

Regular Meeting

County Board of
Supervisors Room
October 13, 2009

The Council of the Town of Culpeper convened in regular session at 6 p.m. with Mayor Pranas A. Rimeikis presiding. **Present:** Calvin L. Coleman, Duke M. duFrane, Michael T. Olinger (arrived 6:02 p.m.), James C. Risner, Robert M. Ryan, Christopher H. Snider, William M. Yowell, Council Members; Jeffrey B. Muzzy, Town Manager; Kristi Caturano, Assistant Town Attorney; Kimberly D. Allen, Town Clerk, Lisa D. Hutcherson, Deputy Town Clerk. **Also Present for the 7 p.m. Session:** Mike Barnes, Information Technology Specialist ; Robert H. Thornhill, Jr., Public Works Director; Mark Bly, Light & Power Director; Christopher D. Hively, Environmental Services Director; Scott Barlow, Police Chief; Ron Mabry, Treasurer; Wally Bunker, Public Information Officer.

AGENDA APPROVAL

Mayor Rimeikis requested the addition of a closed session item to discuss or consult with staff and/or legal counsel regarding negotiating issues which may become subject to review by the Commission on Local Government relating to interjurisdictional cooperation, a possible boundary adjustment with Culpeper County, water and sewer agreements generally pursuant to Code of Virginia Section 2.2-3711(A)(7) and 15.2-2907(D).

Vice Mayor Yowell moved, Council Member Risner seconded, approval of the agenda as amended. The motion carried by unanimous voice vote (7-0—Aye-Coleman, duFrane, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-Olinger).

CLOSED SESSION

Vice Mayor Yowell moved, Council Member Risner seconded, council enter closed session to discuss or consider individuals who have applied for positions on authorities, boards, and commissions (specifically Joint Board of Zoning Appeals, Industrial Development Authority, Tourism Advisory Committee, and Veterans Recognition Committee) pursuant to Code of Virginia Section 2.2-3711(A)(1), and to discuss or consult with staff and/or legal counsel regarding negotiating issues which may become subject to review by the Commission on Local Government relating to interjurisdictional cooperation, a possible boundary adjustment with Culpeper County, water and sewer agreements generally pursuant to Code of Virginia Section 2.2-3711(A)(7) and 15.2-2907(D).

Council Member Olinger arrived (6:02 p.m.).

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

Council entered closed session at 6:05 p.m. and open session at 6:40 p.m.

Certificate of Closed Session: Pursuant to Code of Virginia Section 2.2-3712, Mayor Rimeikis polled council for approval of the certificate of closed session that to the best of each member's knowledge, only business matters lawfully exempted from open meeting requirements under Code of Virginia Sections 2.2-3711 and 15.2-2907(D) and only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in the meeting by the public body.

The motion carried by the following roll call vote: Aye: Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell (8); Nay: None (0).

RECESS: Council recessed at 6:46 p.m.

OPEN SESSION

Council convened in open session at 7:00 p.m.

Council Member Coleman lead the Pledge of Allegiance.

CONSENT AGENDA

On motion of Council Member Olinger, seconded by Council Member Coleman, the items listed below were approved by the following roll call vote: Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell (8); Nay-None (0).

a. **R/R Re: Litter Prevention & Recycling Grant Acceptance:** Council accepted the litter control and recycling grant from the Department of Environmental Quality in the amount of \$3,618 to be administered by the Public Works/Refuse Collection Department.

b. **R/R Re: New Police Station—Acceptance of Furniture Bids:** Council accepted the bids from Creative, JMJ Corporation, ACI, American Office, and Display Allowance totaling \$202,047.64 for the new police station furniture needs and authorized the town manager or his designee to authorize Pye Interiors (working for Dominion Development Resources LLC) to make the purchases.

c. **Treasurer's Report:** Council approved the treasurer's report reflecting a balance of \$32,338,882 and bills paid listings.

d. **Minutes of Previous Meetings:** Council approved the minutes of the regular meeting of September 8 and special meetings on September 24 and 29, 2009 as presented.

SPECIAL ITEMS AND RECOGNITIONS

a. **Employee of the Month Recognition:** Distribution Supervisor Trigg Kincer from the Light & Power Department was selected as Employee of the Month for August 2009.

b. **Special Award Presentation:** Mayor Rimeikis presented former council member F. Steve Jenkins with a plaque (and his nameplate) for his service on council from July 1, 2006 to September 8, 2009. Mr. Jenkins voiced his support of the State Theatre Foundation's funding request.

