

COUNCIL MEETING MINUTES

September 11, 2017

The regular meeting of the Town Council of the Town of Front Royal, Virginia was held on September 11, 2017, in the Warren County Government Center's Board Meeting Room. Mayor Tharpe led Council and those attending in the Pledge of Allegiance to the flag and a Moment of Silence, particularly in remembrance of the lives lost on September 11, 2001. The roll was called at 7:00 p.m.

PRESENT: Mayor Hollis L. Tharpe
Councilman Gary L. Gillispie
Councilman Jacob L. Meza
Councilman Christopher S. Morrison
Councilman William A. Sealock
Councilman Eugene R. Tewalt
Town Attorney Douglas W. Napier
Town Manager Joseph E. Waltz
Clerk of Council Jennifer E. Berry, CMC

ABSENT: Councilman John P. Connolly

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

Vice Mayor Tewalt moved, seconded by Councilman Meza moved that Council approve the Regular Council Meeting minutes of August 28, 2017 as presented.

Vote: Yes – Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – Connolly
(Mayor Tharpe did not vote as there was no tie to require his vote)
(By Roll Call)

RECEIPT OF PETITIONS OR CORRESPONDENCE FROM THE PUBLIC

There were no receipts of petitions or correspondence from the public.

Mr. Waltz announced that he had chosen Chief Kerry L. “Kahle” Magalis, II, as Chief of Police for the Town of Front Royal. Mayor Tharpe welcomed incoming Chief Magalis to the post with the Town Police Department and wished him well.

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

*Councilman Meza moved, seconded by Vice Mayor Tewalt to add the **COUNCIL APPROVAL: Budget Amendment for Sale of Old Police Department, 24 W. Main Street.***

Vote: Yes – Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – Connolly
(Mayor Tharpe did not vote as there was no tie to require his vote)
(By Roll Call)

CONSENT AGENDA ITEMS – (ROLL CALL VOTE REQUIRED)

- A. COUNCIL APPROVAL – DMV Highway Safety Grants
- B. COUNCIL APPROVAL – Liaison Committee Meeting Items
- C. COUNCIL APPROVAL – Correction to Motion for Encroachment at 311 Blue Ridge Ave
- D. COUNCIL APPROVAL – Revision to Policy for Fixed Video Equipment in Public Areas
- E. COUNCIL APPROVAL – Bid for Bridge Inspections and Load Rating Services
- F. COUNCIL APPROVAL – Bid for Reels of Okonite Cable – Energy Services
- G. COUNCIL APPROVAL – Bid for 30-year Water Model Project
- H. COUNCIL APPROVAL – Bid for Construction of Criser Road Trail

Vice Mayor Tewalt moved, seconded by Councilman Meza, to approve the consent agenda as presented.

Vote: Yes – Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – Connolly
(Mayor Tharpe did not vote as there was no tie to require his vote)
(By Roll Call)

COUNCIL APPROVAL –Ordinance for a Proposed Vacation of Town Rights of-Way at 1521 N. Royal Avenue – David Butler (2nd Reading)

Summary: Council is requested to adopt on its second reading an ordinance to conditionally vacate a portion of 16th Street and two (2) unimproved alleys addressed at 1521 N. Royal Avenue to David and Jean Butler.

The vacation includes (1) an unimproved portion of 16th Street extension along Belmont Avenue, approximately 322 feet long by 60 feet wide; (2) an unimproved alley and right of way, running across the middle of the Estate of the Laura A. Denny (*Denny*) property (*North to South*), located adjacent to, near, and to the east of North Royal Avenue; and (3) an unimproved alley and right of way, approximately 150 feet long by 20 feet wide, located on the left (*West*) side of the said Denny property when viewed from Belmont Avenue. Town Staff and a Viewing Committee have reviewed this request (*reports are attached*). Adjacent property owners were notified of the original request and have been notified by certified letter inviting them to the public hearing. A Public Hearing was held to receive comments and concerns from the public on August 28, 2017 and the motion was revised and is therefore reflected below.

