

Council Chambers, 25 West Market Street, 7:30 p.m. Mayor Kristen C. Umstattd presiding.

Council Members Present: Kelly Burk, Dave Butler, Thomas Dunn, II, Suzanne Fox, Katie Sheldon Hammler, Marty Martinez and Mayor Umstattd.

Council Members Absent: None. Council Member Dunn left the meeting at ___ and returned at 9:12 p.m.

Staff Present: Town Manager Kaj Dentler, Deputy Town Manager Keith Markel, Town Attorney Barbara Notar, Assistant Town Manager Tom Mason, Director of Planning and Zoning Susan Berry Hill, Director of Public Works and Capital Projects Renee Lafollette, Director of Utilities Amy Wyks, Senior Planner Michael Watkins, Police Captain Carl Maupin, Deputy Director of Public Works Charles Mumaw, and Clerk of Council Lee Ann Green

AGENDA**ITEMS****1. Items for Discussion**

- a. Exeter Stormwater Management Pond
Tom Mason gave a brief presentation of the issues surrounding the Exeter Stormwater Management Pond and dam.

Key Points:

- The Council was presented with a petition from the Exeter Homeowner's Association to take ownership and maintenance responsibility for the existing stormwater management pond at the August 11, 2015 meeting.
- The earthwork dam runs parallel to the Rt. 15 bypass.
- Principal spillway controls the flow of water going out of the pond area.
- Emergency spillway is designed to take excess water along a path so that the dam is not washed away.
- Water comes from three principal inflow channels – one to the north and two from the south.
- Facility was built in 1990 and met all regulations in effect at the time.
- General Assembly adopted a new dam safety act in 2001, which put a lot more restrictions on the requirements for dams across the state.
- Exeter Homeowner's Association was notified by a letter from the Virginia Department of Conservation and Recreation identifying them as the owner of a dam known as Richmond Square which is considered a high hazard dam.
- Dam Safety Act requires that all dams be regulated except those that meet certain conditions.
- Regulated dams are put into three categories – low, significant and high.

- Exeter dam is considered high hazard because of development downstream and location directly adjacent to a primary roadway which is part of the National Highway System.
- HOA, as owner, will need to take necessary steps to get the dam into compliance which includes an obtaining an Operation and Maintenance Certificate, Rainfall study, Emergency Action Plan, inspection and certification by a professional engineer, and clearing on the existing facility for the trees on the slopes of the dam.
- Preliminary investigation done by an engineering company retained by the HOA confirmed that this is a high hazard dam and initial computer model tests indicate it will not pass the requirements for the 90% of the flow generated from a probable maximum storm, which in Virginia is somewhere around 35 inches.
- Hydrology and rainfall statistics come from the National Weather Service.
- Rough cost estimates for the improvements necessary to bring the dam into compliance, as well as an alteration permit from the state, is \$935,000.
- Taking over the maintenance, as requested, would add an additional \$21,000 per year, minimum, to the Public Works budget.
- Certificates issued by the state must be renewed every six years, which may incur additional costs.
- Drainage shed for this stormwater management facility is a little over 500 acres, about two thirds of which is not part of the Exeter community.

Council Comments/Questions:

- Dunn: The TMDL guidelines are not impacted by the repairing of the dam, is that correct?
Staff answer: That is correct.
- Dunn: How many HOA drainage ponds in the town does the town own?
Staff answer: As far as HOA ponds, the town doesn't own any HOA ponds. The town does own stormwater management ponds at several locations.
- Dunn: Are they on HOA property, or is it town property?
Staff answer: It is a combination of both. There are several at Ida Lee. There are some at the airport. There is one that is half on town property and half on HOA property at Greenway Farm, but the town does not own and maintain ponds entirely on HOA property – the town is not responsible for any of those. If the town decided to take over this pond, it would be different than we have done before regarding how we divide up responsibilities for stormwater management.
- Butler: Remind me who came up with the 35 inches?
Staff answer: It came from the National Weather Service.