COMMENTS & CORRESPONDENCE FROM CITIZENS, VISITORS & DELEGATIONS IN THE AUDIENCE - There were none.

UNFINISHED BUSINESS

Closed Session Items

Vice Mayor Yowell moved, Council Member Coleman seconded, Council re-appointed Elliott H. DeJarnette and Roger C. White to the Industrial Development Authority for new four-year terms beginning October 29, 2009, and ending October 28, 2013.

The motion carried by the following roll call vote: Aye: Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell (8); Nay: None (0).

Vice Mayor Yowell moved, Council Member Risner seconded, to endorse the appointment of Joseph C. Coppedge to fill the unexpired term on the BZA, which will expire on May 6, 2012.

The motion carried by the following roll call vote: Aye: Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell (8); Nay: None (0).

Vice Mayor Yowell moved, Council Member duFrane seconded, to appoint Laurel Care Gravatte to fill the unexpired term of former council member F. Steve Jenkins effective immediately and expiring June 30, 2010.

The motion carried by the following roll call vote: Aye: Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell (8); Nay: None (0).

NEW BUSINESS - PUBLIC HEARINGS

Case AMD-005-2009: Amendments to Town Code Section 22-82, Subdivisions, to Allow Payment by a Subdivider of the Pro Rata Share of the Cost of Off-Site Sanitary Sewer, Storm Sewer, Water, & Drainage Facilities in accordance with Code of Virginia Section 15.2-2243

Mayor Rimeikis opened the public hearing. There being no one to address council, Mayor Rimeikis closed the public hearing.

R/R Re: Case AMD-005-2009: Amendments to Town Code Section 22-82, Subdivisions, to Allow Payment by a Subdivider of the Pro Rata Share of the Cost of Off-Site Sanitary Sewer, Storm Sewer, Water, & Drainage Facilities in accordance with Code of Virginia Section 15-2-2243

Town Manager Muzzy presented the report and recommendation stating that Virginia Code, Section 15.2-2243 authorizes a locality to adopt an ordinance to collect pro rata fees for drainage facilities, to include sanitary sewer, storm sewer, water and other drainage facilities, located outside the property or limits of land owned or controlled by the subdivider or developer. Currently, the Town of Culpeper has not adopted such an ordinance.

In 2003, the Town entered into a Sanitary Sewer Reimbursement agreement with Washington Homes, Inc., of Virginia, to allow the owners of the Highpoint/Cornerview subdivision to construct a sanitary sewer pump station and force main to serve off-site developments in the service area established by such agreement. Under the agreement, the Town would recover the pro rata cost of the pump station from other parties who connected with the pump station in the future. Subsequently, the pumping station was built and accepted by the Town in 2005. Since 2006, the Town has been charging the owners of Magnolia Walk their pro-rated share of the costs associated with constructing a portion the pump station that receives the Magnolia Walk discharge; this money is remitted or returned to K & M, current owners of Highpoint/Cornerview.

On June 16, 2009, the owners of Magnolia Walk Subdivision, Augustine Homes, LLC., through its attorney, asserted a claim that the Town could not collect pro rata payments because the Town has not adopted an ordinance which would allow a pro rata agreement.

August 5, 2009, Assistant Town Attorney Martin Crim, responded and denied such claim on the basis that the Town has the power to enter into agreements, has accepted the benefit of the agreement, and has ratified the agreement.

To avoid any confusion and/or future litigation, the Town Attorney's office recommends that the Town adopt an amendment to its subdivision ordinance allowing pro rata agreements and expressly ratifying the WHI agreement.

SUMMARY OF SPECIFIC CHANGES

Chapter & Section	Nature of Change
NEW SECTION Chapter 22, Subdivision. Sec. 22-82. Payment by subdivider of the pro rata costs of certain facilities.	Adds new language to allow the Town to require a subdivider or developer to pay a pro rata share of the cost of constructing certain off-site facilities, including sanitary sewer, storm sewer, water and other facilities; adds language to expressly ratify the agreement with Washington Homes, Inc. of Virginia (WHI).

The Town Attorney's office has reviewed and approved the proposed amendments as to legal form.

September 15, 2009, the Planning Commission held a public hearing and voted 4-0 (Mr. Huggard absent) to recommend approval of the ordinance amendments, as submitted. Staff concurs with this recommendation.

No public comments were received.

Council Member Olinger moved, Council Member Coleman seconded, to approve the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

FY2010 Budget Adjustment: Carryover of Funds 120 and 420 from FY2009 to FY2010, which exceed 1% of the total FY2010 Budget

Mayor Rimeikis opened the public hearing.