Councilman Meza moved, seconded by Councilman Sealock, that Council adopt on its second and final reading an ordinance to conditionally vacate a portion of 16th Street and two (2) unimproved alleys addressed at 1521 N. Royal Avenue to David and Jean Butler; and, that the ordinance states that the lots that are created by the vacation of the right of way be substantially five (5) quarter acre lots, 75' in width by 150' in length, along Belmont Avenue, meeting all Town Code requirements as stated in Mr. Butler's "Our Intent" statement by David E. Butler, dated November 11, 2016.

Vote: Yes – Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – Connolly

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

**AN ORDINANCE TO CONDITIONALLY VACATE A PORTION OF THE
TOWN OF FRONT ROYAL'S RIGHT-OF-WAY FOR A PORTION OF 16TH
STREET AND PORTIONS OF CERTAIN ALLEYS IN THE TOWN OF
FRONT ROYAL, VIRGINIA.**

WHEREAS, the Town Council of the Town of Front Royal, Virginia, has received a request from David E. Butler and Jean Butler, who resides at 224 Polk Avenue in said Town, to conditionally vacate a portion of the Town's unimproved Street and two (2) certain alleys located at 1521 North Royal Avenue in said Town, more particularly described as:

- (1) An unimproved portion of 16th Street extension along Belmont Avenue, approximately 322 feet long by 60 feet wide;
 - (2) An unimproved ally and right of way, running across the middle of the Estate of the Laura A. Denny (Denny) property (North to South), located adjacent to, near, and to the east of North Royal Avenue;
 - (3) An unimproved alley and right of way, approximately 150 feet long by 20 feet wide, located on the left (West) side of the said Denny property when viewed from Belmont Avenue (all of which together being, the "Property");
- And to convey the Property to them, the said David Butler and Jean Butler;
and,

WHEREAS, the said Town Council and its Staff have investigated said requests and have found that the portion of the Street and alley rights-of-way requested for vacation and conveyance, being the Property, are not used by the Town or its citizens for public rights-of-way, except for certain public Town utility easements, which said public Town utility easements of not less than fifteen feet (15') from the centerline of the utility lines shall be retained in perpetuity by the Town of Front Royal, its successors and assigns for all purposes for which public utility easements are normally and usually retained by public utilities for its use, maintenance, repair, improvement, ingress, and egress; and

WHEREAS, pursuant to the Town's Ordinances and standard procedures for said requests, and as required by Sections 15.2-2006, *et seq.*, and 15.2-2100, *et seq.*, of the Code of Virginia, 1950, a required \$100.00 application fee has been collected and paid into the Town's General Fund; letters of this proposed vacation have heretofore been sent to property owners who are effected by the proposed vacation and conveyance; the Town Manager and the aforesaid applicants have reached a tentative price for the land to be conveyed based on a fair market appraisal; and the Town has appointed a Viewer's Committee who have personally reviewed the area to be vacated and conveyed and who have filed a written Report with the Town recommending the vacation and conveyance; and, after conducting a duly advertised Public Hearing on the said vacation and conveyance; and Town Council now finds it appropriate and in the best interests of the Town to conditionally adopt this Ordinance and to hereby conditionally vacate and convey

the Property to the said David E. Butler and Jean Butler upon the terms and conditions hereinafter specified.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Town Council of the Town of Front Royal, Virginia that the following portions of the Town's unimproved Streets and two (2) certain alleys located at 1521 North Royal Avenue in said Town (the "Property") more particularly described as:

(1) An unimproved portion of 16th Street extension along Belmont Avenue, approximately 322 feet long by 60 feet wide;

(2) An unimproved ally and right of way, running across the middle of the Estate of the Laura A. Denny (Denny) property (North to South), located adjacent to, near, and to the east of North Royal Avenue;

(3) An unimproved alley and right of way, approximately 150 feet long by 20 feet wide, located on the left (West) side of the said Denny property when viewed from Belmont Avenue (all of which together being, the "Property"); Are hereby conditionally vacated, on conditions and terms hereinafter described, and when said terms and conditions are satisfied, said Property will be unconditionally conveyed to the said David E. Butler and Jean Butler; subject to the said utility easements aforesaid,

