

Regular Meeting

County Board Road
March 11, 2008

The Council of the Town of Culpeper convened in regular session at 6:00 p.m. with Mayor Pranas A. Rimeikis presiding: **Present:** Calvin L. Coleman, F. Steve Jenkins, Michael T. Olinger (arrived at 6:05 p.m.), Emma F. Richards (arrived at 6:05 p.m.), James C. Risner, Christopher H. Snider, William M. Yowell, Councilmembers; Thomas E. Huggard, Interim Town Manager; Scott Barlow, Chief of Police; Chuck Stephenson, Town Engineer; Robert W. Bendall, Town Attorney. **Also Present for the 7 p.m. Session:** Neal Deane, Town Treasurer; Beth Burns, Tourism Director; Tonya Estes, Information Technology Manager; Robert H. Thornhill, Jr., Public Works Director; Mark Bly, Light & Power Director; Dan Boring, Interim Environmental Services Director. **Absent:** Councilmember Duke duFrane.

AGENDA APPROVAL

On motion by Vice Mayor Yowell, second by Councilmember Coleman, Council approved the agenda with the following amendments: Added: Update Re: Requesting Attorney General's Opinion re: Loitering Ordinance as Item 9.03A5 and removed R/R Re: Sale of Unit #724, 2006 Harley Davidson Motorcycle, from the consent agenda for discussion.

The motion carried by the following voice vote: Aye: Coleman, Jenkins, Rimeikis, Risner, Snider, Yowell (6); Nay: (0); Absent: duFrane, Olinger, Richards (3).

CLOSED SESSION

Vice Mayor Yowell moved, Councilmember Coleman seconded, that Council enter closed session to discuss or consider individuals who have applied for Town Clerk and Town Manager, and Interim Town Clerk appointment pursuant to Code of Virginia Section 2.2-3711(A)(1), to discuss or consider acquisition and/or disposition of property for the purpose of a public safety site pursuant to Code of Virginia Section 2.2-3711(A)(3), and to consult with legal counsel regarding specific legal matters requiring legal advice relating to Norair pursuant to Code of Virginia Section 2.2-3711(A)(7).

The motion carried by the following voice vote: Aye: Coleman, Jenkins, Rimeikis, Risner, Snider, Yowell (6); Nay: None(0); Absent: duFrane, Olinger, Richards (3).

Council invited Town Attorney Bendall and Interim Town Manager Huggard into the closed session. Council entered closed session at 6:04 p.m.

Note: Councilmembers Olinger and Richards arrived at 6:05 p.m. and joined the closed session.

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

Certificate of Closed Session: Mayor Rimeikis requested the Clerk poll the members 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 Section 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 following roll call was taken: Ayes: Coleman, duFrane, Jenkins, Olinger, Rimeikis, Richards, Risner, Snider, Yowell (9); Nay: None (0); Absent: None (0)

PLEDGE OF ALLEGIANCE: Vice Mayor Yowell led the Pledge of Allegiance.

Mayor Rimeikis welcomed and thanked everyone for attending.

CONSENT AGENDA

Councilmember Olinger moved, Councilmember Snider seconded, that Council approve the following items. The motion carried by the following roll call vote: Ayes: Coleman, duFrane, Jenkins, Olinger, Richards, Rimeikis, Risner, Snider, Yowell (9); Nay: None (0); Absent: (0).

a. **R/R Re: Sale of Unit #724, 2006 Harley Davidson Motorcycle:** This item was removed and placed on the regular agenda as Item 9.03A4.

b. **R/R Re: Taste of Culpeper:** Council approved the following: closing of East Davis Street and East Culpeper Street (from East Street to Commerce Street), South Commerce Street at the depot area, and the public parking lot on East Davis Street; the placement of a tent and stage on Commerce Street at the depot, use of electrical outlets, the Public Works Department to handle trash pick-up and clean-up before and after the event and to assist with set-up; and the Police Department to be present during the events.

