

Regular Meeting

County Board of
Supervisors Room
November 10, 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, Laurel Care Gravatte, Michael T. Olinger (arrived 6:15 p.m.), James C. Risner, Robert M. Ryan, Christopher H. Snider, William M. Yowell, Council Members; Jeffrey B. Muzzy, Town Manager; Robert W. Bendall, Town Attorney; Kimberly D. Allen, Town Clerk, Lisa D. Hutcherson, Deputy Town Clerk. **Also Present for the 7 p.m. Session:** Tonya Estes, Information Technology Director ; Robert H. Thornhill, Jr., Public Works Director; Christopher D. Hively, Environmental Services Director; Scott Barlow, Police Chief; Ron Mabry, Treasurer; Wally Bunker, Public Information Officer; Patrick Mulhern, Planning Director.

AGENDA APPROVAL

Council Member duFrane requested the addition of an item to discuss items for the next Town & County Interaction meeting scheduled for November 25.

Council Member Risner moved, Vice Mayor Yowell seconded approval of the agenda as amended. The motion carried by unanimous voice vote (8-0—Aye-Coleman, duFrane, Gravatte, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-Olinger).

CLOSED SESSION

Vice Mayor Yowell moved, Council Member Snider seconded, council enter closed session to discuss the annual performance evaluation of the town manager pursuant to Code of Virginia Section 2.2-3711(A)(1), and to discuss or consider the acquisition of property for right-of-way access pursuant to Code of Virginia Section 2.2-3711(A)(3).

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

Council entered closed session at 6:02 p.m. and open session at 6:39 p.m.

Council Member Olinger arrived at 6:15 p.m. and joined the closed session.

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 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, Gravatte, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell (9); Nay: None (0).

RECESS: Council recessed at 6:40 p.m.

OPEN SESSION

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

Council Member Snider 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, Gravatte, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell (9); Nay-None (0).

a. **R/R Re: Groundwater Resource Development Program Phase I:** Council authorized the town manager to enter into a contract with Emery & Garrett Groundwater Inc. to perform Phase I scope of services as described at a cost not to exceed \$17,500.

b. **R/R Re: WWTP Upgrade, Phase II—Change Order #6 Miscellaneous Issues:** Council approved change order #6 to expend an amount not to exceed \$73,440 of the funds available in line item 9057-7040 and authorized the town manager to fund the work to be performed by Adams Robinson Enterprise Inc. as part of the Wastewater Treatment Phase II upgrade.

c. **R/R Re: Lists of Delinquent & Uncollectible Taxes:** Council authorized the treasurer relief of the \$161.89 liability of erroneous real estate tax assessments for tax year 2008, authority to list \$235.35 of real estate taxes as liens against the respective properties, authority to write-off personal property in the amount of \$9,514.48, and authority to write-off real estate taxes less than \$5 each in the total amount of \$66.61.

d. **R/R Re: Disposition of Records:** Council approved the destruction of records listed in order to provide space for vital, fiscal, and permanent records retention.

e. **R/R Re: New Police Station—Information Technology Structure:** Council authorized the town manager to approve the lowest responsible bid(s) and sign the contracts for the nine (9) IT components previously listed at a cost not to exceed \$135,000 utilizing funds from general fund capital account 120-9280-7100 (new police building).

f. **R/R Re: Neighborhood Stabilization Program Grant—Appropriation of Funds:** Council approved appropriating grant funds as they are received from the Department of Housing & Community Development for operation of the Neighborhood Stabilization Program in the amount of \$1,200,000 with the funds being appropriated equally into the following fund and departments: \$240,000 into Fund 200, Department 1000, 2000, 3000, 4000, and 5,000. Council further authorized the town manager to approve transfers between the departments within this fund to allow for operational expense differences associated with work on specific houses.

g. **Treasurer's Report:** Council approved the treasurer's report reflecting a balance of \$31,237,985.34, and bills paid listings.

h. **Minutes of Previous Meetings:** Council approved the minutes of the regular meeting of October 13 and special meeting of October 27, 2009.