There being no one to address council, Mayor Rimeikis closed the public hearing.

R/R Re: FY2010 Budget Adjustment--Carryover of Funds 120 (General Fund Capital) and 420 (Wastewater Capital) from FY2009 to FY2010

Town Manager Muzzy presented the report and recommendation stating as part of the year-end process, unfinished projects from the prior year are carried forward to the current year. Budgeted funds available for these projects are brought forward as current year budget adjustments. The new fiscal year budget is adjusted to reflect these carryover transactions. The attached schedule highlights the specific projects and obligations, totaling \$3,648,359.41. The total FY10 budget, representing all operating and capital funds, is \$79,739,501.

In accordance with Virginia Code Section 15.2-2507, an amendment exceeding 1% of the total budget requires a public hearing. The public hearing will be held at the Town Council's regular meeting scheduled for October 13, 2009.

The FY2010 budget will increase in the appropriation as reserves and expenditures totaling \$3,648,359.41 in accordance with the attached document. The breakdown by fund is as follows:

General Fund Capital \$797,738.41
Wastewater Capital \$2,850,621.00

It is recommended that Council approve the budget changes as proposed and authorizes the town manager or his designee to make the necessary budget changes as follows:

1. General Fund Capital FY09 (Fund 120) accounts detailed on the chart below to the FY10 General Fund Capital budget.
2. Wastewater Fund Capital FY09 (Fund 420) accounts detailed on the chart below to the FY10 Wastewater Fund Capital budget.

<u>Account</u>	<u>Expenditure Description</u>	<u>Amount</u>	<u>Fund Total</u>	<u>Percentage of Total Budget</u>
120-9167-7040	Gen Fund - Wayfinding St. Sign proj	34,046.00		
120-9205-7040	Public Works - Stone Repair	30,200.00		
120-9237-5216	Gen Fund - Phase II Pedestrian Crosswalks	37,378.00		

<u>Number</u>	<u>Expenditure Description</u>	<u>Amount</u>	<u>Fund Total</u>	<u>Budget</u>
120-9238-5216	Gen Fund - To provide pedestrian signals	18,800.00		
120-9238-7040	Gen Fund - Historic streetscapes & entryways	29,019.41		
120-9243-7200	Gen Fund - Mt. Run Lake park improvements	2,068.00		
120-9253-7040	Gen Fund - New parks	78,302.00		
120-9280-5216	Gen Fund - New police station	131,413.00		
120-9294-7040	Gen Fund - Yowell Meadow Park	3,000.00		
120-9294-7200	Gen Fund - Yowell Meadow Park	4,248.00		
120-9391-5216	Gen Fund - Western inner loop roadway	241,264.00		
120-9394-5216	Gen Fund - West Street widening - Engineering	8,000.00		
120-9394-7040	Gen Fund - West Street Widening - Infrastructure	180,000.00		
	FUND 120 TOTAL:		797,738.41	1.0%
420-9030-7040	Public Works - Sewer Lining	250,000.00		
420-9057-5216	Environ Serv - Hazen and Sawyer	256,340.00		
420-9057-5216	Environ Serv - Timmons Group(concrete testing)	15,160.00		
420-9057-7040	Environ Serv - Adams Robinson	2,238,518.00		
420-9057-7040	Environ Serv - VAREC Biogas	45,683.00		
420-9065-7200	Environ Serv - Siemens Water tech (gear box)	2,572.00		
420-9066-7200	Environ Serv - Control room / Lab Renovation	42,348.00		
	FUND 420 TOTAL:		2,850,621.00	3.6%
	TOTAL	3,648,359.41	3,648,359.41	[percentages reflect rounding]
	Total FY10 Budget, including all Operating and Capital Funds is \$79,739,501			

Council Member duFrane moved, Council Member Coleman seconded, to approve the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

Appropriation of Bond Proceeds for Police Building Renovation/Construction

Mayor Rimeikis opened the public hearing.

There being no one to address council, Mayor Rimeikis closed the public hearing.

R/R Re: FY2010 Budget Adjustment for \$129,000 Associated with the Overall Project Budget for the New Police Building

Town Manager Muzzy presented the report and recommendation stating as part of the overall financing package for the renovation/construction of the new police building, the Town has received \$5.5 million at the bond closing held on September 15 2009. The total bond package is \$5,629,000 and the balance of \$129,000 needs to be appropriated to various accounts.

