TOWN COUNCIL WORK SESSION
Monday, December 4, 2017 @ 7:00pm
Town Hall Council Chambers

1. <u>Presentation from People Inc. on New Market Tax Credit - Continued Discussion of Fixed Term Financing Option for new Police Department</u>

Summary: The Warren County Economic Development Authority was scheduled to bring in People's Inc. representation to present and answer questions related to the New Market Tax Credit. Additional information will also be provided for the option of a 30-year fixed term loan. Mr. Wilson of the Town's Finance Department was available to present information for the Town Council.

Council is requested to provide staff with direction on proceeding with the New Market Tax Credit Program and/or the 30-year fixed term loan.

Staff Evaluation: Staff has provided several funding scenarios for the New Market Tax Credit Program & the 30 year fixed term financing. Each option has different benefits & risks to the Town. Currently, the Town is being offered a 30-year fixed term loan with an interest rate of 2.65%. If the Town proceeds with the N.M.T.C. program the Town will be required to refinance the remaining balance after paying interest only for a period of 7 years after the project has been completed. If the Town is able to obtain the 30% credit from the N.M.T.C. program and the fixed term interest rate remains under 4.8% for 30 years the N.M.T.C. would be beneficial to the Town when compared to the current option of 2.65% for 30 years. Some of the variables involved in the N.M.T.C. program are the terms that will be available for financing in 7+ years and the future of the program.

Budget/Funding: Scenarios have been provided for reference

TO: FRONT ROYAL MAYOR & TOWN COUNCIL
CC: JOE WALTZ
FROM: B. J. WILSON, DIRECTOR OF FINANCE
RE: NEW MARKET TAX CREDIT PROGRAM VS 30 YEAR FIXED TERM

Town Council requested some comparisons for the New Market Tax Credit Program & the option of a 30-year fixed term loan.
The refinancing of Leach Run Parkway has been removed from the New Market Tax Credit Program figures in order to provide a true apples to apples comparison. These scenarios take into account the $11 million for the construction of the Police Department & the $5.5 million for Happy Creek Phase II.

The scenarios all assume a 30 year term will be available when the Town is required to refinance the remaining debt from the New Market Tax Credit Program. The scenarios also include interest only payments on the $16.5 million, for a period of 9 years in the New Market Tax Credit Program. Under the New Market Tax Credit Program, the Town is required to pay interest only for a period of 7 years after all projects have been completed. This is assuming that all projects will be complete within a period of 2 years. Additional interest expense would be incurred if the projects were not completed within 2 years. These scenarios also assume that the Town will then be refinancing a debt of $11.55 million (70% of the original $16.5 million) once the NMTC program has ended.

Using scenario #1 from the information provided at the November 20, 2017 work session for the 30-year fixed term rate at 2.65% the total expense incurred by the Town would be $24,415,550 and is estimated to require a total real estate tax increase of $0.025 per $100. This scenario has been used as a basis to provide additional scenarios for the funding for the NMTC Program

Scenario #1 Provided at Council Work Session on Nov 20, 2017
The General Fund owes the Electric Fund $600,000 (excluding the FY18 payment budgeted) for the repayment of the loan of the Town Hall Building. Council could elect to take money out of the general fund surplus funds to payback the electric fund; thus freeing up an additional $150,000 in the annual budget that could be allocated toward the construction of the Police Department and/or Happy Creek Phase II. Based on current assessments/rates, the real estate tax rate would likely need to increase $0.01 in April 2018, an additional $0.01 in April 2019, and an additional $0.005 in April 2020. The Town could begin paying interest & principal on the Police Department immediately. The Town would likely need to pay interest only for two years (totaling about $290,000) on the debt service for the $5.5 million with this option.

Comparison Scenario A
Assumes that term and interest rate currently being offered to the Town of 30 year/**2.65%** will be available when the Town is required to refinance the remaining $11.55 million of the NMTC Program. The estimated real estate tax increase would be $0.0025 per $100 in April 2027 and the Town would recognize a **net benefit in expenses of $5.3 million dollars** when compared to financing the full $16.5 million with a fixed term rate of 2.65%.

Comparison Scenario B
Assumes that term and interest rate will increase 1% to be a 30 year/**3.65%** when the Town is required to refinance the remaining $11.55 million of the NMTC Program. The estimated real estate tax increase would be $0.01 per $100 in April 2027 and the Town would recognize a **net benefit in expenses of $2.99 million dollars** when compared to financing the full $16.5 million with a fixed term rate of 2.65%.