SPECIAL ITEMS AND RECOGNITIONS

Employee of the Month Recognition

Public Works Crew Leader Andy Newman was selected as Employee of the Month for September 2009.

Final Report Re: 250th Anniversary Celebration

Co-Chairman T.I. Martin thanked council for appointing a committee to work together to have a successful celebration and staff for their assistance with the event.

COMMENTS & CORRESPONDENCE FROM CITIZENS, VISITORS & DELEGATIONS IN THE AUDIENCE

Dave Lochridge, Ridgemere Drive resident, commended the police department for the way they handled the recent attempted robbery and shooting at Westside Grocery, which is across from his business located at Westside Village Center on Route 522.

George Bryson, Rixeyville Road resident, requested council authorize the town attorney to provide his opinion of the petition of distribution of assets of the Culpeper Historical Society, which is on file in the Culpeper Circuit Court Clerk's Office. He also requested council write to the General Assembly to have this issue investigated.

UNFINISHED BUSINESS

Closed Session Items: There were none.

Case TZ-001-2009: Request by Clore Family LLC to Rezone 4.3659 Acres from R-1 to C-3 located on Madison Road, subject to a Revised Proffer Statement initially dated August 19, 2009 and revised October 16, 2009

Following the September 24, 2009 joint meeting between the Town Council and the Planning Commission, planning staff prepared a memo with responses to the 10 +- questions and/or issues raised during the joint session. On October 20, 2009, the Planning Commission held its regular meeting and reviewed the memorandum as well as comments made by the Town’s new Planning Director, Mr. Patrick Mulhern.

Subsequently, the applicant submitted a Revised Proffer Statement, dated October 16, 2009 to address comments outlined in the memo. Following is a brief summary of the proffer revisions:

Page and section added	Nature of change
Page 2 - Item 3. Road Improvements, paragraph 4.	Adds language to restrict the number of entrances from Zeuswyn Drive to only 4 of the 6 entrances shown on the concept plans.
Page 3 – Item 6. Building Elevations, paragraph 2.	Adds language to withdraw five (5) building elevations; offers one elevation to illustrate berming (sixth 6 th elevation referred to as modified elevation 1).
Page 5 – Item 10. Landscaping, end of paragraph 2, sentences 2-4.	Adds language to provide a detailed landscaping plan to be submitted with the site plan, which shall show a mix of street trees and large shrubs along Zeuswyn Drive and Route 29 Business. Such trees and large shrubs will be installed along (a) the top of a 3’-6’ berm to be constructed along Zeuswyn Drive and Route 29 Business and (b) the limits of the parking areas. Trees and shrubs shall provide seasonal foliage and color will be used to satisfy the requirement that at least 25% of the plantings to be evergreen varieties.

Following a discussion, the Commission voted 3-0 (Mr. Risner and Mrs. Taylor absent) to return the rezoning case back to the Town Council with the staff memo and responses, and the Revised Proffer Statement, dated October 16, 2009.

A copy of the revised Proffer Statement, dated October 16, 2009, the Planning memorandum with all responses, dated October 16, 2009, correspondence dated October 20, 2009 from Mr. John C. Bennett, Attorney at Law, and letter from Tripp Butler, President of the Country Club of Culpeper, dated November 6, 2009 are filed in the Town Clerk’s Office with the November 10, 2009 meeting packet.

Original Case Packet presented to Council September 8, 2009

BACKGROUND

The applicant seeks to rezone 4.3659 acres to construct a mixed-use project, utilizing four (4) concept plans, which show the development of between 68,000 to 153,000 square feet of commercial and up to 182 multifamily family units. The applicant has offered a Revised Proffer Statement, which offers transportation improvements and

provides for a traffic impact analysis, including a traffic signal warrant study. The proffer statement also restricts inappropriate land uses and offers building elevation drawings and includes other amenities. No cash proffers are offered with the rezoning proposal, as the number of proposed units does not exceed the number of by-right units allowed under the existing zoning classifications.