- Butler: Okay, and who decided – was it the state – that decided that a dam of this type needed to safely pass the 35 inches, or the PMF?
Staff answer: Yes. And that is probably consistent with Corps of Engineers practices for more nationwide facilities.
- Butler: Okay, because 35 inches strikes me as something that is wholly outside the realm of reasonable.
Staff answer: It is a large number.
- Butler: Yeah, a large number. A couple of questions on the table, one is ownership of the pond is a question. And but even regardless of how we answer that question, there is a question of what does the town feel is the right amount of solution to the hurt and money to put into a solution?
Staff answer: That is a good question. We are not sure what that answer is.
- Butler: And that's a question, I think, for us. Just trying to make sure that I am framing the questions correctly. Okay, the other question, and I think I know the answer to this, but I am going to ask in a slightly different way...is there any way to execute a project that would – let me put it this way – the solution to the TMDL issue and the solution to the PMF issue – is this not and I understand that they are separate requirements, but are they completely separate engineering solutions? Is there any way we could come up with a project that would solve the TMDL problem and at the same time help with this problem or is that just like saying okay I need a new roof and I also need new wiring in my house and there is just no way you can combine them?
Staff answer: If you build just the improvements to improve the dam, they don't help the TMDL issue at all and if you build just the TMDL project by itself, it doesn't help the dam issue, but from a construction standpoint, there may be some efficiency if both of those were constructed at the same time.
- Butler: I am just wondering if there is an alternative to the TMDL solution that might also help, you know, this PMF problem.
Staff answer: Perhaps there could be – we really haven't looked for any of those type answers at this time.
- Butler: I understand that there are two separate issues.
- Burk: Out of curiosity, does that pond ever empty or is it always full?
Staff answer: Once it was filled, the only work that we know was done prior to it being taken off bond was some of the sediment was removed that accumulated during the construction of the Exeter planned development. It has been full ever since.
- Burk: You talk about having to remove the trees. Why would that be important to remove the trees? I would think they would be somewhat of a border to help keep the water in.
Staff answer: You talked about having to remove the trees. Why would that be important to remove the trees? I would think they would be somewhat of a border to help keep the water in.

Staff answer: It is really the tree roots that are the problem. If they are on the dam or on any of the embankments of the dam, they can disrupt the structural integrity of the soil that has been packed down and loosen things up and perhaps allow water to pass through the dam from a seepage standpoint. So, the ownership of dam carries with it responsibility to make sure it is kept in good condition and that type of vegetation has been proven to be detrimental to the integrity of an earthen dam.

- Burk: Interesting. Okay – we are not talking about ownership of the pond. We are talking about ownership of the dam, is that correct? Or are we talking about the ownership of the pond?
Staff answer: I am not sure I know how to separate that.
Notar: The dam holds the pond – holds the water, so it is virtually the same thing.
- Burk: So, we are talking about ownership of the pond. So, would we then have to do maintenance to upkeep the pond itself just from an aesthetic standard and that sort of thing?
Staff answer: We would and we believe that's part of the HOA's request.
- Burk: You showed a map and you showed the watershed was not exclusive to the one development. Could one of the things that we look at and I know we don't have to make any decisions tonight – we've got time, but one of the things I was wondering about was could we look at doing a tax district in that area since that's the area that impacts that particular issue we are talking about. I've had some people who have talked to me about this and their concern first off is the tax rate increase, but it doesn't affect their HOA and now they are going to have to pay for someone else's HOA. So, they are concerned about that – other residents in the town and I believe there is other HOAs that are going to come behind us that we will have to – if we accept this one, we will have to accept a couple of other ones, is that correct?
Notar: It is possible to create a special tax district. Localities can create them. Public hearings are required and it has to be done by ordinance but it is possible.
- Burk: That might be something we want to consider, but of course, we need to talk to our state representatives to find out what they could do to help, because this is a huge endeavor to put on one HOA but at the same time it is a huge endeavor to put onto other HOAs that aren't involved in it. It is quite a dilemma, but I understand we have some time to think about this and so I hope that we will take that time to discuss it and talk about it and not make any motions tonight, but thank you.
- Martinez: I noticed that the affected area – there is a lot of area outside of the Exeter Association that is being affected by this. So, it's not just Exeter.

Staff answer: Yes sir, as far as the drainage shed goes, it is maybe one third Exeter and two thirds other parts of the town.