c. **R/R Re: Third Thursday Concert Series:** Council approved the following: closing of East Davis and East Culpeper Streets (from East Street to Commerce Street), South Commerce Street at the depot area, and the public parking lot on East Davis Street from 7 a.m. until the end of the event; the placement of a tent and stage on Commerce Street at the depot, use of electrical outlets, the Public Works Department to handle trash pick-up and clean-up before and after the events and to assist with set-up; and the Police Department to be present during the events.

d. **R/R Re: Culpeper Day 2008:** Council authorized the use of the tent and stage and use of electrical outlets for Culpeper Day and closing the following streets from 6 a.m. to 6 p.m. on Saturday, May 3, 2008: Davis Street from West Street to Commerce Street, Commerce Street from Davis Street to Culpeper Street, and Culpeper Street from Commerce Street to Waters Place.

e. **R/R Re: Madison Road Drainage Improvements:** Council authorized the interim town manager to transfer \$11,250 from account 4102-5620 (disposal fees) to line item 9238-7040 (sidewalks—trails and bikeway projects) in order to complete the pipe replacement.

f. **Treasurer's Report & Line Item Transfers:** Council approved the treasurer's report reflecting a balance of \$35,182,034.36, bills paid listing, line item transfers, and line item transfers.

g. **Minutes of Previous Meetings:** Council approved the minutes of the regular meeting of February 12 and corrections to the minutes of the special meeting of January 26, 2008.

SPECIAL ITEMS AND RECOGNITIONS

Employee of the Month Recognition: Police Officer Jeff Dodson was selected as Employee of the Month for January 2008.

The photo display included both Officer Dodson and December 2007 Employee of the Month Billing/Accounting Clerk Stephanie Mullins because the display of Ms. Mullins' photo failed at the last meeting.

Resolution of appreciation: Vice Mayor Yowell moved, Councilmember Coleman seconded, to suspend the rules of order and approve the resolution of appreciation for presentation to retiring Town Clerk Foster.

The motion carried by the following voice vote: Aye: Coleman, Jenkins, Olinger, Rimeikis, Richards, Risner, Snider, Yowell (8); Nay: None (0); Absent: duFrane, (1).

Vice Mayor Yowell read and Mayor Rimeikis presented a framed resolution to the Town Clerk in appreciation of 34 years of service to the Town. Town Clerk Foster thanked the Town Council, employees, and citizens for the support and kindness they had shown her over the years.

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

Mayor Rimeikis opened the public forum noting it was a time for individuals to address items that were not on the agenda. He requested that speakers state their name and place of residence and adhere to the three-minute time limit.

George Bryson, 10103 Rixeyville Road, expressed his concerns with the way the DAR Monument in Lakeview Subdivision has been handled. He discussed the background and how he and his wife had worked to keep the monument area clean and how the developer had indicated that the monument lot had been proffered to the DAR; however, it had never been deeded. He mentioned the easements allowing bike and walking trails across the monument lot. He provided pictures to the Clerk for the record.

Mr. Bryson also expressed his objection to the proposed consolidation effort and read a letter he had submitted to the Star Exponent on this issue. (A copy is on file.)

UNFINISHED BUSINESS

Closed Session Items

Vice Mayor Yowell moved, Councilmember Jenkins seconded, that Council approve the appointment of Deputy Town Clerk Lisa D. Hutcherson as Interim Town Clerk effective April 1, 2008. This appointment will be effective until a new Clerk has been hired and officially appointed by Council.

The motion carried by the following voice vote: Aye: Coleman, Jenkins, Olinger, Rimeikis, Richards, Risner, Snider, Yowell (8); Nay: None (0); Absent: duFrane, (1).

NEW BUSINESS - PUBLIC HEARINGS - None

REPORTS & RECOMMENDATIONS FROM AUTHORITIES, BOARDS & COMMISSIONS - None

REPORTS & RECOMMENDATIONS FROM COUNCIL COMMITTEES
PUBLIC SAFETY, PUBLIC WORKS, PLANNING & COMMUNITY DEVELOPMENT
COMMITTEE

R/R Re: Donations for Wine Street Memorial Park

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

	r/Memory Of:	Item:	Amount:
of George and Beatrice	l. Gulas	12" paver	
. Mitchell	Mitchell	12" paver	
Mrs. George A. Ramer	son, Jr.	12" paver	
rings Baptist Church	and in memory of and Korean War	rial Trees (\$100	

