but also to mitigate legal fees?

Mayor Tederick stated that it is puzzling that the County is spending a large amount of resources through the EDA and perhaps County resources, and the Town has now sued the EDA. He noted that it was vitally important to find ways to partner and work together, as Town citizens are also Warren County citizens. Mayor Tederick asked if Warren County is now the fiscal agent of the EDA; Supervisor Sayre confirmed that as of July 1st that was correct. Mayor Tederick noted that there is debt service (a bond) due to expire in 2021 for Stephens, Toray and two other projects. He explained that the Town has been told that this debt service has been refinanced until 2040 without the Town's knowledge or the Town's approval. He asked the appropriate means of handling questions relating to this debt service.

County Administrator Doug Stanley explained that the County just took over as fiscal agent in July and the answer relating to the bond would need to come from the EDA. He stated that a memo could go through the County, as they were handling EDA bills and payroll, though specific questions relating to the bond project would go to the EDA.

ACTION ITEM: Memo to EDA, CC: County related to Debt Service/Dates/Amounts

POLICE DEPARTMENT

Mayor Tederick noted that the Town was promised certain terms as it relates to the Town Police Department and we all know that has now changed. He noted that the Town is very interested in getting a loan and most likely the EDA was interested in getting paid for that debt. Mayor Tederick questioned if there is the possibility of having that matter expedited in order to determine the payoff amount. County Attorney Dan Whitten noted that the County Finance Director, Carolyn Stimmel,

has given a payoff amount to the Town Finance Director BJ Wilson, though there was a disagreement on the amount. Mr. Whitten suggested scheduling a meeting with both Finance Directors, and the Town and County Attorneys.

ACTION ITEM: Schedule meeting with Whitten, Stimmel, Napier and Wilson regarding Police Department payoff amount

Councilman Meza noted that it is important to nail down timelines for these actions. He stressed that the back and forth has gone on for some time and the interest rate has moved at an increasing amount. Mr. Meza added that a timeline for resolving the Police Department amount needs to be 1-2 weeks for the item as the interest rates are rising, and the Town's debt service will be higher as a result of any delay. Mayor Tederick and others expressed their agreement. Mr. Whitten noted that Ms. Stimmel is part time though within two weeks the meeting can be determined.

Vice Mayor Sealock noted that Council needs a priority list from the County and the EDA as they are now two years behind and he has concerns from the issue. He added that he does not want a delay tactic, nor does he want to read that the bank amounts do not agree with the EDA paperwork. Chairman Murray noted that the audit cannot be finished at the moment though they all are working as diligently as possible to move forward.

AFTON INN

Mayor Tederick noted that the Afton Inn is a dilapidated structure at a prominent community intersection and it would take real challenges to finance the project. He stated that some Council members feel it is the EDA's responsibility to honor the finances of the project. Mayor Tederick noted that the Afton Inn is a major priority for Council. Chairman Murray voiced his support of either completing the project or the site becoming a parking lot, though either way it needed to be addressed.

Mr. Whitten asked if the Town has discussed deeding the Afton Inn property back to the Town. Mayor Tederick stated that the next step would be for the Town to develop the MOU and the contractor's attorney will be reaching out as well. Mr. Whitten noted that the attorney for the contractor had already reached out.

ACTION ITEM: Town will work to Develop MOU for Afton Inn within 30 Days

Mayor Tederick stated that currently the contractor has legal grounds regarding the project, as it is a breach of contract. He noted that the contractor is attempting to diligently work with the community. The Mayor expressed hope that a draft contract would go before both the Board of Supervisors and the Town Council within the next 30 days. Mr. Whitten stated that the contractor would like things under roof before bad weather sets in.

ii. Should the Town and County pursue a joint lawsuit against third-party entities?

Mayor Tederick asked if the EDA had an insurance policy to cover criminal activity. Mr. Whitten reported that the EDA has \$500,000 of insurance per instance with Cincinnati Insurance that requires a criminal conviction, he noted that the only other policy was one that covers employees, a Professional Liability Policy, through State Risk Management, with \$1 million per occurrence. Mayor Tederick asked for a copy of those policies referred to by Mr. Whitten; who then noted that the policies could be provided as requested.