- Martinez: And all this impacts will be with the town?
Staff answer: Yes.
- Martinez: Also, too, you know talking about – in the past we have done things in the town. We have had neighborhoods that the town has borne the cost of improvements in water and sewer and gutters in specific neighborhoods. We have had to take the responsibility because there is no way we could throw that kind of lien on anybody. So, I see this as kind of the same thing. Maybe there are some HOAs that will follow-up on this and maybe other people in the town will have to help share this burden, but that is what this town does on all its capital projects. When you improve one neighborhood, the whole town [inaudible]. I think that is just a precedent that we have already established. And also that this is not just Exeter's problem. There is a whole group of other homes in that little area that this is going to impact. So, I think there is no real questions other than just the comments.

Staff answer: Council Member Burk mentioned other HOAs. We know there are two other regulated dams in Leesburg that are HOA owned.

Notar: High hazard dams.

- Mayor: And which are they, Tom?
Staff answer: Stratford and Stowers.
- Hammler: Thank you, Tom. And all that contributed to the research and memo and thank the Exeter board for being here tonight as representatives. First of all, a disclosure. I live in Exeter and it certainly has come to the attention of Council that the homeowner's association may have to pass, you know, like \$10,000 per household cost on to each homeowner, so for the record, Barbara, do you see that there is a conflict of interest for me as a Council Member participating in this discussion?

Notar: No, you have disclosed.

- Hammler: I pointed that out for the record.
- Martinez: Also, too, I think that \$10,000 is not correct. Is there a number – I heard Sandy mention something about it that correct number that is going to be...
Male voice: [inaudible], roughly a million dollars, about \$1,200 a household.
- Hammler: \$1,200 per household to correct that number just based on the numbers that have been disclosed tonight. A couple of questions – I kind of teed them up over the weekend but for the sake of the public record, is there any way legally to grant a grandfathering provision given that this is a huge regulation based on the fact that the pond was built in 2001?

Staff answer: We are not aware of any grandfathering provisions that are in the legislation adopted by the General Assembly in 2001, which was requiring existing dams as well as new dams to comply with the regulations.

- Hammler: Thank you very much. And I know you mentioned, Tom, for whatever reason the state legislature decided to use the weather service, but to the extent that it is helpful for the rest of us to understand why they came up with such what seems like an unreasonable new threshold, literally 35 ½ inches of rain in 24 hours versus 7, which is the 100 year flood projection – just when in the history of our region and in what frequency is there ever been a storm generating that amount of rain in 24 hours?

Staff answer: I wish I could give you a better answer. I just got some information late this afternoon about extreme rainfalls and it does reference a storm in the mid-90s in Georgia, which had similar rainfall in a 24 hour period. And also, I haven't had a chance to research this, but there has been some rainfalls in Pennsylvania that were close to that 30 inches. I am not a hydrologist, I wish I could explain it better, but I also feel like this is an unusually high number, but it hasn't been taken lightly by the government agencies that have arrived at these thresholds and they have – after we do a little more research, we can provide you a better accounting on what might have been the history that they looked at when they arrived at these rainfall amounts.

- Hammler: We can talk about this just in the context of whatever Council decides, but I think that kind of research is going to be important because I would certainly fully support a very, very active legislative agenda item to go back and look at this threshold given the cost and quite frankly the low probability of this ever happening. So, for the record, I would certainly support that. I just wanted to add to the discussion that we just mention about possibly a tax district. Certainly, you mentioned Tom that one of the reasons why it is considered a high hazard dam is its proximity to a major roadway, which incidentally is owned by the state so we need to figure out what portion of whatever it is we are all responsible for that the state needs to pay for and we need to figure out what that dollar amount could potentially be.

Staff answer: We can certainly look into that.

- Hammler: Just a related question, either legislative or if it is even possible legally to take action just that we think this is unreasonable and what more direct action that could take that might allow us to really move the deadline back. I would certainly request knowing if that's an option. In other words, we all agree it is an excessive amount. It is not a reasonable threshold and therefore, you know, could we take legal action to say, you know, ultimately, why do we have to adhere to this and...

Notar: My first instinct is that in order for the town council to take legal action, you would have to assume ownership of the dam.

- Hammler: For the record, we are not discussing that on the dais. That would happen at closed session.

Notar: So, you could certainly add it to your legislative agenda on behalf of the HOA.

- Hammler: Alright. And again, just back to the research about the weather. We know we have had serious hurricanes come through, you know, that we've taken action thinking Hurricane Sandy was going to hit. How many inches of rain did that – the worst hurricane that Leesburg has ever experienced – how much rain did Leesburg ever get? So, just....