The cost for each engraved paver is as follows: a 4" x 8" brick--\$50 (with up to three horizontal lines with a maximum of 11 characters per line); an 8" x 8" paver--\$75 (with up to three lines with a maximum of 11 characters per line); and a 12" x 12" square paver--\$100 (with up to three diagonally engraved lines). For donations of \$1,000.00, donors may choose to donate a memorial bench (eight currently available) or one of two picnic tables. Plaques will adorn each bench or table, which staff will coordinate with the donor to personalize.

In the design of the memorial pad, there are 24 - 12" x 12" square pavers programmed. Following approval of this month's donations, all of the 12" x 12" pavers will be donated. With the popularity and flexibility of engraved messages, staff proposes to make additional 12" x 12" pavers available for donation by changing the existing paver configuration. This will continue making available a popular donate-able item, and increase the amount of funds to offset expenses for the park.

The current donations and requests will offset the total cost of the project by \$500. To date, the Town has accepted \$10,100 in donations for this park.

It was recommended that Council accept the donations from the children of George and Beatrice Gulas, Ashby Mitchell, Mr. and Mrs. George Ramer, for a 12" x 12" paver; and Alum Springs Baptist Church for two memorial trees.

Councilmember Olinger moved, Councilmember Snider seconded, approval of the report and recommendation.

The motion carried by the following voice vote: Ayes: Coleman, Jenkins, Olinger, Rimeikis, Richards, Risner, Snider, Yowell (8); Nay: None (0); Absent: duFrane, (1).

R/R Re: Deed of Gift—DAR Monument Lot, Lakeview Subdivision

Interim Town Manager Huggard presented the following report and recommendation: Mr. Kamel Tabbara, has indicated his willingness to donate a 10,000 sq. ft. +- lot in the Lakeview Subdivision to the DAR Chapter. This lot surrounds the DAR Monument, and adjoins Yowell Meadow Park. The DAR Chapter would prefer to retain the monument at this location; however, they have no resources, funding or manpower to do so.

In trying to find a solution to this issue, Mr. Tabbara has agreed to donate the subject lot to the Town of Culpeper. This would allow the DAR monument to remain in its original location and ensure maintenance of this important historical landmark.

There is no direct Town funding required to accept this property. However, additional mowing and maintenance of the lot would be undertaken by the Public Work Department as part of maintenance of Yowell Meadow Park.

It was recommended that Council authorize the Interim Town Manager to accept the Deed of Gift of the Monument Lot in Lakeview Subdivision.

Vice Mayor Yowell moved, Councilmember Snider seconded, to approve the report and recommendation.

Following a brief discussion, the motion carried by the following voice vote: Ayes: Coleman, Jenkins, Olinger, Rimeikis, Richards, Risner, Snider, Yowell (8); Nay: None (0); Absent: duFrane, (1).

R/R Re: Route 229 Widening Revenue Sharing Program

Interim Town Manager Huggard presented the following report and recommendation: The Route 229 widening project is currently on the Capital Improvement Plan and was originally to be constructed solely with State funds. However, the Virginia Department of Transportation Revenue Sharing Program has been revised allowing municipalities to participate in the program. The Town applied for, and was approved for Revenue Sharing funds in the amount of \$2,000,001 for the fiscal year 07-08. The Town is eligible to apply for additional funds in the amount of one million dollars for the fiscal year 09. The program is a dollar for dollar match up to one million dollars.

In order to be considered for funding, VDOT requires that a Resolution, Letter of Intent and a Detailed Designation of Funds be submitted to VDOT prior to March 20, 2008. The project has been approved by VDOT. The project will be designed and managed by VDOT.

Funds in the amount of \$1,000,001 will be budgeted in the General Fund-Capital Account 9395-7040 for FY09.

It was recommended that Council forward to VDOT a resolution supporting the application for an allocation of \$1,000,000 through the Virginia Department of Transportation Revenue Sharing Program for FY09.

Councilmember Coleman moved, Vice Mayor Yowell seconded, approval of the report and recommendation.