The appropriation of \$129,000.06 is broken into two (2) segments: \$101,009.28 in capitalized interest to allow for a debt service payment in February 2010 and \$27,990.78 in issuance expenses associated with the overall bond sale. This action was presented to the October 2009 Finance Committee while staff advertised for the public hearing in advance of the October 2009 Finance Committee meeting.

The FY2010 General Fund Capital budget will increase in the total amount of \$129,000.06. The funds will be appropriated to the General Fund Debt Service account in the amount of \$101,009.78 and the General Fund Capital budget for the New Police Building in the amount of \$27,990.78.

It is recommended that Council approves the \$129,000.06 budget amendment to the Fiscal Year 2010 General Fund Debt Service account and the General Fund Capital budget in the line item for the New Police Building as detailed above.

Council Member Snider moved, Council Member Risner seconded, to approve the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

Quarterly Reports from Authorities, Boards, & Commissions

Council received written reports from the Planning Commission, Parking Authority, Parks & Recreation Commission, Economic Development Advisory Committee, Cable Commission, Veterans Recognition Committee, Tourism Advisory Committee, and Public Transportation Board and a verbal report from County Economic Development Director Carl Sachs.

REPORTS & RECOMMENDATIONS FROM COUNCIL COMMITTEES

LIGHT & POWER AND WATER & WASTEWATER COMMITTEE

R/R Re: Amendment #3 to Hazen & Sawyer Contract--WWTP Phase II Expansion, Increase in Scope

Town Manager Muzzy presented the report and recommendation stating an engineering services contract was awarded to Hazen & Sawyer to provide design and construction assistance for the WWTP Phase II Expansion in January 2006.

Additional engineering services for the design, bidding, and construction of repairs to the existing lagoon liner are needed to correct deficiencies noted in the DEQ Annual Inspection. Additionally, additional engineering services are needed during construction for remedial improvements to the digester gas system for use of digester gas as fuel to the boilers.

The estimated cost of these engineering services is \$55,000. Since construction of the WPCF Upgrade is anticipated to be completed ahead of schedule, it is estimated that approximately \$32,000 of funds contracted with Hazen & Sawyer for construction assistance will not be required and will be available to partially cover the costs of this additional work.

The attached amendment number 3 increases the Hazen & Sawyer scope of services to include the above additions as well as providing flexibility for remaining funds to be charged between tasks to cover over and under estimates between tasks and allow for post start-up assistance if contracted funds are not required to complete the specified scope of services.

An increase in the Hazen & Sawyer contract of \$23,000 is needed to cover these additional scope items. Funds are available in WWTP Phase II Expansion and Engineering Services (42-9057-5216) to cover this additional cost.

It is recommended that Council authorizes the Town Manager to execute amendment number 3 to the existing contract with Hazen & Sawyer to provide the additional professional engineering services at a cost of \$23,000.

Council Member duFrane moved, Vice Mayor Yowell seconded, to approve the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

R/R Re: Amendments to Tap Privilege Fee Assessment Policy--Pre-Purchased & Use of Tap Privileges & Reimbursement

Town Manager Muzzy presented the report and recommendation stating the Tap Privilege Fee Assessment Policy assigns a tap privilege when the tap fee is paid by the potential customer. Current policy does not set a time limit on the use of a tap privilege once paid, and does not address reimbursement if requested by the user. Although not specifically addressed in the policy, the town has provided reimbursement of tap fees from customers requesting such refund prior to the tap privilege being used and charges a 2% administrative fee. Currently there are approximately 66 water and 56 sewer taps pre-paid and not yet used.

After discussions with legal counsel and other jurisdictions, reservations of tap privileges vary widely from one jurisdiction to another ranging from a use-it-or-lose-it policy to permanent reservations. Refund policies also range from full or partial reimbursement to no refund.

It is Staff's opinion that modifications to the existing policy should be made to limit guaranteed service for existing pre-purchased tap privileges to five (5) years and new tap privileges to 24 months. It is further recommended that reimbursement of tap privileges should be allowed with a 2 % administrative fee being assessed for existing pre-purchased tap privileges and 15% for future pre-purchased tap privileges. Setting time limits on the use of tap privileges will allow the Town to efficiently plan, construct, and distribute the limited capacity in a fair and efficient manner.

There is no financial impact to adopt the policy; however, there will be costs associated with the reimbursement of tap privilege fees in the future.

It is recommended that Council adopts the amendments to the Tap Privilege Fee Assessment Policy to limit guaranteed service for existing pre-purchased tap privileges to five (5) years and new tap privileges to 24 months and to allow reimbursement of tap privileges with a 2 % administrative fee being assessed for existing pre-purchased tap privileges and 15% for future pre-purchased tap privileges. These amendments will become effective immediately.

