



TOWN COUNCIL WORK SESSION MINUTES

Monday, August 18, 2014 @ **6:30pm**
Front Royal Administration Building

1. **CLOSED MEETING** – Planning Commission Interview

Motion to Go Into Closed Meeting

Vice Mayor Parker moved, seconded by Councilman Tharpe, that Council convene and go into Closed Meeting for the purpose of assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of a public body, specific to Planning Commission Interview, pursuant to Section 2.2 3711. A. 1. of the Code of Virginia.

INSERT VOTE HERE
INSERT VOTE HERE
INSERT VOTE HERE

Motion to Certify Closed Meeting at its Conclusion

Vice Mayor Parker moved, seconded by Councilman Tharpe, that Council certify that to the best of each member's knowledge, as recognized by each Council member's affirmative vote, that only such public business matters lawfully exempted from Open Meeting requirements under the Virginia Freedom of Information Action as were identified in the motion by which the Closed Meeting was convened were heard, discussed or considered in the Closed Meeting by Council, and that the vote of each individual member of Council be taken by roll call and recorded and included in the minutes of the meeting of Town Council.

INSERT VOTE HERE
INSERT VOTE HERE
INSERT VOTE HERE

2. **Continued Discussion of 409 Virginia Avenue Utilities** – Town Manager

Council Discussion:

Councilman Tharpe asked if individuals would be forced to make the change. Mr. Burke stated that a notice would be put in the records and a notification would be made to the property owner. Mrs. Breeden explained that there were two separate individuals that owned the halves of the duplexes in some cases and at times the landlord can authorize the accounts to be placed in their names. Councilman Hrbek noted that this would set the three year window to set the matter “right”.

Councilman Funk arrived at 7:10 p.m.

Mayor Darr asked about the resolution noting the special exception for two meters rather than two taps, which would minimize the intrusion into the areas. Mr. Burke noted that once there was an upgrade in service required or a failure for any reason, it would be up to the property owner to pay to bring everything into compliance at the same time.

Vice Mayor Parker noted that they also had the option to move forward with a lien. Mr. Burke stated that was correct. Councilman Hrbek expressed concern with the matter, as it was the Town’s problem

and the home inspector did not catch the issue either. In answer to Councilman Hrbek's question, Mr. Burke noted that the Town continued to allow it to take place by servicing the property as it is.

Mayor Darr gave a history of the property, noting that it was two brothers originally owning the property, then it was eventually sold as two separate properties, with one water meter. Councilman Tewalt stated that when the property was resubdivided into a duplex, the Planning Department should have caught the matter and it was not noticed unfortunately.

Councilman Hrbek noted that the Town made the error, and the Town should pay for the mistake. Councilman Tewalt asked if the Town wanted to go against their own ordinance to install a submeter on the property.

Vice Mayor Parker suggested that to bring them into compliance we could sell them the tap at the 1985 rates. He noted that the lien could still be placed on the property, or they could pay for the amount out right. Mr. Hrbek stated that he would like the matter to come to an end and move forward so future Council's would not have to address the issue.

Mayor Darr voiced support of option TWO of the resolution in order to install a separate meter for water service connection. Councilman Sayre asked about the 1985 rate. Mr. Burke noted that the Town would still do the work up to the line. Mayor Darr stated that the Town could move forward with the 1985 rates for water installation. Mr. Hrbek asked the actual cost. Mr. Burke stated that running a new service line would be about \$1,500-\$2,000. Mr. Hrbek reiterated that the Town should absorb that cost.

Councilman Tewalt agreed with #1 of the resolution; Councilman Tharpe expressed his agreement with Mr. Tewalt. Councilman Funk stated that he would be willing to do #1, though he would have been willing to do the 1985 rate compromise as well. Vice Mayor Parker noted that if they chose one option they would have to move forward with that option with all properties. Mr. Napier stated that was correct most likely.

After brief discussion, Council chose to go with option ONE. Mayor Darr requested the rates of the 1985 tap fees when going forward. He added that should this resident move or sell the property then it would need to go into compliance.

3. Proposed Amendments to Code §98-42 –“Fortunetellers/Similar Businesses” – *Town Attorney*

Summary: Town Council is considering repeal of Town Code Section 110-17, the prohibition of fortune-telling, etc. both because it conflicts with Town Code Section 98-42, which permits fortune-telling, etc. upon the payment of a license tax; and because a recent 4th Circuit United States Circuit Court of Appeals has deemed such prohibitions to be violative of the First Amendment of the United States Constitution. Citizens also voice objections to the term “spiritual medium” in Town Code Section 98-42, as to some people that term has religious connotations, and those people do not feel spiritual mediums should be subject to a license tax to engage in their religious practices.