AND BE IT, FURTHER, ORDAINED AND ENACTED that this vacation is conditioned upon the lots being created by the vacation of the rights of way aforesaid are substantially five (5) quarter acre lots, 75' in width by 150' in length, along Belmont Avenue, meeting all Town Code requirements as stated in the said David E. Butler's "Our Intent" statement by the said David E. Butler, dated November 11, 2016, previously filed with the Town, and to be approved by the Town according to law; and,

AND BE IT, FURTHER, ORDAINED AND ENACTED that this vacation is conditioned upon the said David E. Butler and Jean Butler obtaining a plat and survey of the Property showing the location of the Town's utility easements, said plat and survey to be prepared by a licensed Virginia Land Surveyor, said survey to be obtained at the expense of the property owners, and the recordation thereof at the expense of the property owners to be filed in the land records of the Circuit Court of Warren County, Virginia; and the Town Manager and Town Surveyor shall, if appropriate, sign and thereby approve the aforesaid Plat of Survey, and that the Town Attorney shall forthwith prepare a good and sufficient Special Warranty Deed for the Property, with appropriate reservations of utility easements on behalf of the Town, to be signed on behalf of the Town Council by the Mayor, with the Town's Official Seal to be thereunto affixed and attested to by the Clerk of Town Council, and with a copy of the said approved Plat of Survey to be a part thereof, as well as an attested copy of this Ordinance, and that the said Town Attorney shall further, upon receipt of payment in the amount of Twenty Thousand Dollars (\$20,000.00), plus the costs to advertise the Public Hearing, deliver the deed for the Property;

AND BE IT, FURTHER, ORDAINED AND ENACTED that, if the aforesaid plat and survey and said sums are not delivered to the Town Attorney within one (1) year from the

date of the adoption of this Ordinance by the said David E. Butler and Jean Butler, he shall report same to this Council, and this Ordinance shall be void.

Upon payment of said sum and recordation of said deed and plat and this Conditional Ordinance, the conditions to this Ordinance shall expire, and this Ordinance and conveyance shall thereupon become Unconditional.

This ordinance shall be effective upon passage.

COUNCIL APPROVAL – Llewellyn LLC [Shenandoah Avenue LLC] Deed of Gift of Conservation Easement and Resolution

Council is requested to approve and accept a Deed of Gift of Conservation Easement of approximately 40 acres located on Route 340 and along the South Fork of the Shenandoah River from Llewellyn LLC [Shenandoah Avenue LLC], with the condition that the plat be revised to conform to the Planning Commission's recommendation to eliminate Area B; and, that Council acknowledges that the conservation easement conforms to the Town's Comprehensive Plan as it is located within an area that is designated in the Town's Comprehensive Plan for future conservation use.

Councilman Sealock moved, seconded by Vice Mayor Tewalt, that the Town Council approve and accept a Deed of Gift of Conservation Easement and Resolution from Llewellyn LLC [Shenandoah Avenue LLC], of approximately 40 acres located on Route 340 and along the South Fork of the Shenandoah River with the condition that the plat be revised to conform to the Planning Commission's recommendation to eliminate Area B; and, that Council acknowledges that the said conservation easement conforms to the Town's Comprehensive Plan.

Vote: Yes – Gillispie, Meza, Morrison, Sealock and Tewalt

No – N/A

Abstain – N/A

Absent – Connolly

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

(By Roll Call)

A RESOLUTION TO APPROVE A DEED OF GIFT OF EASEMENT FROM SHENANDOAH AVENUE, LLC CREATING A CONSERVATION EASEMENT ALONG THE SOUTH FORK OF THE SHENANDOAH RIVER

WHEREAS, Shenandoah Avenue, LLC, a Virginia limited liability company, is the owner in fee simple of real property situated on U.S. Route 340 and along the South Fork of the Shenandoah River in the Town of Front Royal and Warren County, Virginia, containing in the aggregate 37.5322 acres, more or less, as further described below (the "Property"), and desires to give and convey to the Town of Front Royal, Virginia, a municipal corporation (the "Town") a perpetual conservation and open-space easement over the Property as herein set forth; and

WHEREAS, the Town is a governmental agency of the Commonwealth of Virginia and a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent tax laws) (IRC) and Treasury Regulation §1.170A-14(c)(1), and is willing to accept a perpetual conservation and open-space easement over the Property as herein set forth; and