FINANCIAL IMPACT

If approved, the Town would receive zoning fees, tap fees, and utility fees generated from the new development. In addition, the proposal would increase the Town's tax base and provide employment opportunities.

PUBLIC COMMENTS RECEIVED

Numerous residents and citizens attended the public hearing; five residents spoke in opposition to the request.

PLANNING COMMISSION RECOMMENDATION

Following its public hearing on August 18, 2009, the Planning Commission voted 5-0 to recommend approval of this request, subject to a Revised Proffer Statement which limits the total number of residential housing units to 182. The Revised Proffer Statement, dated August 19, 2009 (included in the Case File) reflects this change.

Council Member Olinger asked if a traffic study had been conducted, and Zoning Administrator Brown replied that it was decided early in the process by VDOT and the Town Engineer at the time that the traffic study would be required at the time the site plan was submitted.

Council Member Gravatte moved, Council Member Olinger seconded, to require a traffic study analysis before approving the rezoning.

Council Member Risner stated that a traffic study should be done when staff proposed it to be done; there would be a better indication of what the traffic impact would or would not be possibly at a better time during the process.

Mayor Rimeikis asked if council could require a traffic study prior to moving forward. Town Attorney Bendall replied yes, council could require it now.

Council Member Risner asked if it would be a prudent use of resources to do one now vs. when the site plan is being done in three, four or five years.

Mayor Rimeikis asked what would be the point of a traffic study and Council Member Olinger replied it could provide an assessment of any safety issues at the intersections.

Mayor Rimeikis asked Planning Director Mulhern to clarify the difference between a traffic study and a traffic impact analysis.

Planning Director Mulhern stated a traffic impact analysis was done during a rezoning in order to:

- provide a sense of what the traffic impact would be
- require improvements that may be necessary to accommodate the development

Mayor Rimeikis asked what type of information would be obtained from a traffic impact analysis.

Planning Director Mulhern pointed out on a zoning map the proposed project as well as future proposed development in the surrounding area stating that the analysis would look at the entire transportation network and give some sense as to what improvements would be necessary.

Council Member Coleman asked if the study would provide information on a possible right turn-in and a right turn-out scenario from Route 29. Planning Director Mulhern replied that it may and council could request the applicant or direct staff (if the town funded the study) to pursue a potential access point off of Route 29.

Further discussion ensued and Planning Director Mulhern explained that the traffic impact analysis was a fairly new VDOT requirement in which a traffic engineer would look at current zoning and the Comprehensive Plan designation for adjoining parcels and make assumptions of what build-outs would be as well as traffic allocations in the transportation network. Then recommendations could be made on improvements for the rezoning request.

Council Member Gravatte commented on safety concerns she felt VDOT needed to consider as well as the impact of commercial zoning in the area.

Mayor Rimeikis asked Council Member Gravatte if her motion proposed that the Town pay for the traffic impact analysis or was she requesting the applicant pay for it. Council Member Gravatte responded her intent was for the applicant to proffer a traffic impact analysis now rather than at the time of site plan approval.

Council Member Snider asked if the rezoning was approved and in the future, the Clore family sold the property to a developer who presents a site plan, would the traffic impact analysis done today be valid. Planning Director Mulhern responded it would depend on how the purchaser builds out one of the concepts the applicant proposed.

Council Member Risner responded it was his understanding that a proffer on a rezoning remained with the property whether it changed ownership or not.

Town Attorney Bendall responded that this was correct.

Further discussion ensued as to the value of the traffic impact analysis now versus later with Town Attorney Bendall noting that there was a two year shelf life on a traffic impact analysis. A new traffic impact analysis would need to be done if the property was not developed in two years.

For clarification, Council Member Coleman asked if the rezoning is approved and a traffic impact analysis is done, would it be enforceable. Planning Director Mulhern replied he believed so and clarified the applicant has proffered to provide a traffic impact analysis at final site plan to encompass the entire 15 acres.