ACTION ITEM: Obtain copy of Insurance Policies from Attorney Whitten re: EDA Occurrence Limits

Supervisor Sayre noted that he had concerns with the statute of limitations. Mayor Tederick explained that the Town had locked in their statute of limitations though he was unsure about the County of Warren. He explained to Chairman Murray, and those present, that his questions were not all his own, but rather the Town Council members had submitted their own to him prior to the meeting, and some members may have additional questions as well.

Mayor Tederick asked for list of EDA properties, their true value, the monthly payments due, total debt, etc. Mr. Whitten noted that the list was being worked on though it could be provided when completed.

ACTION ITEM: Obtain copy of EDA Property List from Attorney Whitten within 30 Days

At the request of Mayor Tederick, Mr. Napier explained why the Town had to sue the EDA. Mr. Napier noted that the EDA lawsuit was to prevent misperceptions, adding that it was not a hostile filing. He stated that it was to prevent accusations against Town Council of malfeasance or misfeasance, and to stop the running of statute of limitations. He noted that it was impossible to determine when the improper actions took place and he wanted to possibly broaden the scope of the investigation and the Town does not know how much they have lost or the details of what was taken. Mr. Napier stated that the Town needs to obtain information and determine if data had been withheld. He reiterated that the filing was not a hostile act but rather the Town doing their due diligence.

Mayor Tederick noted that it is difficult to determine the Town's level of liability. He stated that he is perplexed as the EDA is their own corporation, as is the Town and the County, though the Cherry Bekaert Report was given to the Town in a redacted form. He requested an unredacted Bekaert Report with the supporting documentation in order to properly determine the Town's level of liability. Mr. Whitten stated that he did not see an issue, though he would speak with Sands Anderson and get back to the Town on the matter. Councilman Meza noted that the Town had made the request previously. Mr. Whitten stated that a previous request was made and a redacted report was given. Mr. Meza asked what had changed now to allow an unredacted Bekaert Report.

Mr. Whitten noted that he would need to check to see if Sands Anderson would allow the release the of the unredacted Bekaert Report to the Town to ensure it would not violate attorney client privilege. Councilman Meza clarified that Mr. Whitten was responding with an "unsure" answer.

ACTION ITEM: Obtain Unredacted Cherry Bekaert Report as Requested

Mayor Tederick inquired if the Sands Anderson contract is with the EDA; Mr. Whitten noted that it was and the County of Warren has been paying the legal bills. After a question from the Mayor, Mr. Whitten noted that the Board of Supervisors and the EDA Board had not been given or shown the unredacted version of the Bekaert Report.

Supervisor Sayre noted that Mr. Napier needed the unredacted version, at a minimum. He added that it was important to treat the Town as brothers, and he is advocating to make that happen. Mr.

Sayre stated that the Town's lawsuit should be the County's lawsuit. Mayor Tederick noted that was a good point.

Mayor Tederick asked if the County could join the Town's lawsuit against the EDA. Mr. Napier stated that there was no reason why they could not. He added that it would be beneficial and helpful to not have a duplication of efforts. Mayor Tederick asked if Warren County has considered a suit against the EDA for restitution purposes and protection against malfeasance and misfeasance. Chairman Murray noted that a lawsuit has been considered and one had begun. Mr. Sayre stated that the employees are not included in that lawsuit and the County would lose statute of limitations.

Mr. Whitten noted that he could not counsel the Board of Supervisors on the matter, as he was the EDA attorney. Mayor Tederick noted that Board of Supervisors attorney for the EDA lawsuit was Bob Mitchell attorney; Mr. Whitten stated that was correct.

Councilman Meza stated that if they cannot obtain the unredacted Bekaert Report then the Town will be moving forward with the lawsuit largely in part for the discovery and the information necessary to protect the Town against the liabilities. He noted that the Town seems to be hearing that they may receive the report and he asked if the County wished to partner in the lawsuit against the EDA.