The 4th Circuit case upheld Chesterfield County, Virginia's \$300.00 per year license fee ordinance. Other cases have, however, deemed annual license fees of \$1,000.00 or more as a *de facto* ban on fortune-telling and therefore an

unconstitutional ban. If the Town is to impose a flat license fee on fortune-telling, therefore, it would be legally risky to impose a license fee of greater than \$300.00 per year without further judicial clarification.

The current Town Code license fee provision is:

SECTION 98-42 FORTUNETELLERS AND SIMILAR BUSINESSES

For every license for a person engaged in business as a fortuneteller, clairvoyant, phrenologist, spirit medium, astrologist, hypnotist or palmist, there shall be paid a license tax of four hundred dollars (\$400.) a year. Such license tax shall not be proratable. A license for a fortuneteller, clairvoyant, phrenologist, spirit medium, astrologist, hypnotist or palmist shall not be transferable.

The Code of Virginia Section which allows localities to impose license fees on fortune-telling is:

Va. Code § 58.1-3726. Fortune-tellers, clairvoyants and practitioners of palmistry. — For the purpose of license taxation pursuant to § 58.1-3703, any person who, for compensation, shall pretend to tell fortunes, assume to act as a clairvoyant, or to practice palmistry or phrenology shall be deemed a fortune-teller. No license tax on fortune-tellers imposed pursuant to this chapter shall exceed \$1,000 per year. The governing body of any county, city or town may provide that any person who engages in business as a fortune-teller without the license required shall be guilty of a Class 3 misdemeanor.

Normally, it is my advice to adopt as precisely as possible the enabling legislation of the State Code, since Virginia is a Dillon Rule state. The problem with Va. Code §58.1-3726 are the words “shall pretend to tell fortunes”, which, in my view, may well be unenforceable because perhaps unprovable in court: how can anyone prove that someone is pretending to tell fortunes as opposed to telling fortunes? It is akin to suggesting that my religious views reflect the truth, but yours only pretend to tell the truth. I would suggest plugging this loophole in the State Code as follows:

SECTION 98-42 FORTUNETELLERS AND SIMILAR BUSINESSES

Any person who, for compensation, shall tell or pretend to tell fortunes, practice palmistry or phrenology, or assume to act as a clairvoyant, shall be deemed a fortune-teller, and first shall obtain a license from the Town. For every license for a person engaged as a fortune-teller, ~~clairvoyant, phrenologist, spirit medium, astrologist, hypnotist or palmist,~~ there shall be paid a license tax of ~~four~~ three hundred dollars ~~(\$400.)~~ (\$300.00) a year. Such license tax shall not be proratable. A license for a fortune-teller, ~~clairvoyant, phrenologist, spirit medium, astrologist, hypnotist or palmist~~ shall not be transferable

Council Member Sayre has expressed a concern that fortune-tellers will attempt to evade paying the license fee by pretending not to charge a fee or other

express compensation, but instead accept “donations” or the like. I set forth a draft Town Code provision at the end of the Section to address this concern, adding, however, that this addition is not part of the enabling legislation of the State Code.

SECTION 98-42 FORTUNETELLERS AND SIMILAR BUSINESSES

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Council is requested to consider whether it wants to amend Town Code Section 98-42, and if so, in what manner it wishes to so amend.

Staff Recommendation: Staff recommends amending Town Code Section 98-42 to bring it into conformity with Va. Code § 58.1-3726 to the extent feasible. This would also have the effect of eliminating the objection from citizens of imposing a licensing tax on spiritual mediums.

Council Discussion:

In response to Councilman Hrbek’s question, Mr. Burke noted that this is considered a BPOL. Councilman Tewalt noted that they should move forward with the issue at a \$300 rate and remove the “pretend to tell fortunes” wording. Mr. Hrbek expressed his agreement. Mayor Darr asked if the Council was considering the suggestion by Mr. Sayre. Mr. Napier suggested that the Town keep the matter as simple as possible.

Councilman Tewalt noted that the Town would most likely would not be overrun with fortunetellers most likely. Councilman Funk clarified the “pretend” to tell wording. Councilman Hrbek asked about religion rulings on the matter. Mr. Napier noted it would be a case by case matter and typically churches could establish themselves as a church should they wish to do so.

Vice Mayor Parker noted that the Town did not regulate churches, only businesses, and it was up to the applicant whether they would like to establish themselves as a business or a religion.