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the “Open-Space Land Act”), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

WHEREAS, Pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and

WHEREAS, Chapter 525 of the Acts of 1966, Chapter 17, the Open-Space Land Act, Title 10.1, §§10.1-1700 and 10.1-1701 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Town of Front Royal as a “public body” to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

WHEREAS, as required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the Town of Front Royal Comprehensive Plan adopted on March 23, 1998; and

WHEREAS, this Easement is granted “exclusively for conservation purposes” under IRC §170(h)(1)(C) because it effects “the preservation of open space (including farmland and forest land)” under IRC 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of and pursuant to the clearly delineated governmental policies set forth below:

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth’s policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, §§58.1-510 through 58.1-513 of the Code of Virginia, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth’s unique natural resources, wildlife habitats, open spaces and forest resources;

d Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open-space use; and

(ii) Land use policies of the Town of Front Royal as delineated in its comprehensive plan adopted on March 23, 1998 to which plan the restrictions set forth in this deed conform and which contains the following goals, objectives, and strategies:

a) Natural Environment and Unique Features Goal: “Identify and preserve those natural, open space and scenic resources that

characterize Front Royal and add to the beauty that is enjoyed by the community. Incorporate the Shenandoah River as a true part of our Town.”

- b) From the Riverton Planning Area Action Strategies: “Maintain the integrity of the floodplain in its natural state. Prohibit new development in the floodplain”; and

WHEREAS, the Property, which is currently used by the Grantor for passive recreation, comprises open grasslands, forestlands, and river bottom, and

WHEREAS, the Property contains approximately one (1) mile of frontage on the South Fork of the Shenandoah River, from which the public has visual access to a substantial portion of the Property, and protection of the Property will contribute to improved water quality downstream and in the Chesapeake Bay; and

WHEREAS, the Property fronts on both sides of U.S. Route 340 on the south side of the South Fork of the Shenandoah River bridge, and contributes to the scenic views enjoyed by the public therefrom; and

WHEREAS, the Property is situated across the river from another property (owned by Larry Andrews) held in conservation easement by the Town of Front Royal; and

WHEREAS, this easement will yield significant public benefit to the citizens of the Commonwealth as set forth as Section I: and

WHEREAS, Shenandoah Avenue, LLC and the Town desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II; and

WHEREAS, the Town Council of the Town of Front Royal, Virginia has determined that the restrictions set forth in Section II (the Restrictions) will preserve

and protect in perpetuity the conservation values of the Property, which values are reflected in Section I; and

NOW, THEREFORE, BE IT HEREBY RESOLVED AND ENACTED by the Town Council of the Town of Front Royal, Virginia, that the said Deed of Gift of Easement from Shenandoah Avenue, LLC, which gives, grants and conveys to the Town a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, being described as:

PARCEL ONE:

All of that certain tract or parcel of land with all the improvements thereon, together with all appurtenances appertaining, lying and being situate in the Town of Front Royal in the North River Magisterial District of Warren County, Virginia, containing 10.9368 acres, as shown on the attached Easement Plat of Richard A. Edens, L.S., dated August 23, 2017. The aforesaid described property is a portion of the property conveyed to Grantor and identified as PARCEL THREE, Tract Two, in the deed to Grantor dated June 10, 2013 and recorded in the Office of the Clerk of the Circuit Court of Warren County, Virginia as Instrument No. 130004293. (Tax Parcel 20A2-1-2A)

PARCEL TWO:

A. Western Portion:

All of that certain tract or parcel of land with all the improvements thereon, together without all appurtenances appertaining, lying and being situate in the Town of Front Royal, in the North River Magisterial District of Warren County, Virginia, containing 13.7947 acres, as more particularly shown on the attached Easement Plat of Richard A. Edens, L.S., dated August 23, 2017. (Tax Parcel 20A2-1-2)

B. Eastern Portion:

All of that certain tract or parcel of land with all the improvements thereon, together without all appurtenances appertaining, lying and being

situate in the Town of Front Royal, in the North River Magisterial District of Warren County, Virginia, containing 12.8007 acres, as more particularly shown on the attached Easement Plat of Richard A. Edens, L.S., dated August 23, 2017. (Tax Parcel 20A2-1-2)