Comparison Scenario C
Assumes that term and interest rate will increase 2% to be a 30 year/**4.65%** when the Town is required to refinance the remaining $11.55 million of the NMTC Program. The estimated real estate tax increase would be $0.01 per $100 in April 2027 and the Town would recognize a **net benefit in expenses of $538,970** million dollars when compared to financing the full $16.5 million with a fixed term rate of 2.65%.

Comparison Scenario D
Assumes that term and interest rate will increase 3% to be a 30 year/**5.65%** when the Town is required to refinance the remaining $11.55 million of the NMTC Program. The estimated real estate tax increase would be $0.03 per $100 in April 2027 and the NMTC Program will have cost the Town more than if the Town had financed the full $16.5 million. The **additional expense of $2 million** would be incurred when compared to financing the full $16.5 million with a fixed rate term of 2.65%.

If the Town were able to obtain a 30-year fixed term rate once the NMTC program has ended, the Town would recognize an overall benefit in total expense if the interest rate remains under 4.8% annually. The current interest rate being offered to the Town is 2.65%. If the interest rate were to increase more than 2.15% over the next 7-9 years, the NMTC program would not be beneficial to the Town based on a 30-year term.

Council Discussion:
Messrs. Wilson and Waltz recommended the fixed rate. Vice Mayor Tewalt noted that he recommends the fixed as well, he added that it would only leave $900,000 in the Town's surplus funds, and the Electric Fund was already in the hole as well, and then the refuse was also in the hole.

He stated that no other funds should be taken out of the General Fund as the Town should not be removing funds from the accounts.

Councilman Meza clarified that there was enough to cover three months reserve, the outstanding obligations/before the purchase orders. Mr. Wilson stated that they did, with about $1.8 available. Mr. Meza and Mr. Wilson discussed the fluctuation of rates, the loss of funding in seven years and the risk factors. Mr. Wilson stated that the tipping point was 3.8%. Councilman Sealock noted that he was not ready to decide at this point. Councilman Meza stated that even if 4.65% the debt service is still less than if the Town financed on a fixed rate. He added that the rate would have to go up to 5% before it became a "bad deal" for the Town. Councilman Gillispie noted that he was in favor of the fixed rate.

Councilman Connolly stated that there were many variables for the New Market Tax Credit Program and there were other options with less risk. Mr. Waltz noted that People's, Inc. could come at the first worksession in January. Vice Mayor Tewalt noted that the fixed rate of 2.65% was his preference; Messrs. Gillispie and Connolly noted that they concurred with Mr. Tewalt. Mr. Meza stated that he may be inclined to be in favor of People's, Inc. Mr. Waltz noted that if there was not a deadline, then they could have People's, Inc. come in to discuss matters in full.

2. FRLP Proffer Revision Request (R1-A) – *Director of Planning/Zoning*
Summary: Front Royal Limited Partnership (FRLP) has submitted a request to amend the 2010 proffers associated with the conditional rezoning of approximately 149 acres to the R1-A District. The proposed changes do not alter the type or density of the proposed development (320 Single-Family Detached Dwelling Units). Rather, the proposed changes alter specific conditions in the proffers, such as, but not limited to, the tap fee credits, per-unit cash proffers, non-cash proffers, East/West Connector.

PLANNING STAFF REPORT
Adoption or revision of proffers requires the same procedures as a rezoning or ordinance amendment. The submission must first be reviewed by the Planning Commission, and the Planning Commission must forward recommendations to Town Council. Town Code 175-146.D. specifies that the Planning Commission must take action within 90 days after the date of the first regular meeting of the Commission. It is important to note that when the submission changes, such as when a property owner revises the proffers during the review process, the 90-day time period resets.

Before approving and adopting any rezoning, or modification of a previously approved rezoning (proffers), a public hearing is required, pursuant to Virginia Code § 15.2-2204. The original proffers were reviewed by Town Council and the Planning Commission on June 22, 2017. During this joint meeting, the following issues were discussed:

1) Tap Fee Credits. Various aspects of the proffers are not permissible by law (see legal review document from the Town Attorney). Most notably, this includes the tap fee credit that reduces the required tap fees for FRLP. The existing proffers cap the tap fees paid by FRLP at $10,000 per connection. **[See the Town Attorney's legal review]**
2) Confusing Language. Both the Town Attorney and FRLP agree that the proffers are