Chairman Murray stated that an offer had previously been made to the Town to join their lawsuit. Councilman Meza noted that Mr. Murray seemed to be referring to the Town joining in if the Town paid their portion, and if they did not pay a portion then the County would not share information with the Town. Mr. Whitten noted that he reached out to Mr. Napier and offered the Town an opportunity to participate in the "forensic audit" though the response was that the Town was not interested in participating in the forensic audit and so the County proceeded to pay the costs of the forensic audit through Cherry Bekaert.

Mayor Tederick clarified that Warren County did not contract for the forensic audit – it was the EDA. Chairman Murray stated that the County agreed to pickup the costs of the audit. Mayor Tederick stated that the Town stopped funding the EDA many years ago and he opined that was a mistake. He added that at the time that the County requested that the Town pay a portion towards the lawsuit, the Town/County were not in funding relationship, and considering that the Town citizens are also County citizens, the Town Council chose not to finance the audit. Town Attorney Napier agreed that summary was correct, adding that the Town was moving in another direction at that time, as the Town turned the matter over to law enforcement.

Councilman Sealock noted that the Town did not have their questions answered and he wanted to lay out those questions again, because the Town was burned on the New Market Tax Credit and EDA wants it off their books, as does the Town. He added that the Town cannot go forward until these matters are handled. Chairman Murray stated that the County cannot answer for the EDA.

Mayor Tederick noted that Mr. Napier is open to discussing with the County's legal representation about the prospect of the parties joining together in the lawsuit. He stated that the possible liability exposure to Board of Supervisors members and EDA members is a good question; as is whether the County can be a fiscal agent of EDA. He noted that those questions should be addressed and he strongly encouraged the County to seek legal answers.

Mayor Tederick stated that regarding third-party entities, he noted that he had spoken with Mr. Whitten and the Town's EDA civil suit is preventing the Town from joining forces regarding any third-party entities. He continued, noting that there are third-party entities that the Town feels have acted in a manner that warrant sizeable reimbursement to the Town and the County and it would not make sense for the Town and County to go down separate trails but rather join together against those third-party entities. Mayor Tederick explained that in order for the Town and County to join together the Town would have to drop their case against the EDA. Mr. Whitten noted that was correct, the Town would need to non-suit their case, with prejudice, in order to discuss the matter or eventually use Sands Anderson, should the Town wish to do so. He added that should the Town use a different law firm it would not be the case, which is also acceptable.

Mayor Tederick explained that none of Town Council would like to drop the civil suit with prejudice, though he added that the Town would be open to using another firm or attorney to pursue the other entities and work together. Mayor Tederick stated that the EDA has a lawsuit and if the EDA adds other parties then they can do so, and the Town is going after third parties. He questioned why the County would not go after those parties as well and why the Town and County would not go through after these parties together; and he offered that to Warren County to join with the Town.

Vice Mayor Sealock asked about the statute of limitations if the Town drops the lawsuit. Mr. Napier noted that if it is with prejudice, it is "dead". Mr. Napier noted that if the Town non-suits the case then the time limit may be six months then the Town can revive it. Mr. Napier added that he does not see any point in doing so, adding that one reason in filing the lawsuit, and requesting the Cherry Bekaert Report was that there are other third parties that the Town will want to pursue.

Vice Mayor Sealock voiced support of having the Town and County join together in the lawsuit; Mr. Napier agreed. Mr. Whitten noted that if the Town and County went into a tolling agreement they could share information. Mr. Napier stated that they could not extend the running of the statute of limitations. After brief discussion regarding the tolling agreement, Mr. Napier clarified that a tolling agreement most likely could not take place.

Mayor Tederick stated that the Town/County/EDA could gather to clean up the mess that has taken place within the community. He expressed that he truly wanted to partner with the County to unravel the dynamics of what has taken place. He proposed that the legal representation of the three entities meet to develop a strategy to determine if there are benefits to working together. Mr. Napier agreed, adding that it would be helpful for the attorneys to gather with one another to strategize and resolve the matter for the community.

Chairman Murray noted that he felt that the Town and County work together quite well. He pointed out that when outside legal counsel is brought in there is a cost and it would not be free.