The aforesaid PARCEL TWO is the same property conveyed to Shenandoah Avenue, LLC and identified as PARCEL THREE, Tract One, in the deed to Llewellyn, LLC dated June 10, 2013 and recorded in the Office of the Clerk of the Circuit Court of Warren County, Virginia as Instrument No. 130004293. (Tax Parcel 20A2-1-2A)

The Property is shown as Tax Map Nos. 20A2-1-2 and 20A2-1-2A among the land records of the Town of Front Royal, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

This Resolution shall be effective immediately upon enactment.

NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

TAX MAP NO. 20A2-1-2; 20A2-1-2A

Exempted from recordation tax

under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this ____ day of _____, 2017, among **SHENANDOAH AVENUE, LLC**, a Virginia limited liability company ("Grantor"), and the **TOWN OF FRONT ROYAL**, a municipality of the COMMONWEALTH OF VIRGINIA, ("Grantee") (the designations "Grantor" and "Grantee" refer to the Grantor and Grantee and their respective successors and assigns); TAMARA LEE **PREISS** and BETTINA SILVA **CALLAWAY**, CO-TRUSTEES OF **THE BETTINA SILVA CALLAWAY REVOCABLE TRUST AGREEMENT** DATED JULY 7, 2012, (the "Noteholder") and **LAWSON AND SILEK, P.L.C., Trustee** (the "Trustee").

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated on U.S. Route 340 and along the South Fork of the Shenandoah River in the Town of Front Royal and Warren County, Virginia, containing in the aggregate 37.5322 acres, more or less, as further described below (the “Property”), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property as herein set forth; and

R-2 Grantee is a governmental agency of the Commonwealth of Virginia and a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent tax laws)(IRC) and Treasury Regulation §1.170A-14(c)(1), and is willing to accept a perpetual conservation and open-space easement over the Property as herein set forth; and

R-3 Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the “Open-Space Land Act”), declares that the preservation of open-space land serves a public purpose by curbing urban sprawl, preventing the spread of urban blight and deterioration and encouraging more economic and desirable urban development, helping provide or preserve necessary park, recreational, historic and scenic areas, and conserving land and other natural resources, and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

R-4 Pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and

R-5 Chapter 525 of the Acts of 1966, Chapter 17, the Open-Space Land Act, Title 10.1, §§10.1-1700 and 10.1-1701 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Town of Front Royal as a “public body” to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the Town of Front Royal Comprehensive Plan adopted on March 23, 1998; and

R-7 This Easement is granted “exclusively for conservation purposes” under IRC §170(h)(1)(C) because it effects “the preservation of open space (including farmland and forest land)” under IRC 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

R-8 This open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of and pursuant to the clearly delineated governmental policies set forth below:

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, §§58.1-510 through 58.1-513 of the Code of Virginia, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources;

d. Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural and open-space use; and

(ii) Land use policies of the Town of Front Royal as delineated in its comprehensive plan adopted on March 23, 1998 to which plan the restrictions set forth in this deed conform and which contains the following goals, objectives, and strategies:

- c) Natural Environment and Unique Features Goal: "Identify and preserve those natural, open space and scenic resources that characterize Front Royal and add to the beauty that is enjoyed by the community. Incorporate the Shenandoah River as a true part of our Town."
- d) From the Riverton Planning Area Action Strategies: "Maintain the integrity of the floodplain in its natural state. Prohibit new development in the floodplain"; and

R-9 The Property, which is currently used by the Grantor for passive recreation, comprises open grasslands, forestlands, and river bottom, and

R-10 The Property contains approximately one (1) mile of frontage on the South Fork of the Shenandoah River, from which the public has visual access to a substantial portion of the Property, and protection of the Property will contribute to improved water quality downstream and in the Chesapeake Bay; and

R-11 The Property fronts on both sides of U.S. Route 340 on the south side of the South Fork of the Shenandoah River bridge, and contributes to the scenic views enjoyed by the public therefrom; and

R-12 The Property is situated across the river from another property (owned by Larry Andrews) held in conservation easement by the Town of Front Royal; and

R-13 This easement will yield significant public benefit to the citizens of the Commonwealth as set forth as Section I: and

R-14 Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II; and

R-15 Grantee has determined that the restrictions set forth in Section II (the Restrictions) will preserve and protect in perpetuity the conservation values of the Property, which values are reflected in Section I; and

R-16 Grantee has determined that the Restrictions will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement; and

R-17 Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, which is described in SCHEDULE "A" attached hereto and made a part hereof.