Following a brief discussion, the motion carried by the following voice vote: Ayes: Coleman, Jenkins, Olinger, Rimeikis, Richards, Risner, Snider, Yowell (8); Nay: None (0); Absent: duFrane, (1).

R/R Re: Sale of Unit #724, 2006 Harley Davidson Motorcycle

The following report and recommendation was presented: The Police Department has advertised and received bids for the sale of Unit #724, a 2006 Harley Davidson motorcycle (VIN #1HD1FHW126Y688853). The highest bidder was Angela Frazier for \$11,500. The Police Department is requesting permission to sell the motorcycle to the highest bidder and use funds from this sale to purchase the following equipment for the two (2) remaining motorcycles:

\$5,000.00 to purchase LED emergency lights
\$2,455.70 to purchase FLHT fan kits
\$ 675.80 for brake rotors for the two
Total: \$8,131.50

There will be no financial impact to the Police Department's FY2007-08 budget. However, there will be an increase of \$3,368.50 to the Town of Culpeper's general fund from these proceeds.

It was recommended that council accepts the bid of \$11,500 from Angela Frazier for the purchase of Unit #724, a 2006 Harley Davidson motorcycle (VIN #1HD1FHW126Y688853) and authorizes the police department and interim town manager to expend funds of \$8,131.50 from the sale proceeds to purchase the above-listed equipment for the two (2) remaining motorcycles with \$3,368.50 to go into the Town of Culpeper's general fund.

Councilmember Olinger questioned why the Department was getting rid of the motorcycle and the process followed for disposal of it. He noted based on discussions with a local dealer, it appears the price received is below book value.

Chief Barlow explained that the Department has two motor officers and three bikes. He noted the motor officers wanted to upgrade two motorcycles with the LED emergency lights, etc. He noted since the three units were unnecessary, it was suggested that the one be sold to be able to upgrade the other two. He discussed the bid process and noted the minimum bid was set at \$10,000.

Discussion ensued relative to the original purchase and trade-in program with Waugh Enterprises in Orange and the estimated trade-in value and new motorcycle cost. Chief Barlow noted the trade-in value may have been more; however, the Department was not purchasing another motorcycle at this time.

Councilmember Jenkins moved, Councilmember Risner seconded, approval of the report and recommendation.

The motion carried by the following voice vote: Ayes: Jenkins, Rimeikis, Richards, Risner, Snider, Yowell (6); Nay: Coleman, Olinger (2); Absent: duFrane, (1).

Update Re: Requesting Attorney General's Opinion re: Loitering Ordinance

Town Attorney Bendall offered the following comments:

- Town attorneys are not authorized to seek opinions from the Attorney General; however, the request must ask a specific question, include an answer, and request the Attorney General's opinion.
- He was requested by Council to write an ordinance addressing individuals gathering along the highways of the Town and to use Warrenton's ordinance as a model to see if it is constitutional.
- Warrenton's ordinance prohibits loitering, loafing, idling, hanging around, wandering on foot, etc.
- He referenced court cases involving loitering and how many Virginia courts have struck down loitering statutes because they are too broad.

- After several hearings in the Virginia Court of Appeals, it was decided that the Virginia statute prohibiting loitering and loitering on bridges was unconstitutional as it applied to the plaintiffs who have rights to gather, demonstrate, and pass out information on public bridges.
- The Court of Appeals ultimately decided that any attempt to prohibit loitering potentially prohibits a person's First Amendment rights.
- The problem he had with Warrenton's ordinance was that it contained other provisions that were also prohibited.
- He referenced Alexandria's failed ordinance.
- He was not certain that he could write a limited ordinance; if he added other provisions to it, like drug transactions and prostitution, it will have to be very carefully written but likely accepted.
- For this reason, he had not spent the Town's tax dollars to research and create the ordinance and requested Council's direction.
- He did not believe submitting an ordinance to the Attorney General would be beneficial at this time.

Mayor Rimeikis noted the States loitering law is still active; it prevents loitering in rights-of-way and on bridges, but conditions have to present a safety hazard and signs need to be installed by the VDOT Commissioner.