Council Member Ryan stated he would like to see the existing pre-purchased taps grandfathered and future purchases guaranteed for five years.

Discussion ensued regarding the number of current pre-paid water and sewer taps.

Council Member Risner moved, Council Member Olinger seconded, to approve the report and recommendation as presented.

Further discussion ensued on the possibility of allowing the pre-paid water and sewer taps to be grandfathered thereby removing any time restrictions for use. Council Member Snider stated the two-year timeframe should remain for future taps; however, he requested staff research pre-paid taps to determine their potential use as well as their affect on capacity.

Mayor Rimeikis stated the rationale for the policy was to prevent developers from buying large numbers of taps and not using them for an extended period of time.

Vice Mayor Yowell questioned if the pre-paid taps had been previously grandfathered. Environmental Services Director Hively responded the history regarding these taps was unclear.

Mayor Rimeikis stated he was unsure whether or not the policy would apply to the 50,000gpd allocated to the county.

The motion was withdrawn and the item was referred back to the Light and Power and Water and Wastewater Committee for further clarification.

PUBLIC SAFETY, PUBLIC WORKS, & PLANNING & COMMUNITY DEVELOPMENT COMMITTEE

R/R Re: Donations to Wine Street Memorial Park

Town Manager Muzzy presented the report and recommendation stating that continuing with the gifting program for Wine Street Memorial Park, these individuals and groups wish to donate the following items:

Donor:	In Honor/Memory Of:	Donated Item:	Donated Amount:
The Culpeper Foundation	All veterans of WWII and the Korean Conflict	Funds toward a central veteran's monument	\$5,000.00
Anonymous donations from the Museum of Culpeper History	All veterans of WWII and the Korean Conflict	Funds toward a central veteran's monument	\$ 25.00
Walter Burton	All veterans of WWII and the Korean Conflict	Logo work and designs	\$ 525.00
Keith D. Price	All veterans of WWII and the Korean Conflict	Pocket Folders for prospective donor information packets	\$ 340.00

Keith D. Price	All veterans of WWII and the Korean Conflict	Banners	\$ 500.00
Keith D. Price	All veterans of WWII and the Korean Conflict	Donor Gift Coins	\$ 650.00
Anonymous donations from the Culpeper 250 th Anniversary celebration	All veterans of WWII and the Korean Conflict	Funds toward a central veteran's monument	\$ 170.00
U.S. Military Vets Motorcycle Club – Culpeper Chapter 4	All veterans of WWII and the Korean Conflict	Funds toward a central veteran's monument	\$ 500.00
Totals:			\$ 7,710.00

In preparation for fundraising efforts this fall, Keith D. Price has donated several items which will be useful in the Committee's fundraising efforts: donor pocket folders, banners, and commemorative gift coins. The Committee, in connection with the Museum of Culpeper History, will host an invitation-only event at the museum on November 6.

The current donations and requests will offset the total cost of the project by \$7,710. To date, the Town has accepted \$66,424.28 in donations for this park.

It is recommended that Council accepts the donations for the central veteran's monument as shown above.

Council Member Snider moved, Council Member Risner seconded, to approve the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

R/R Re: Repeal of Existing/Adoption of Revised Chapter 13, Noise Ordinance (first reading)

Town Manager Muzzy presented the report and recommendation stating the Virginia Supreme Court, on April 17, 2009, in a case styled *Tanner v. City of Virginia*, Record No. 080998, ruled that Virginia Beach's noise ordinance was facially unconstitutional because its use of the "reasonable person" standard did not provide "ascertainable standards" for potential defendants. The Virginia Beach ordinance at issue, in part, prohibited noise that was "unreasonably loud, disturbing and unnecessary." This, the Court held, violated the "Due Process Clause" because it was too vague to give fair notice to prospective defendants of what conduct was prohibited. Copy of case is attached.

Presently, the Town of Culpeper prohibits any "noise disturbance," subject to certain exceptions. The Town Code (Section 13-2) defines a "noise disturbance" as "any sound which by its character, intensity, and duration: 1) endangers or injures the health or safety of persons within the town; or 2) disturbs reasonable persons of normal sensitivities within the town"

Two major types of noise ordinance standards appear to remain. First, ordinances may regulate noise by use of decibel levels. These ordinances are fairly common. Second, ordinances may define examples of noise disturbances. The Town has attempted to regulate noise or sound which by its character, intensity, and duration endangers or injures the health or safety of persons within the town or disturbs reasonable persons of normal sensitivities. While some examples of prohibited noise are identified the ordinance is vague and fails to give fair notice to prospective defendants of what conduct is prohibited.