Staff answer: [inaudible]. From the dam safety folks perspective, this is the little bits that I have understood, pretty much the worst rainfall that can be expected to ever occur.

- Hammler: Understood, just from our perspective as we consider legislative...

Staff answer: I know it seems to be way out there, but...

- Hammler: One thing to take – like maybe they took a national average for the weather service. We don't even know – at least I don't, what the source of that resources was.

Staff answer: We have some good information to look through and if the Council wants we can provide some more details about what this rainfall amount – the significance of this amount of rain.

- Fox: Many of my questions have been asked and answered, but I do have a few more. Since 2001, how many overflows of the Exeter pond have there been?

Staff answer: None.

- Fox: Zero. Okay, and who has taken care of – you said the town has not maintained the dam in the past. Who has?

Staff answer: The Exeter Homeowner's Association.

- Fox: And has there ever been safety – a failure of the dam or anything like that? Has there ever been a breach of the dam? Has there been any type of failure at all?

Staff answer: Not that I am aware of.

- Fox: The only other question that I have – is there similar wording in other deeds. Like the deed we are looking at tonight, is there similar wording in other deeds that may come before us that we would have to come back again and revisit this issue for the exact same reason?

Notar: I believe there is.

- Fox: Alright. Well, I have to echo what Katie said about the legislative agenda. I think that there is action already being taken by Delegate Minchew for some oversight legislation and I think we might want to look at supporting that, but at this point, that is all I have.

- Mayor: We have a couple of different problems. One is the timeline that the Exeter HOA is under and they are looking at having to take

some kind of action in December. So, I have said this before but I am going to say it again. The town approved this dam during the development of Exeter. In my opinion, we took responsibility for it at that point. Yes, we off loaded it onto the backs of the homeowners of that community as we do with many other facilities. But, it was our responsibility as a town and the town council approved that development. They approved it with the dam and, you know, going back to what Marty said, I think it should be the town's responsibility. If anybody has to spend a million dollars to repair this, the town has an option of bonding out a project and paying a fraction of a million dollars every year and that's an option that really is not available to an HOA. The idea of every homeowner in Exeter getting slapped with a \$1,200 bill whether it is through a special tax district or whether it is through an HOA assessment, which couldn't even happen given their bylaws as I understand them. That is crippling to those homeowners. I have no problem with the town taking over this. I think the attorney for Exeter has done a very good job saying that in the language that governed this dam, there are provisions that don't appear in the language covering any other stormwater management dam in the town, so I don't view this as much of a precedent setting decision as perhaps others might. But, I do think Exeter is under a deadline and that deadline is coming up quickly and it is going to hit as I understand in December and beforehand, I think the Council needs to accept responsibility for doing whatever is now required by the state. To Suzanne's point, yes, absolutely we should back up any members of our delegation who are trying to get, whether it is state aid or a reduction of these requirements, but if we do face a public safety situation, that's on us as a town and it should not be borne solely by the residents of Exeter. We are all in this together. We get slapped with these additional requirements from the state and federal government, which our homeowners never anticipated in a million years and now whichever council whenever it was that this was approved – actually approved it, that actually I believe does predate me! That long ago, but I do think we need to step up as a council. We need to accept responsibility for this project. We have the bonding ability. We also, based on the wonderful work that the town manager did trying to find extra money to completely finish the downtown improvements, we also had money in reserves that could be used to help out with this, but we can reduce the annual cost of this on our taxpayers in a way that Exeter just cannot. So, I would like to know the drop dead date for when we have to make a decision if we are going to effectively help Exeter deal with this situation because December is going to be here faster than we know. You know, I don't think we can wait to resolve this until the General Assembly finishes meeting in March or whenever they are going to be done next year. It will be too late for Exeter at that point – potentially too late for the Stratford Community as well and other

communities that have to use the Stowers dam, but this is a problem we are facing in different areas of town. I think in this case, because of the unique language that governs the ownership and easements over this dam, we have an even clearer obligation than we might have with others, but my position would be the same on others. But, I need to know a drop dead date and I don't know, Mr. Easment, whether Exeter has any information on that and when if the Council is going to take any effective action, when we would need to do that. If you want to come to the mike, that would be fine.