ACTION ITEM: Schedule the Legal Counsel of EDA/Town/County to Meet & Strategize

Councilman Gillispie asked, based on the findings of the prior EDA Executive Director Mr. Anzivino, that the EDA was insolvent. County Administrator Mr. Stanley stated that the County office was handling the day to day bills for the EDA, not the loan matters, though they do pay the loan payments. He noted that the insolvency question should be directed to the EDA's auditor. Mr. Whitten noted that the EDA hoped to have the 2018 audit completed in next 60 days. Mayor

Tederick noted that it was the Town Council's hope to meet with EDA eventually and they would invite the Board of Supervisors as well. Chairman Murray reminded the Mayor that the County wished to have them present at the current meeting.

Councilman Gillispie asked about the reports and results of investigations that have been completed regarding the ongoing issues being shared with the members of Board of Supervisors. Mr. Murray noted that the Board of Supervisors are only told matters under attorney client privilege, they are not briefed on the investigations, though he wishes that they were.

Mr. Whitten noted that the Board of Supervisors only was only given a redacted report regarding the EDA and Cherry Bekaert was hired through him as expert services in his role representing the EDA. Supervisor Sayre noted that the Board of Supervisors are not given the inside scoop on what is taking place.

Councilman Holloway asked Mr. Whitten who he was representing this evening, the County or the EDA; Mr. Whitten noted that he was representing both this evening and he walks a fine line. He explained that the Board of Supervisors had been asked if they wished for him to continue as the EDA attorney and the Board of Supervisors noted that they had. Mr. Whitten added that the State Bar and the Commonwealth Attorney noted that it was not a conflict of interest.

Councilman Meza stated that the County is costing a lot using Bob Mitchell every time Mr. Whitten is recusing himself for EDA matters. He remarked that he understands that Mr. Whitten is walking a fine line, and though it may be common, in this particular instance there may be a strong conflict of interest to represent both. Mr. Meza added that the optics of the dual representation situation were not favorable. Mr. Stanley noted that it does not cost the County more to have Mr. Mitchell represent the County at times. Mr. Whitten noted that he cannot advise Board of Supervisors regarding the EDA, though he can represent them both as they are not adverse parties.

Councilman Gillispie asked if the Board of Supervisors are appointing the new EDA members to EDA Board. Chairman Murray noted that they do appoint the members.

Councilman Meza asked the EDA interviews or the list of those interviewed could be public. Supervisor Sayre stated that some on the Board of Supervisors would like the interviewee list to be public. Chairman Murray noted that the Board of Supervisors has never done a public interview, adding that some interviewed could be embarrassed if they were interviewed but not selected. He continued, noting that it could be an invasion of privacy. He stated that the new Board of Supervisors could discuss the matter in January, though the current Board Members do not feel it is appropriate to publicize the interviewees.

Councilman Holloway asked if it was legally possible to post the names. Mr. Whitten noted that it was a FOIA exemption to share the EDA interview list. He noted that the County could provide a list to the Town Council, should they choose to do so.

Councilman Meza noted that he was asking out of transparency as there is a lack of trust unfortunately and he was trying to mitigate the ongoing mistrust. He added that it was his hope to assist with the transparency and public perception of the EDA Board. Mr. Murray noted that his perception of the public list request is "no" at this time, though perhaps the new Board of Supervisors could review such a request.

iii. What are the positive and negative impacts of dissolving the EDA as it currently exists; how would it be done?

Mayor Tederick stated that he is not seeking to dissolve the EDA as he is unsure what that may even resemble. He explained that the EDA may be a brand that is tainted, the public trust is broken, and therefore perhaps dissolving the EDA is necessary, though he is unsure at this time. He stated that the matter of reforming the EDA should be properly reviewed.

Chairman Murray asked if the Town had reviewed the State law dealing with IDA dissolution. Mayor Tederick noted that Mr. Napier had reviewed that with him extensively. He added that in 1996 he was elected to the Board of Supervisors, and those four years contained a lot of progress in the community and there were a lot of meetings and the EDA had strict guidelines. Mayor Tederick explained that decisions on land and operational matters were made jointly with the Town and the County and the fruits of those decisions can be seen in the community today.