The Town Attorney is of the opinion that regulation of noise by use of decibel levels is more successful than that by attempting to define examples of noise disturbances. The noise measurement proposed is based on recognized national standards, or Standard: IEC A-weighting which is widely used in environmental noise measurement. A noise source is generally considered to be intrusive if noise from the source, when measured over a 15 minute period, exceeds the background noise by more than 5 dB(A). The Town Attorney, based in part on the Virginia Beach court decision, has advised staff that the Town's current ordinance is vague and unenforceable. The Town has an opportunity to amend its ordinance in such a manner that it would not be facially unconstitutional. Changes in Virginia law require changes to the Town's noise regulation ordinance.

The proposed ordinance, which regulates noise in the Town by repealing the Town's vague standard and uses decibel levels for purposes of regulation.

To enforce the ordinance, the Police Chief recommends the purchase of four (4) noise meters at a cost of \$1,019 each for a total cost of \$4,076. Each meter is required to be calibrated yearly at the cost of \$196, for a total cost of \$784. Officers are required to be trained in the use of the noise meter, which will require a minimum of two (2) hours, at an estimated cost of \$30 per hour (total estimated training cost of \$2,400).
Total start up cost: \$6,476
Yearly Maintenance costs \$784

It is recommended that council holds the first reading of the proposed ordinance replacing Town Code Chapter 13, Noise Ordinance, on October 13, 2009, and the second reading on November 10, 2009. Following the second reading, it is recommended that council repeals existing Chapter 13 and adopts revised Chapter 13, Noise Ordinance, which regulates noise based on decibel levels, to become effective upon adoption.

Council held first reading. The second reading of the proposed ordinance amendments will be held at the regular November council meeting for council action.

R/R Re: Route 229 Widening Project--Roundabout at Route 229/15-29 Intersection

Town Manager Muzzy presented the report and recommendation stating since the regular July Council meeting, staff has held meetings with Jim Utterback, VDOT District Administrator, Brent Sprinkel, District Preliminary Engineer, in order to hold a scoping meeting to get the 229 Phase One widening project back on track. The meeting was held on September 3rd, and the topics of discussion were; funding, scheduling, and Intersection configuration options.

Funding:

For the phase 1 portion of the 229 widening project the funding is in place and it is considered fully funded. However, it is quite possible that the urban funding that is currently allocated, and in place for Phase I will fall short due to increases that can take place over the next three years. In that case, Revenue sharing funds that are currently allocated for phase II can be used to expedite the project. Additionally, VDOT has found an accounting error in the 229 project funding. The error was the result of splitting the 229 widening project into two projects. Fortunately, the Town has not lost any funding for the projects. However, the expenditures, engineering and surveying, were taken from phase 1 only, thereby leaving less money in the phase 1. The amount of money used for the expenditures is approximately 1.2 million dollars for engineering and design for both phases 1 & 2. As a result, funding in the amount of 1.2 million will be transferred from phase 2 to phase 1 to balance the account. At first glance it appears that phase 2 will be short, but in reality, the actual cost of phase 2 is reduced by an equal amount because the estimate includes the engineering costs which in fact have been undertaken to date.

Scheduling:

VDOT’s approximate schedule as to when different aspects of the project would be completed by is as follows:

Finalize Scope-December, 09; Update Plans-May, 2010; Design and Public Hearing-December, 2010; Acquire Right of Way-March, 2012; Utility Relocation, November, 2012; Advertise/Bidding Process-April 2013; Construction-August, 2014

Intersection Configuration:

As requested, VDOT has determined that the roundabout would be viable intersection configuration as well as a standard signalized intersection.

Funding in the form of urban funds and revenue sharing funds has been approved and allocated for the project.

It is recommended that council adopts the roundabout option as the viable intersection configuration vs. the standard signalized intersection at the Route 229/Route 15-29 intersection. Further, it is recommended that the town manager notify VDOT of the selected configuration and request that the project be expedited as much as possible.