- Exeter HOA: [inaudible]. It is our understanding that our date is sometime in November, but the reality is they told us that the total maximum flood rainfall is being looked at so that the modeling that was done at 35 inches, they are still looking at that number statewide, how they actually set that number and they plan to have that new methodology in December, so our understanding is they are not going to push us until they come up with that actual – how they are going to do this and it has been looked at in the past several years, so that number may be 27 inches, it may be 28 inches. It is probably going to be lower than 35. That will affect some of the design but it will not eliminate the need for something being done. So, our understanding is in early December, is when they will have that.
- Mayor: When they start to push you, how much time do we have to comply?
Exeter HOA: I think then we have got to move.
- Easment: Thank you once again, Members of Council, for listening and hearing Exeter's petition and concerns. I also want to thank staff for bringing those concerns to the council's attention. It is exactly those concerns that my client evaluated which made us go back and look to see if in fact Exeter was the owner of the stormwater management pond and dam and when we looked through this, we found the deed that we have presented to the Council – the deed of easement and we saw that there is an issue. That the association does not own these structures. It is laid out in the memo very clearly, but I would like to just repeat that once more. You all have a copy of that plat which we provided which is attached to that deed of easement that says that Parcel W, which includes the entire stormwater management pond and dam is in itself a stormwater easement – a stormwater management easement. That language in the deed further goes on to say all lines, channels, inlets, structures, and appurtenant facilities which are installed in the easements shall be and remain the property of the town. Channels, inlets, structures and appurtenant facilities – further is also says the owner, meaning the developer, grants and conveys in fee simple all appurtenances and facilities located within the storm drainage easement to the town. There is not a distinction between certain types here and there and the dam and the pond. It says all appurtenances and facilities within that easement, which again is the entire parcel. So an argue –

there is no ambiguity. Anything that is related to stormwater management, meaning a pond or a dam, that is located on the parcel is or was conveyed in 1990 to the town. Now, it may be that Exeter picked up the slack and maintained those because the town wasn't performing its functions; but we are not asking the town to take on any additional obligations that in our view the town doesn't already legally have. Now, I will make one more point with regard to that precedence issue. We do believe that the language of the Exeter Deed of Easement is very unique. I have performed some research and granted, Ms. Notar, I did not look at every deed of easement in the town, so I can't say with certainty that does not exist in any others, but of the three other deeds of easement that we pulled shortly after 1990, there was no language similar to the Exeter language, that fee simple conveyance language did not exist in those others. So, we are asking Council to recognize and acknowledge its existing ownership and maintenance obligations for both the pond and the dam. Now, I do understand that comes with significant challenges, costs, and obligations. But it doesn't seem equitable for my client, who we have given the opinion to does not own those structures to have to take on those obligations. I yield any remaining time to questions.

- Butler: A few items. One on the November or December deadline that we have been referring to. What exactly is Exeter required to provide at that time?

Easement: If you don't mind, I will defer to Clark, who might know a little bit more about that issue.

Exeter HOA: Yeah, I mean [inaudible] the process of getting the [inaudible]. We don't have the construction done by that date, but we have to now start going through the process of getting the maintenance and operations certificate. We have got to start that process, which means to be compliant we would have to come up with all the things that Tom outlined and that whole process will have to go through at that time, so we would have to come up with the engineering and we would have to start the process at that time. I don't know when the completion – they would say hey you have to have it done by June or whatever, but we have to get that certificate. I don't know whether they may say you have got to get that certificate in 60 days. You know? Whatever they set the timeline on getting the actual maintenance and operations certificate is what we would have to comply with. I don't know exactly.

- Butler: Okay, moving ahead. Let's say they say, hey look, you have got to provide whatever it is on December 15 – what exactly do you have to provide on December 15 and what will that cost you to get it?
Staff answer: It is our understanding that we have a \$20,000 number as the engineering work necessary for putting the package together, which includes the downstream inundation analysis and other listed technical documents that the state needs to look at when reviewing the Exeter

Dam condition for them to issue a Certificate of Operation and Maintenance. It is very likely that they could issue a temporary certificate for operation and maintenance if the documentation says the existing dam doesn't meet the standard – improvements are necessary. We need time to prepare the design and construction and then construct these improvements. We need a time extension for a reasonable period to do that. But, the initial submission right now is scheduled to go in November from Exeter HOA to the DCR folks. That is being delayed by DCR with some flexibility because as we heard earlier, they are relooking at some of the hydrology and might reduce that amount, which the engineers would need the new or revised amount to complete the work. So, I am just kind of making deadlines up. By late winter, early spring, with the new rainfall information, I would say that the DCR folks would be expecting a package from Exeter and from there the whole process is really – a critical path is going to be what improvements are necessary. How long will it take to design and build those.