Mayor Rimeikis restated the motion which was to request that the applicant proffer a traffic impact analysis before approval of the rezoning. The motion failed by voice vote (3-6—Aye- duFrane, Gravatte, Olinger; Nay-Coleman, Rimeikis, Risner, Ryan, Snider, Yowell; Absent-None).

Council Member Risner moved, Council Member Ryan seconded to approve Case TZ-001-2009: Request by Clore Family LLC to Rezone 4.3659 Acres from R-1 to C-3 located on Madison Road, subject to a revised proffer statement dated October 16, 2009.

At council's request, Zoning Administrator Maxie Brown reviewed the revised proffer statement dated October 16, 2009.

Vice Mayor Yowell asked about the possibility for another entrance off of Business Route 29. Zoning Administrator Brown replied that staff had lengthy discussions on this issue with VDOT which they do not support or recommend. Council Member Coleman stated that the issue needed to be reviewed again.

Council Member Gravatte asked if there was a way to restrict drive-thrus. Zoning Administrator Brown replied that proffers were voluntary.

Council Member Ryan stated that the Planning Commission and the Town Council had spent a lot of hours reviewing this case, and he did not believe that a government or special interest group should tell a property owner what to do with their property.

Council Member Snider asked if the applicant would be willing to proffer a right-in/ right-out from Madison Road if the traffic impact analysis warranted it.

Further discussion ensued on the possibility of another entrance on Business Route 29 and some of the by-right uses.

The motion carried by voice vote (8-1—Aye- Coleman, duFrane, Gravatte, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-Olinger; Absent-None).

Clerk's Note: Conflict of Interest Act Declaration signed by Council Member duFrane is on file in the Town Clerk's Office.

NEW BUSINESS

PUBLIC HEARINGS - There were none

REPORTS AND RECOMMENDATIONS FROM AUTHORITIES, BOARDS, AND COMMISSIONS

None

REPORTS AND RECOMMENDATIONS FROM COUNCIL COMMITTEES

LIGHT & POWER AND WATER & WASTEWATER COMMITTEE

R/R Re: Amendments to Tap Privilege 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 charged a 2% administrative fee.

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 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 future purchased 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.

It is recommended that Council adopts the proposed changes to the Tap Privilege Fee Assessment Policy to limit guaranteed service for 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. These amendments are to become effective immediately.

Council Member Olinger moved, Council Member Snider, seconded to approve the report and recommendation as presented. The motion carried by voice vote (9-0—Aye- Coleman, duFrane, Gravatte, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

PUBLIC SAFETY, PUBLIC WORKS, & PLANNING & COMMUNITY DEVELOPMENT COMMITTEE
R/R Re: Repeal of Existing & Adoption of Revised Town Code Chapter 13, Noise Ordinance (second 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 was provided, which regulates noise in the Town by repealing the Town's vague standard and uses decibel levels for purposes of regulation.

Council held the first reading of the proposed ordinance on October 13, 2009.

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 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 following the second reading of the proposed ordinance replacing Town Code Chapter 13,

Noise Ordinance, council repeals existing Chapter 13 and adopts revised Chapter 13, Noise Ordinance, which regulates noise based on decibel levels, to become effective immediately.

Council Member Risner moved, Council Member Coleman seconded to postpone action on the proposed ordinance amendments until the US Supreme Court makes a ruling on an appeal of a noise ordinance case. The motion carried by voice vote (9-0—Aye- Coleman, duFrane, Gravatte, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

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:
Betty Simms	All veterans of WWII & the Korean Conflict	Funds toward a central veterans monument	\$ 50.00
Tommy Curd-Martin	All veterans of WWII & the Korean Conflict	Funds toward a central veterans monument	\$ 50.00
Totals:			\$ 100.00

The current donations and requests will offset the total cost of the project by \$100. To date, the Town has accepted \$74,134.28 in donations for this park.