"untenably confusing to interpret**."** The multiple ways to interpret many of the proffers could lead to unnecessary lawsuits in the future.
3) Complexity. In addition to being confusing, the language of the existing proffers is complex. Documentation from the original rezoning process in 2009/2010 appears to be misleading by suggesting that the proffers ensure the construction of the East/West Connector Road. This is far from the case. The existing proffers do account for the possibility of the East/West Connector Road being built, but such possibility is very unlikely due to the following provisions found in the proffers:

o The proffers require FRLP to build Phases 2-4 of the East/West Connector if the Town elects to build Phase 5. However, even if the Town elects to build Phase 5, FRLP can chose to not build Phases 2 – 4 by stopping development at 199 houses.
o Even if FRLP decides to build over 199 houses, and the Town builds Phase 5, the existing proffers give FRLP a dollar-for-dollar credit for all the costs FRLP incurs in the construction and design of the East/West Connector (Phases 2 – 4). It is probable that these credits (construction costs) would far exceed any cash proffers paid by FRLP, and not unimaginable that FRLP (or future owner) would try to seek additional payments or credits from the Town.

PROPOSED PROFFERS:
The Applicant's original proffer revision submission was dated August 24, 2017. It was revised by the Applicant on September 29, 2017, October 27, 2017, November 6, 2017, and most recently on November 8, 2017. Below is a summary of the proffer changes proposed by the Applicant:

• The proposed proffers eliminate the tap fee credits.
As mentioned above, there are legal issues with the tap fee credits. FRLP proposes to eliminate the tap fee credits, but in doing so has eliminated the per-unit cash proffers.
• The proposed proffers eliminate the per-unit cash proffers.
The existing proffers (2010) include a cash proffer amount of $19,600 per house, for each house built after the first 99 houses. There are many possible outcomes written into the proffers that control what the total amount of cash proffers would be. This could range dramatically, from a positive 3.1 million dollars to the Town to a negative 11.5 million dollars, or more, to the Town. The major variables that control the outcome include the following:

▪ How the tap fee credit is accounted for in the first 99 houses.
▪ The value of land dedications.
▪ Whether the East/West Connector Road is built or not (scenario 1 or 2).
▪ How many houses the applicant decides to build.
▪ The amount of time it takes for the development to occur.
Scenario 1 and 2 is broken down in more detail on the tables attached to the Town

Attorney's legal review memorandum.

• **The proposed proffers eliminate Phases 2-5 of the East/West Connector Road.**
The proposed proffers require FRLP to build the first section of the East West Connector and provide right-of-way throughout FRLP's R1-A Zoned property. The intent is that the remaining sections would be addressed in the rezoning of FRLP's 604-acre property. Based on the Applicant's traffic study from 2010, as well as the draft 2017 traffic study, Phases 2 – 5 of the East/West Connector Road is not necessary to accommodate the traffic from the R1-A Zoned property (up to 320 dwelling units).

• **The proposed proffers add new transportation related proffers.**
FRLP has offered up to $450,000 to the Town for traffic signals at the intersections of Shenandoah Shores Road & East/West Connector, and, Shenandoah Shores Road & Happy Creek Road. Alternatively, the funds could be used toward Leach Run Parkway if the Town decides to not require a traffic signal. The applicant has also added a proffer for a left-turn lane onto the East/West Connector from northbound traffic on Shenandoah Shores Road. The applicant also has added an eastbound right-turn lane onto Shenandoah Shores Road. The westbound right turn lane off of Happy Creek Road to Shenandoah Shores Road remains in the proffers.

The applicant's original submission on August 24, 2017 included other transportation improvements, such as a southbound right-turn lane on Shenandoah Shores Road at Happy Creek Road. However, these were removed when the applicant's transportation consultants determined that this was not needed for the 320 units, but would be in the future. Current State law prohibits localities from accepting proffers for improvements that are not warranted by the proposed development.

• **The proposed proffers remove other credits in the existing proffers.**
The proposed proffers also remove various credits and gifts that would be received by FRLP, other than the tap fee credits. This includes credits for the right-of-way dedication needed for the development's access road; credits for a small portion of land at Shenandoah Shores Road that is needed for the future realignment of Shenandoah Shores Road for the flyover; and the gifting of Town land to FRLP.

• **The proposed proffers include other minor changes.**

The proposed proffers include other minor changes, such as, but not limited to, the elimination of Energy Star Certification; the increased width of the proposed trail to 8 feet, the modification of East/West Connector road location, as shown on Exhibit 3; the modification of when the neighborhood park would be built in the development process (150th versus 99th permit); the modification of when the school proffers are paid to Warren County; and clarification of what the entrance road will consist of.