The Property is shown as Tax Map Nos. 20A2-1-2 and 20A2-1-2A among the land records of the Town of Front Royal, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I -PURPOSE

The conservation purpose of this Easement is to preserve land for agricultural use, watershed preservation, and preservation of scenic open space and to protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are its open-space and scenic values and its values as land preserved for open-space and rural uses including agriculture, livestock production and forestry. Grantor covenants that no acts or uses that are inconsistent with the purpose of this Easement or the conservation values herein protected shall be conducted on the Property.

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. **DIVISION.** Division of the Property is prohibited. The Property shall not be sold or conveyed except as a whole.

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered divisions of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:

- (i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or
- (ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Town Council of the Town of Front Royal, Virginia.

2. **BUILDINGS AND STRUCTURES.** Grantor represents that the Property herein described is in current compliance with all applicable federal, State, and local laws. Grantor, further, covenants and agrees that no buildings or structures which have not been pre-approved in writing by the Grantee, and which are not found within the following list, shall be permitted on the Property, **PROVIDED, HOWEVER**, that nothing herein shall be construed as a waiver of any restrictions otherwise imposed by the Town through its lawfully adopted Ordinances, including, but not limited to, its Zoning Ordinance:

(i) one (1) single-family dwelling, which does not exist on the date of this Easement. Such dwelling shall not exceed 4,500 square feet of above-ground enclosed living area without Grantee's prior review and written approval;

(ii) non-residential outbuildings and structures commonly and appropriately incidental to the dwelling permitted in subsection (i) of this paragraph, and sized appropriately to serve as an amenity to single-family residential use, and located near such dwelling. For the purpose of this subsection of paragraph (ii), "near" means within 200 feet of such dwelling, unless prior written approval shall have been obtained from Grantee that a greater distance is permitted considering the purpose of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area;

(iii) a picnic pavilion not to exceed 500 square feet without Grantee's prior written approval;

(iv) a storage shed to store recreational, sports, and maintenance equipment not to exceed 500 square feet without Grantee's prior written approval;

(v) a viewing deck not to exceed 300 square feet;

(vi) a board walk if needed for construction of river/greenway trail; and

(vii) if the County of Warren, Town of Front Royal, or other governmental body desires to maintain a public park or natural area on the Property and the Grantor hereafter enters into a lease, sale or other arrangement to facilitate such public access and amenity, picnic shelters and pavilions shall be permitted but shall not exceed 10,000 square feet in the aggregate unless prior written approval shall have been obtained from Grantee, which shall consider the impact of the size, height and siting

of the proposed structures on the conservation values of the Property. Hiking/biking trails, parking areas, tent campsites, educational and recreations monuments or signs and other similar improvements may be constructed on the Property, provided that parking areas and hiking/biking trails shall be primarily pervious surfaces with paving or other impervious surfaces permitted to a limited extent as necessary to facilitate accessibility and meet public accommodation requirements.

Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of any dwelling on the Property.

To protect the scenic values of the Property, no dwelling or other building shall be constructed within 300 feet of the South Fork of the Shenandoah River, except for a picnic pavilion described in Section II, paragraph 2, subsection (iii) and a trail boardwalk as described in Section II, paragraph 2, subsection (vi).

Private roads and utilities to serve permitted buildings or structures, and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained. Public or private utilities whose construction and maintenance Grantee determines will not impair the Property's conservation values may be constructed and maintained if Grantee gives its prior written approval. Notwithstanding the above, the Grantor reserves the right to install storm water management practices and underground utilities on the Property as necessary to serve development on an adjoining property.

Existing public utilities, including a water, sewer, and power line may be maintained, replaced, or upgraded.

The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 1% of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values protected herein, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the structures set forth in subsections (i) through (iv) above and all other impervious surfaces, excluding roads.

3. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) hay production; (ii) forest management; (iii) community gardens; (iv) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values herein protected; (v) use of the Property as a public natural area or park for passive recreational activities including, but not limited to, hiking, bird watching, nature study, and wildlife photography; and (vi) activities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance. Temporary outdoor activities involving 100 or more people shall not exceed seven (7) consecutive days in any 90-day period without prior written approval of the Grantee. Notwithstanding any other provision of this easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.

4. **MANAGEMENT OF FOREST.** Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest or land-clearing activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan approved by Grantee. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest. Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for grassland, crop land, or in association with the construction of permitted buildings.

Non-commercial *de minimis* harvest of trees for trail clearing, firewood or Grantor's domestic use, trees that pose an imminent hazard to human health or safety, or removal of invasive species shall not require a Forest Stewardship Management Plan.

5. **RIPARIAN BUFFER.** To protect water quality, a 35 -foot buffer strip shall be maintained in forest or be permitted to revegetate naturally along the edge of the South Fork of the Shenandoah River as measured from the top of the bank. Within this buffer strip there shall be (a) no buildings or other substantial structures constructed, (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment, (c) no removal of trees except removal of invasive species or removal of dead, diseased or dying trees or trees posing an imminent human health or safety hazard, and (d) no cultivation or other earth-disturbing activity, except as may be reasonably necessary for (i) wetland or stream bank restoration, or erosion control, pursuant to a government permit, (ii) fencing along or within the buffer area; (iii) construction and maintenance of stream crossings that do not obstruct water flow, (iv) creation and maintenance of foot or horse trails with unimproved surfaces, (v) clearing and maintenance of a .5 (1/2) acre picnic area; and (vi) two (2) small clearings of up to 20 feet along the river frontage to provide access for recreational boating. Limited mowing to control non-native species or protect trees and other plants planted in forested buffers is permitted. There shall be no grazing of livestock in the buffer strip.

6. **GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds, (ii) wetlands or stream bank restoration pursuant to a government permit, (iii) erosion and sediment control pursuant to a government-required erosion and sediment control plan, or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grading, blasting or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited.

7. **ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property.
8. **SIGNS.** Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of the Property, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) provide notice necessary for the protection of the Property, (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. Temporary political signs are allowed. No signs visible from outside the Property shall exceed nine square feet in size.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION AND ACCESS.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time. Representative of Grantee may enter the property in the event of an emergency and to maintain, replace, or upgrade existing utility lines as cited in Section II, paragraph 2 above.
2. **ENFORCEMENT.** Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance; and to enjoin non-compliance by *ex parte* temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to insure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act or other cause outside of Grantor's control or any prudent action taken by Grantor to avoid, abate, prevent or mitigate damage or changes to the Property from such causes.

SECTION IV – DOCUMENTATION

Documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report (“Documentation Report”), describes the condition and character of the Property at the time of the gift. The Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the Documentation Report contained in the files of Grantee is an accurate representation of the Property.

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. Landowner’s rights and obligations under this Easement terminate upon proper transfer of Landowner’s interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
2. **NO PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof, except in the event that Grantor enters into a lease, sale or other arrangement with Grantee to facilitate such public access for use of the Property as a public park or natural area as set forth in Section II, paragraph 2, subsection (vi).
3. **TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement and that the Property is free and clear of all encumbrances (other than utility and access easements) including, but not limited to, any mortgages not subordinated to this Easement.
4. **ACCEPTANCE.** Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 and is evidenced by the signature of Hollis Tharpe, Mayor, pursuant to the authority granted to him by a Resolution of the Town Council of the Town of Front Royal, Virginia, a true copy of which is attached hereto and recorded herewith.
5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage or open-space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density.

No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

6. **CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policy and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.
7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number or other appropriate reference in any deed or other instrument conveying any interest in the Property.
8. **NOTICE TO GRANTEE.** Grantor agrees to notify Grantee in writing (i) before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or open-space values or interests associated with the Property; and (ii) at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.
9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see Section 1.170A-13(c)(5)), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.
10. **MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.
11. **ASSIGNMENT BY GRANTEE.** Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as an eligible donee as defined in Section 170(h)(3) of the IRC as amended and the applicable Treasury Regulations.

12. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the donation of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.
13. **EXTINGUISHMENT, CONVERSION, DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act which does not permit extinguishment of open-space easements or loss of open space. Nevertheless, should an attempt be made to extinguish this Easement, such extinguishment can be made only by judicial proceedings and only if in compliance with Section 10.1-1704. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section 12 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this easement and the Open-Space Land Act.
14. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's conservation values. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of Warren, Virginia.
15. **SEVERABILITY.** If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.
16. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.
17. **CONTROLLING LAW.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.
18. **RECORDING.** *This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Warren, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.*
19. **SUBORDINATION.** *TAMARA LEE PREISS and BETTINA SILVA CALLAWAY, CO-TRUSTEES OF THE BETTINA SILVA CALLAWAY REVOCABLE TRUST AGREEMENT DATED JULY 7, 2012, is the Noteholder under a certain Deed of Trust dated July 17, 2014 and recorded in the Clerk's Office of the Circuit Court of Warren*

County, Virginia as Instrument No. 140003249, which subjects the Property to the Noteholder's lien. The Noteholder hereby consents to the terms and intent of this Easement, and agrees that the lien represented by said Deed of Trust shall be held subject to this Easement and joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement.

COUNCIL APPROVAL – Implement 2009 Resolution to Abandon Undeveloped Right-of-Way and Authorize Conveyance of an Undeveloped Portion of W. 8th Street to William M. Biggs and William J. Biggs AND Approve Payment of Claims Associated with a Fence/Gate

Summary: Council is requested to implement the November 9, 2009 Resolution to Abandon Undeveloped Right-of-Way and Authorize Conveyance of an Undeveloped Portion of W. 8th Street to William M. Biggs and William J. Biggs. The Resolution authorized the Mayor to execute a Quitclaim Deed to William J. Biggs and William M. Biggs for an unimproved and unused portion of W. 8th Street in return for payment to the Town by the Biggs of the sum of \$30,000, as presented. During this same time Mr. Biggs filed a claim with the Town in the amount of \$2,586.53 in property damages to his fence and gate due to the installation of a storm sewer. Council is requested to consider approval of the payment of the claims to the Biggs in the amount of \$2,586.83 to be deducted from the \$30,000 owed to the Town for the property referenced above.

Vice Mayor Tewalt moved, seconded by Councilman Sealock that Council approve the implementation of the November 9, 2009 Resolution to Abandon Undeveloped Right-of-Way and Authorize Conveyance of an Undeveloped Portion of W. 8th Street to William M. Biggs and William J. Biggs, as presented. He further moved that Council approve the payment of the claims for property damage to the Biggs' fence and gate in the amount of \$2,586.83, said claim to be deducted from the \$30,000 owed to the Town for the property referenced in the November 9, 2009 Resolution.

Vote: Yes – Gillispie, Meza, Morrison, Sealock and Tewalt
No – N/A
Abstain – N/A
Absent – Connolly
(Mayor Tharpe did not vote as there was no tie to require his vote)
(By Roll Call)

COUNCIL APPROVAL: Budget Amendment for Sale of Old Police Department, 24 W. Main Street

Summary: Council is requested to approve a budget amendment totaling \$275,000 for the sale of the Old Police Department located at 24 W Main St. The amount of \$22,000 will be used to pay the realtor and the amount of \$253,000 will be placed into contingency for future use at the discretion of Town Council.

Vice Mayor Tewalt moved, seconded by Councilman Meza that Council approve a budget amendment totaling \$275,000 for the sale of the Old Police Department located at 24 W. Main Street; \$22,000 for realtor costs, and the amount of \$253,000 will be placed into contingency for future use at the discretion of Town Council.

COUNCIL MEETING MINUTES

September 11, 2017

Vote: Yes – Gillispie, Meza, Morrison, Sealock and Tewalt

No – N/A

Abstain – N/A

Absent – Connolly

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

(By Roll Call)

There being no further business, the Mayor declared the meeting adjourned at 7:10 p.m.

APPROVED:

Jennifer E. Berry

Clerk of Council