Councilman Sayre asked that it go to the Planning Commission. Mr. Burke noted that it typically would not fall into the purview of the Planning Commission. Councilman Tewalt noted that it was not a Planning Commission issue and it would be a redundant to send it to them. Councilman Tharpe expressed his agreement with Councilman Sayre. Councilman Funk voiced support of sending the issue to the Planning Commission. Councilman Hrbek noted that there was no issue for the Planning Commission to consider on this issue in his opinion. Mr. Napier stated that should there be a concern as to where to locate businesses then it could be sent to the Planning Commission, otherwise, he did not view it that way. Mayor Darr stated that he did not see the need to send the matter to the Planning Commission, as there was no need for the Commission to review the subject. Councilman Sayre noted that it would be important for the Planning Commission to review the subject in his opinion.

Councilman Funk noted that it could be a separate item for the Planning Commission to review and different vote. Mr. Sayre referred to criminal background checks and special use permits in Chesterfield County's ordinance. Mayor Darr did not see the need for the Planning Commission review.

Vice Mayor Parker noted that they should strike the assumption words. Mr. Napier stated that they should follow the State Code as much as possible. Mr. Camp asked about peddling fortune telling; Mayor Darr noted that it would not.

4. Dispatcher Step Program/Master Communications Officer Program – *Police Chief*

Council Discussion:

Council noted that it would be on the Consent Agenda.

5. Mobile Phone/Mobile Data Device Policies for the Town – *Town Attorney*

Council Discussion:

Mayor Darr asked about councilmen using their Facebook page to answer constituents questions. Mr. Burke noted that they were issued for Town business and that was permitted. Mr. Hrbek asked about whether the Town's policy mirrors some large corporations Facebooks policies. Mr. Burke noted that all crew supervisors have cell phones. Councilman Tewalt asked about games running on Town computers and how they are checked. Councilman Hrbek asked about employees posting pictures in Town uniforms and the attitude of the younger crew in this day and age with the action of "getting caught" or being concerned with posting it on Facebook.

Councilman Funk pointed out a slight typo and asked about the IT wording referring to a possible website that "may exist" in Section 13. Mayor Darr noted that this would also include Council and would go onto the Consent Agenda.

6. Proposal from County of Warren to Add TVs to Warren County Board Room – *Town Manager*

Council Discussion:

Councilman Tharpe asked that the matter go to the Liaison Committee for more information. Council expressed their agreement. Vice Mayor Parker asked that it fall under the Fair Funding Policy with Warren County.

7. Continued Discussion of Sign Ordinance Amendment – Councilman Funk

Summary: Councilman Funk asked that this item be placed on a work session for further discussion. It was last discussed at a work session on July 7, 2014.

Council Discussion:

Councilman Funk asked about adding the hand lettering onto the sandwich board signs, noting that generally it looked favorable in his opinion. Council noted that Planning Commission would review the matter in full.

8. Council Discussion/Goals

Councilman Hrbek noted that the PILOT matter needed to be moved forward in his opinion. Mr. Burke stated that a letter was drafted, and he could touch base with Mrs. McDonald on the issue. Councilman Hrbek asked for a timeline on the matter.

Councilman Hrbek stated that the Happy Creek Trail looked great. He asked if benches and refuse containers would be installed at just the ends or in the middle as well. Mr. Burke stated that they were awaiting the easement approvals. Council discussed the brush removal and erosion control matters.

Vice Mayor Parker asked about construction traffic in the Warren Park area. Mr. Burke noted that typically the larger trucks

To answer Vice Mayor Parker's question regarding 17th Street, Mrs. Breeden noted that the Town will soon meet with VDOT and they have requested some changes to the Town's paving plan according to Mr. Burke.

Mayor Darr stated that soon he would begin to look at establishing public comment rules at the Council meetings.

9. CLOSED MEETING – Personnel Matters

Motion to Go Into Closed Meeting

Vice Mayor moved, seconded by Councilman Hrbek, that Council convene and go into Closed Meeting for the purpose of assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of a public body, pursuant to Section 2.2 3711. A. 1. of the Code of Virginia.

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motion by which the Closed Meeting was convened were heard, discussed or considered in the Closed Meeting by Council, and that the vote of each individual member of Council be taken by roll call and recorded and included in the minutes of the meeting of Town Council.

INSERT VOTE HERE

INSERT VOTE HERE

INSERT VOTE HERE

Present: All of Council

Councilman Funk arrived at 7:10 p.m.

Town Manager Burke, Director of Finance Breeden, Chief of Police Shiflett, Planning Director Camp, Police Major Hite, Clerk of Council Berry, members of the press and the public.