The proffers include a provision that the road section A1 to B will be built when any final record plat includes a residential lot within 25 feet of Marys Shady Lane. Staff would note that this effectively means that section A1 to B may not be built. However, the proffers do guarantee that the Town would have reservation of the right to obtain such right-of-way if needed for the future road extension. Furthermore, the road section will be necessary before the A-1 property can be developed.

STAFF CONCLUSIONS:

The following bullet points include Pros and Cons associated with the proposed proffers:

- **Pro:** The proposed proffers do address the major legal issues that have been the topic of conversation for the past few years. This includes, but is not limited to, the removal of the tap fee credits and the elimination of Scenario 2 of the East/West Connector road that places a great financial burden on the Town.
- **Pro:** While the proposed proffers only address the first section of the East/West Connector road, this is all that can be legally required. The new proffer laws of the Virginia Code restrict proffers from including off-site improvements that are not necessary for the proposed development. As identified in the applicant's traffic studies, only the first part of the East/West Connector is necessary for the 320 dwelling units on the subject property.
- **Pro/Con:** FRLP did not combine the R1-A and A-1 properties into one unified development project, as requested from Town Council and the Planning Commission. FRLP intends to submit a rezoning application in the near future on the A-1 property to address the future extension of the East/West Connector.
- **Pro/Con:** Although improved from the existing proffers, the proposed proffers still include a great deal of unnecessary and unenforceable language. For example, Sections 2 and 3 are already required by Town Code, and Section 4 and 5 are unenforceable.
- **Pro/Con:** Upon evaluation of the proposed proffers, the most significant change from the Town's perspective appears to be the elimination of the per-unit cash proffers. The existing proffers allow these funds to be used by the Town towards Leach Run Parkway. The proposed proffers eliminate these per unit cash proffers, but does add $225,000 towards traffic signalization at the entrance road. Added with the $225,000 already proffered for traffic signalization at Happy Creek Road/Shenandoah Shores Road, the applicant is offering $450,000 in cash to the Town to address off-site transportation impacts created by the proposed development. The applicant has also added alternative language, so if the Town decides not to install either of the traffic lights, the funds can be used towards Leach Run Parkway.

From FRLP's point of view, the per-unit cash proffers and tap fee credits were originally intended to balance each other out. Therefore, FRLP believes that eliminating the tap fee credits necessitates the elimination of the per-unit cash proffers.

- **Con**: Just as the existing proffers do not, the proposed proffers do not address impacts to law enforcement.

At the November 15, 2017 Planning Commission Meeting, a public hearing was held on the application. No citizen input was received at the public hearing. The Planning Commission approved a motion to recommend approval of the proposed proffers by FRLP.

Council Discussion: Council discussed the location of the roadway and the full tap fees to be paid under the proffers.

Mr. Camp noted that only one of the Planning Commission members was against the measure, all others were in favor. Council chose to bring it back to worksession once more before a public hearing.

3. <u>Agreement between the Town and County for collection and remittance of fees paid online through EnerGov Software</u> – *Director of Planning/Zoning*
Summary: In 2014, the Town and County individually signed agreements to purchase permitting and land management software known as EnerGov. The system went live in 2016, and is currently used by the Town and the County to process permits, inspections and other land use applications. However, for the full utilization of the software, integration of the Citizen Self Service (CSS) component is needed. CSS will establish an online portal for EnerGov, where applicants can apply online and check the status of their permits, inspections and/or application review. This includes payment of application fees online. CSS does not allow both the County and the Town to process payments. The system is only able to remit payments to one entity, either the Town of the County. The Town and County have discussed setting-up an agreement where the County would collect payments to the Town and reimburse those on a quarterly basis. This would be at no charge to the Town, and would be accompanied by an itemized report. Credit card processing fees would be paid online by a vendor and not require collection by the Town or County. The agreement has been approved by the Warren County Board of Supervisors at this time.

Legal Evaluation: The Town Attorney helped draft the attached MOA with the County Attorney, with assistance from the Town Director of Finance and Director of Planning & Zoning.

Council Discussion: With brief discussion, Council chose to move forward.