Council Member Risner moved, Council Member Coleman seconded to approve the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

FINANCE, PERSONNEL, TECHNOLOGY & ORDINANCE COMMITTEE

R/R Re: Donations to 250th Anniversary Celebration

Town Manager Muzzy presented the report and recommendation stating these individuals and groups wish to donate the following items to offset the costs of the Town’s 250th Anniversary Celebration:

Donor:	Donated Item:	Donated Amount:
Mr. & Mrs. Marshall Gayheart, Jr.		\$100
Clore-English Funeral Home		\$250
Found & Sons Funeral Chapel –Cremation Services		\$50
Jacki & Rich Kaiser		\$25
Wells Fargo Advisors - Bob Kenefick		\$250
Culpeper County Library		\$50
Culpeper Regional Health System		\$250
Suites at 249		\$250
German P. Culver, Jr., CPA, PC		\$250
Cintas Corporation		\$500
Graystone Homes		\$10
Yount, Hyde & Barbour, P.C.		\$500

Rappahannock Electric Cooperative		\$250
Raven's Brew Coffee	Chocolate bar, coffee, postcards and a mug valued at \$39	Valued at \$39
Host Lions Club	Water	Valued at approximately \$40
Clarke Hardware	250 th anniversary crock	Valued at \$29.99
Knakal's Bakery, LLC	Cookies and a Sheet Cake	Valued at \$50
Tea Lace & Roses	Gift Certificates for Tea for Two	Valued at \$60
R & R Printing	Printing 1000 flyers	Valued at \$50
Cloud 9 Party Store	Children's Amusements for the picnic in the park	Valued at \$1040
Eventful	Design services	Valued at \$2500
Emma Richards	Culpeper throw	Valued at \$47
Wal-Mart	Decorations	Valued at \$25
Kimberla's Bridal	garter for the gift basket	valued at \$15
Purple Parrot	puzzle for the coloring contest	valued at \$15.99
	Cash	\$2735
	In-Kind	\$3911.98
Totals:		\$6646.98

The current donations will offset the total cost of the project by \$6646.98. To date, the Town has accepted \$36,591.98 in cash and in-kind donations for this event.

Cash donations will be deposited into a separate bank account established for the 250th Anniversary Committee. General Fund department 8107 has been established for the purpose of 250th anniversary expenses and donations.

It is recommended that Council accepts the donations to the 250th Anniversary Celebration as shown above.

Council Member Coleman moved, Council Member Olinger seconded, approval of the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

R/R Re: FY2009 Budget Adjustments--Project Management & Town Attorney

Town Manager Muzzy presented the report and recommendation stating two (2) departments exceeded their budgeted allocation for Fiscal Year 2009:

1. Project Management:

This department did not have any funds budgeted for FY09. \$121 in expenses were charged for the Town Banquet and Workers Compensation Insurance. **\$121 from General Fund Contingency Reserve funds are needed to balance this account.**

2. Town Attorney:

This department had a total of \$125,270 budgeted for FY09. Total expenditures for all legal expenses for FY09 totaled \$307,644.75 and represented expenses for the Town Attorney (Robert Bendall) as well as for special legal services through another firm (Carter Glass). The attached spreadsheet provides detail on the breakout of legal expenses and explanation for the expenses.

Of the total amount actually spent (\$307,644.75) on legal activities in FY2009, \$137,929.83 was directly relate to ongoing, routine town legal activities and represents \$12,659.83 over the budget. **\$12,659.83 from General Fund Contingency Reserve funds will be needed to balance this account.**

Of the total amount of legal expenditures (\$307,644.75), \$155,706.31 is directly or indirectly associated with utility services/consolidation issues or expenses and is recommended to be charged back to the Water & Waste Water Enterprise Funds. **\$155,706.31 will be transferred from the Water/Wastewater Enterprise Funds Contingency Reserves on a 50/50 basis.**

There is no financial impact.

It is recommended that Council approves the transfer of funds from General Fund Undesignated Reserves and Water and Wastewater Enterprise Fund accounts to cover FY2009 budget shortfalls in the Town Attorney and Project Management accounts in the following amounts:

1. \$121 from General Fund Undesignated Contingency Reserves (100-9990-99990) to Project Management (100-4103-5160 in the amount of \$66 and 100-4103-5190 in the amount of \$55)
2. \$12,659.83 from General Fund Undesignated Contingency Reserves (100-9990-99990) to Town Attorney (100-1201-5218)
3. \$77,853.16 from Water Enterprise Fund Contingency Reserves (320-9990-9990) to Town Attorney (100-1201-5218)
4. \$77,853.16 from Wastewater Enterprise Fund Contingency Reserves (420-9990-9990) to Town Attorney (100-1201-5218)

Council Member Olinger moved, Council Member Risner seconded, to approve the report and recommendation as presented.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

Report Re: Funding Request (\$1.5 Million) from State Theatre Foundation

Town Manager Muzzy presented the report and recommendation stating on September 1, the State Theatre Foundation appeared before the Finance Committee and presented a request for the Town to consider funding assistance for the State Theater renovation in an amount up to \$1.5 million. The committee discussed that Kyle Laux of Davenport & Company, the Town's financial advisor, was in the audience on another matter and had volunteered to meet with and the State Theatre Foundation to explore possibilities for the Town's assistance and then report back to the committee at its October meeting.