It is recommended that Council accepts the donations (totaling \$100) for the central veteran’s monument.

Council Member Snider moved, Council Member Risner, seconded to approve the report and recommendation as presented. The motion carried by voice vote (9-0—Aye- Coleman, duFrane, Gravatte, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

FINANCE, PERSONNEL, TECHNOLOGY & ORDINANCE COMMITTEE

R/R Re: Ratification of Appointment of Subcommittee to Consider the State Theatre Foundation's Funding Request

Town Manager Muzzy presented the report and recommendation stating in September 2009, the State Theatre Foundation requested the Town considers funding assistance for the State Theatre renovation in the amount of up to \$1.5 million.

Council considered this request at its October 13 meeting and referred it back to the Finance, Personnel, Technology, & Ordinance Committee for further consideration and a recommendation to council in 30 days on how the request could be funded.

Your Committee met on November 3 and recommended the appointment of a sub-committee consisting of Jim Risner and Chip Coleman to consider funding options and report back to the Finance, Personnel, Technology, & Ordinance Committee at its January 2010 meeting.

Based on Council’s Rules of Procedures, all appointments to committees, including ad hoc committees, shall not become effective until ratified by council.

There is no financial impact.

It is recommended that Council ratifies the appointment of a sub-committee consisting of Jim Risner and Chip Coleman to consider options for the Town on the State Theatre's \$1.5 million funding request and report their findings and recommendations back to the Finance, Personnel, Technology, & Ordinance Committee at its January 5, 2010 meeting.

Council Member Snider moved, Council Member Ryan, seconded to approve the report and recommendation as presented. The motion carried by voice vote (9-0—Aye- Coleman, duFrane, Gravatte, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

TOWN & COUNTY INTERACTION COMMITTEE

Items for Discussion at Upcoming Interaction Committee Meeting

Council discussed items to be discussed at the November Interaction Committee meeting. Vice Mayor Yowell suggested holding a quarterly vs. monthly meetings since there are no pressing issues at this time. Council Member Risner suggested a discussion on appointing a non-voting Planning Commission member to each body's Planning Commissions.

Town Manager Muzzy was requested to provide council with a more detailed report on the western Outerloop road project, including available funding.

REPORTS AND RECOMMENDATIONS FROM TOWN ADMINISTRATION

R/R Re: Amendments to Committee Appointments & Council Representatives on Authorities, Boards, & Commission

Town Manager Muzzy presented the report and recommendation stating Council's Rules of Procedure state "The mayor shall appoint council members to serve on standing committees and ad hoc committees established by council...These appointments shall not become effective until ratified by council. Appointments may be changed upon a majority, affirmative vote of all members of council."

Mayor Rimeikis has made the following changes to committee assignments, which need to be ratified.

Town & County Interaction Committee: duFrane, Risner, Yowell

Parks & Recreation Commission: Laurel Gravatte will replace Bobby Ryan as Council's representative on the commission

Culpeper Cable Commission: Bobby Ryan will replace Mike Olinger as Council's representative on the commission

There is no financial impact.

It is recommended that council ratifies the mayor's committee appointments as follows to become effective immediately:

Town & County Interaction Committee: duFrane, Risner, Yowell

Parks & Recreation Commission: Laurel Gravatte will replace Bobby Ryan as Council's representative on the commission

Culpeper Cable Commission: Bobby Ryan will replace Mike Olinger as Council's representative on the commission

Council Member Snider moved, Council Member Gravatte seconded to approve the report and recommendation s presented. The motion carried by voice vote (9-0—Aye- Coleman, duFrane, Gravatte, Olinger, Rimeikis, Risner, Ryan, Snider, Yowell; Nay-None; Absent-None).

TOWN MANAGER'S MONTHLY REPORT

Council received the monthly report.

COMMUNICATION AND CORRESPONDENCE

Council received the Order of Notice & Public Hearing from Rappahannock Electric Cooperative.

ADJOURNMENT Council adjourned at 8:18 p.m.