Attorney Bendall stated HB470 was approved by the General Assembly in January; the Bill added the wording "or the local governing body posting signs prohibiting such activity. The Bill also passed the Senate and House and is awaiting the Governor's signature. Since there is already a Bill in the General Assembly, he suggested Council wait to see if it is signed by the Governor. If this actually occurs, local governments will be one step closer to having a loitering ordinance.

Attorney Bendall encouraged Council to allow the State to exercise its right to determine the Bill's constitutionality. He would also prefer to see a test case successfully defended by the Attorney General before it is started at the local level, because the Town would then be in the forefront of convincing the court.

Mayor Rimeikis reference the Dillon Rule that states a locality has to have the authority to establish and enforce such an ordinance; if not, it is in error.

Attorney Bendall noted the new law is expected to become effective July 1.

Councilmember Jenkins agreed the Town should wait to see what happens next at the State level; in the meantime, he believed a letter should be sent to Delegate Scott encouraging him to support this.

Discussion ensued with Councilmember Risner requesting the Town Attorney advise Council in July if this Bill becomes law.

Councilmember Jenkins and Attorney Bendall discussed the issue with Mr. Bendall explaining the State statutes authorizing local governments to have loitering statutes have been primarily for regulating juveniles; however, some localities may have carried the law over to adults.

Following further discussion, the consensus of Council was to take no further action until the Town Attorney can advise Council on whether or not the Governor signs the amendment.

REPORTS & RECOMMENDATIONS FROM TOWN ADMINISTRATION

R/R Re: Establishment of Town Consolidation Budget

Interim Town Manager Huggard presented the following report and recommendation: The January 2008 citizen petition requires the Town government to prepare a plan to dissolve the Town government and consolidate its functions within the County of Culpeper government. In so doing, the Town Council is seeking knowledgeable experienced Counsel for advice and assistance as well as other necessary funds to prepare the appropriate responses. This may also include the conduct of studies and analyses to develop a consolidation plan which will be submitted to the County for its action. Ultimately the separate voting populations of both the Town and the County will vote to approve or disapprove the proposed consolidation.

We are estimating that, at this time, the Town may expand upwards of \$25,000 during the remainder of FY08 on the above activities. Depending on strategies and activities decided upon, future funding for FY09 will be developed.

It was recommended that Council authorize the establishment of a new department category for the Town budget, to be known as Town Consolidation, department 1205, and that Council authorize the transfer of funds in the amount of \$25,000 from Contingency Reserves 12-9990-9990 to line item 10-1205-5218.

Vice Mayor Yowell moved, Councilmember Risner seconded, approval of the report and recommendation. The motion carried by the following voice vote: Ayes: Coleman, Jenkins, Olinger, Rimeikis, Richards, Risner, Snider, Yowell (8); Nay: None (0); Absent: duFrane, (1).

TOWN MANAGER'S MONTHLY REPORT: Council received the monthly report. Councilmember Risner complimented the Police Department on the number of property complaints reported during the month.

FY09 Budget Adoption Schedule

Interim Town Manager Huggard presented the budget meeting schedule. He noted the Finance, Personnel, Technology and Ordinance Committee meeting had been changed to March 31; the budget summary would be provided to Council by April 1 and the draft budget would be presented at the April Council meeting.

Town Attorney Bendall noted due to a State Code amendment the advertisement of the budget public hearings would be handled different this year. He briefly discussed the new requirements.

Following a further brief discussion, Council had no objections to the proposed schedule except the Finance, Personnel, Technology and Ordinance Committee meeting was changed from April 1 to March 31. The budget summary will be presented to the entire Council as part of the Committee packet in order to meet the State imposed deadline of April 1 for the Manager's budget submittal.

Councilmember Risner questioned if the budget documents would be made available to the whole Council in time for the March 31 Committee meeting. Interim Town Manager Huggard stated Staff would have as much ready as possible. Town Treasurer Deane noted it would probably be in summary format.

COMMUNICATION & CORRESPONDENCE – There was none.

ADJOURNMENT: Council adjourned at 8:05 p.m.

Clerk

Mayor