4. <u>Continued Discussion of IT Federal/Royal Phoenix/W. Main Street Extension</u> – *Director of Planning & Zoning*
Summary:

• IT Federal: Based on Town Council's direction at the Work Session on November 20, 2017, Town Staff has directed Pennoni Associates to begin design work of the pump station. The work is being in initiated through the EDA with the understanding that the Town will pay for the cost. Based on Pennoni Associate's cost estimate, the design will cost $9,200. Staff has also requested a time schedule for design and construction. A decision still needs to be made regarding who is paying for the pump station construction.
To recap from the November 20th Work Session, the pump station will be designed as a 10HP Smith and Loveless system that will accommodate 80,000 GPD, or the equivalence of 4,200 employees at 15 GPD. The pump station will discharge to the north of the site, and a second pump station would be needed in the future for the southern portion of the development.

• Royal Phoenix: The concept plan and traffic study is scheduled for review by the Planning Commission during a work session on December 20, 2017. As identified in the traffic study addendum, there are approximately 12 million dollars in off-site improvements that are recommended to accommodate the traffic that the entire development would generate. The addendum includes a phasing analysis that points out the thresholds of when the various off-site improvements will be warranted. The concept plan and traffic study will be forwarded to Town Council following review by the Planning Commission with their recommendations.

• W. Main Street Extension: Bohler Engineering submitted a revised cost estimate for the construction of West Main Street. The original estimate was adjusted to reflect the pump station being a public facility. The total estimated cost is approximately $1.4 million dollars.

Council Discussion: Council discussed the sections of the road construction and the pump station options. Vice Mayor Tewalt noted that he did not wish to see the future areas needing a pumping station and the Town not consider the area in full. He stated that if someone from the other side come into the site, then the all taps should be considered for the whole area. Mr. Hannigan and Mr. Camp noted that the site cannot be dug down lower than 10 feet. Mr. Tewalt noted that the 10 feet disturbance may not apply to all areas.

Mr. Waltz noted that the grant should be considered and Mr. Meza stated that the tap fees would also be collected.

5. <u>Criser Road Bridge Update</u> – *Town Manager*
Summary: On August 10, 2017, the Town only received one bid for the construction of the bridge for $1,377,980 which was double the construction estimate. The Town re-advertised the RFP and on September 15, 2017, the Town received two bids but still double the construction estimate. We have had discussions with both contractors and will update Council at the meeting and discuss the next steps for the construction of Criser Road Bridge Project.

Council Discussion: Mr. Waltz suggested holding off until March in order to rebid in early spring. Vice Mayor Tewalt noted that the new specs will have the crossover matter removed. Mr. Sealock noted that the $860,000 amount was more realistic. Mr. Tewalt noted that advertising in February. Council agreed with re-advertising in February.

6. <u>Audit/Finance Committee Terms expire 12/31/17</u>
Summary: Councilman Jacob L. Meza and Vice Mayor Eugene R. Tewalt terms on the Audit and Finance Committee expire December 31, 2017. This is a one year term.

Council Discussion: Council chose to place the gentlemen back on the Committee for another year.

7. <u>Joint Tourism Advisory Committee Recommendations</u>

Summary: Council approved the Front Royal-Warren County Joint Tourism Advisory Committee Memorandum of Agreement (MOA) on November 13, 2017. The MOA states the Committee shall consist of (9) nine members, each appointed to a 4-year term. Three members shall be 1) the Front Royal Director of Community Development & Tourism; 2) the Warren County Planning Director and 3) the President of the Front Royal-Warren County Chamber of Commerce. The remaining (6) six members shall be appointed by the Town Council (3 members) and Board of Supervisors (3). One member from each the Town and County must be a representative from a lodging property. Council is requested to consider the recommendations from the Director of Community Development & Tourism and approve the (3) three appointments at a regular meeting.

Council Discussion: Ms. Hart presented the nominees for the appointees and Council noted that it should move forward onto the agenda. She stated that the they are sponsoring the attendance at the DC Metro Cooking Show Beer Garten and the Backroom Brewery will be at the DC Convention Center.

8. **Council Discussion/Goals**

Councilman Meza noted that lights were promptly replaced around town and he thanked Staff for that. He asked about how Culpeper does their property maintenance/buildings that are dilapidated; Mr. Napier noted that he will check into that issue. Mr. Camp explained the derelict structure matter adopted by the Town of Culpeper.

PRESENT: Mayor Tharpe, Vice Mayor Tewalt, Councilman Connolly, Councilman Gillispie, Councilman Meza, Councilman Sealock, Town Manager Waltz, Town Attorney Napier, Clerk of Council Berry, Director of Planning Camp, Director of Finance Wilson, Director of Energy Services Jenkins, Director of Community Development Director Hart, IT Director Jones, members of the public and members of the press.

ABSENT: Councilman Morrison