EDA REFORM COMMITTEE

Mayor Tederick moved, seconded by Supervisor Sayre, that the Front Royal Town Council and the Warren County Board of Supervisors create an IDA/EDA (Industrial/Economic Development Authority) Reform Committee to determine the future of the IDA/EDA and what steps need to be taken to achieve this goal; He further moved that the Committee consist of seven (7) members:

1. 1 Council Member
2. 1 Board of Supervisors Member
3. 1 ~~EDA Board Member~~ (later amended to the EDA Executive Director)
4. The County Administrator
5. The County Attorney
6. The Town Manager
7. The Town Attorney

And that each entity appoint accordingly; He continued to further move that a Preliminary Report from the Committee with the Committee's Preliminary Recommendations, be due to the Town Council and the Board of Supervisors on October 30, 2019; and the Committee shall receive additional comments from the Town Council and the Board of Supervisors as to what further to include or not include in the Final Report of the Committee; and base there on, the Committee shall issue a Final Report due to the Town Council and the Board of Supervisors on November 29 ~~30~~, 2019.

Supervisor Carter noted that he would be in favor of the Committee as presented, though he clarified if the motion could be taken at this meeting. Mr. Napier noted the vote could be passed and taken in the current meeting; he added that depending on the Committee's final recommendations, the Board and Council may require ordinances to implement the findings from the Reform Committee. Mr. Whitten noted that forming a committee and appointing the members all at once is slightly different than previous committees.

Mayor Tederick noted that he would like to see individuals get together to reform the EDA and also determine what dissolution could look like. He inquired if dissolution is what is needed and whether some economic functions be farmed out to other entities in the community. Mayor Tederick noted that some EDA functions could be brought in house to the Town and County government, and those were all aspects that the Committee could review and determine, then the two bodies would review at a Joint Meeting on October 30th.

Chairman Murray suggested that perhaps the Committee consist of the EDA Executive Director rather than an EDA Board Member; Mayor Tederick and Supervisor Sayre agreed with that change.

Chairman Murray suggested that the date be November 29th instead of the 30th; Mayor Tederick and Supervisor Sayre agreed with that change as well.

Chairman Murray read portions of the State Law which “prohibits the dissolution of IDAs” if there are outstanding bond amounts. Mayor Tederick explained that the Town was fully aware of the debt and it was not their intention that the EDA be dissolved. He added that perhaps the EDA may need to be holding institution for the debt instead.

Supervisor Sayre voiced his support for the name: Reform Committee, as it was a good name, geared towards making the EDA better.

Councilman Meza asked if it would be a conflict of interest having the EDA Director sit on a Committee which was reviewing whether to dissolve the organization which employed him. Some members present noted that it was not a conflict.

Yea: Carter, Fox, Glavis, Sayre, Murray; Gillispie, Holloway, Meza, Sealock, Thompson, Tewalt, Tederick
Nay: 0
Abstain: n/a
Absent: n/a

(BY ROLL CALL; On Motion to Create EDA Reform Committee)

Mayor Tederick moved, seconded by Supervisor Sayre, that Councilman Jake Meza and Supervisor Archie Fox be appointed to the EDA Reform Committee.

Yea: Carter, Fox, Glavis, Sayre, Murray; Gillispie, Holloway, Meza, Sealock, Thompson, Tewalt, Tederick
Nay: 0
Abstain: n/a
Absent: n/a

Schedule Next Joint Meeting

Mayor Tederick noted that Town Manager Waltz will be reaching out to schedule the next Joint Meeting with the EDA. He asked if the Board of Supervisors would like to be a part of that meeting. Chairman Murray noted that it was imperative that all parties continually meet together and he suggested that Mayor Tederick set a date. Mayor Tederick chose the date of August 27th at the same location, the Warren County Community Center, Villa Avenue.

Motion to Adjourn

Mayor Tederick moved, seconded by Councilman Holloway, to adjourn the meeting.

Yea: Carter, Fox, Glavis, Sayre, Murray; Gillispie, Holloway, Meza, Sealock, Thompson, Tewalt, Tederick
Nay: 0
Abstain: n/a
Absent: n/a

The meeting adjourned at 7:36 p.m.