At the October Finance Committee meeting, Mr. Laux presented the committee with possible funding options for up to \$1.5 M to assist the Foundation in securing needed bank loans to initiate their renovation project. The Foundation stated that this was their "last shot" to bring this project to a successful conclusion. Mr. Laux's presented the results of his investigation which included options to:

1. Provide the requested \$1.5 million contribution directly from Town Reserves
2. Set -up a short-term line of credit with financial institutions which would allow the foundation to draw funds as needed

The Finance Committee discussed Mr. Laux's presentation and raised the following possibilities:

- Could a bond be issued to include the debt of the Light & Power Department to the Water and Wastewater funds as well as a Town contribution to the State Theatre Foundation?
- Could a loan be made from the fund balance of the Town's utility departments or would it have to be from the general fund? If it is possible to structure a loan from the utility functions, could the debt be transferred as a debt to a regional water/sewer authority if it is formed? What effect would this type of loan have on negotiations with the County?
- How would the Foundation pay debt service since the Theatre is not expected to be operationally self-supporting?
- Could a loan be structured through the Town's IDA and economic development structure?

As a note: staff did discuss the question of loaning funds from the utility operations to the State Theater with the Town Attorney and the Town's Auditors and they both agreed that is possible but will require a formal loan agreement setting forth the details of the transaction and repayment.

Due to the short time frame which the State Theatre Foundation told the Finance Committee they were operating under, the Committee referred the question to the full Council for discussion and deliberation. Although the Committee did not take a formal vote, it was their consensus that Council should consider entering into an arrangement with the State Theatre Foundation to assist them with funding up to \$1.5M to assist with the renovation of the theater. It was fully recognized, however, that there were many details to be worked out before any actual financial assistance could actually occur.

Mr. Tad Loving, Vice Chairman of the State Theatre Foundation Inc. distributed architectural renderings to council members and discussed the progress to-date on the renovation and new construction on the theater. He noted that based on direct/indirect tax revenue information from the League of Historic American Theatres as well as representatives from the Kennedy Center, the Foundation estimated there would be a 4:1 return on the investment.

Council Member duFrane questioned tax credits. Mr. Loving responded that tax credits for the historic renovation as well as new market tax credits had already been incorporated into the financial plan.

Council Member Coleman questioned pledges. Mr. Loving replied approximately 26 donors pledged to fund fifty-three percent (53%) of the project and were continuing to make payments on their pledges.

Council Member Coleman referenced council's recent action to move quickly on funding the new Police Station and noted the State Theatre Foundation wanted to take advantage of low construction costs as well. He stated council could vote to support the Foundation and then work with Davenport and Associates to determine the best funding approach.

A brief discussion ensued regarding the risk associated with the town committing funds to the Foundation.

Vice Mayor Yowell referenced improvements to the Depot and East Davis Street, which began approximately 20 years ago as well as a previous commitment from council to invest approximately \$2 million in a community pool if local groups raised funds. He stated it would be an investment in the future.

Council Member Risner indicated he supported the project; however, more research was needed to determine the best use of taxpayers' money.

Council Member Risner moved, Council Member duFrane seconded, to refer this item back to the Finance, Personnel, Technology and Ordinance Committee for further consideration and a recommendation to council in 30 days on how the request could be funded.

The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

REPORTS AND RECOMMENDATIONS FROM TOWN ADMINISTRATION

None

TOWN MANAGER'S MONTHLY REPORT

Council received the monthly report; Council Member Risner highlighted the cash donations to the 250th Anniversary Celebration, which were one-third of the cost of the event.

COMMUNICATION AND CORRESPONDENCE

Council received the Order for Notice & Inviting Comment from Verizon Virginia Inc. on expanding the competitive determination and deregulation of retail services throughout its incumbent territory and the Order for Notice & Comment from Virginia Electric & Power Company's Integrate Resource Plan filing with the State Corporation Commission.

ADJOURNMENT

Council adjourned at 8:30 p.m.

Clerk

Mayor