Exeter HOA: We were instructed by the state [inaudible] to apply for the temporary certificate. In June that is kind of what they were saying until we got this delay, they said go ahead and get the temporary certificate, get this in process.

- Butler: What would it cost you to get the temporary certificate?
Exeter HOA: Well, we have done the study. We have done most of the study, so we have that aspect done. Then it is you know, [inaudible].
- Butler: Okay, so how many dollars will it take to apply for the temporary? About \$20,000 more to apply for the temporary certificate.
Exeter HOA: [inaudible]
- Butler: You don't sound too firm on that number.
Exeter HOA: [inaudible]
- Butler: Okay, because the deadline that the Mayor is talking about, I am trying to find out what the real deadline is and the real deadline isn't the \$800,000 for construction. That is much further on. What I am trying to find is – okay, and Tom your estimate is that since the DCR is continuing to evolve these rainfall numbers that packet might not be required until sometime in the spring, but we don't know.
Staff answer: Yes, so the typical extension time is 120 days. Exeter would have to ask for another extension, but it is likely.
Exeter HOA: And that is our understanding as well from our discussions with the state.
- Butler: So, if you ask for an extension, that wouldn't cost you any money. You wouldn't need to spend the \$20,000 to ask for the extension, correct?
Exeter HOA: It is possible unless they come back and say you may have an extension for the other conditions and requirements you need to meet, but you absolutely have to have the temporary operating

license and that is something that may be required before another extension is granted.

- Butler: Okay, so we still don't know. It could be December, it could be April. We are not sure.
Exeter HOA: It could be.
- Butler: I think that would be a good data point for the council to noodle around since to the Mayor's point – December is coming up real quick.
Exeter HOA: I guess our concern is getting that initial temporary one that implies ownership. So, we are trying to avoid getting [inaudible] either way between us getting that temporary operators. We can't actually set that timeline so that neither one of us until we decide who owns this and gets that operation and maintenance certificate is the legal owner. That is where we are trying to get. We are trying to not have to get it and then say well now it is not ours. Now it is yours but it is already...
- Butler: Understand. Okay, just also trying to make the point that you know when Council is pushed to follow deadlines that we find out later weren't real deadlines, it doesn't always set well. So, it might not be a bad idea to ask for an extension for 120 days so we will know exactly what the deadline is and what we need to do by when.
- Easment: So, Council is aware and to respond to that, we have already done that. We are operating under a current extension given the ownership issues and legal matters that have already arisen from this. So, while we understand that may be something that is possible, we have already done that once and whether or not that is again a possibility is questionable.
- Butler: Right. It is just we don't know. Which is my whole point. I'm not saying that's obvious, but I am saying – especially if the DCR is delaying it themselves. There are still open questions and the difference for us to make a decision by December or by April in a case like this is huge. Huge. Because April we are in another budget cycle. December is an immediate thing where we are, you know, may or may not be making priorities against other things. April – a whole lot different discussion, which is why I asked. I did run some quick numbers and a million dollars – not clear to me that the HOA couldn't borrow it if they needed to for something like this, but regardless, if it was bonded one way or the other, it would be between \$70-80 thousand a year over 20 years assuming that was the length of the loan and assuming somewhere between a 3.5 to 5% interest rate, so that is a lot less scarier of a number. If you add in the \$60,000 every six years and the \$21,000 in maintenance that was mentioned in the staff report, it comes out to be call it \$100,000 a year over 20 years. No conclusions based on that number, I am just suggesting that is a different number than thinking that somebody has to stroke a million dollar check. Thank you.

- Burk: The only question I had is if you are contending that the town should have been the owner of the pond all these years and the HOA has been doing maintenance on the pond all this time, is there going to be some suggestion or some thought that there needs to be a reimbursement for the money the HOA has already spent?
Easment: I can't speak for my client on that. It is a legal issue they have to discuss, but I can say that so far that hasn't been an issue that I have been aware of that has been brought to the table at any discussion.
- Burk: It might be something that you all want to discuss so that we are clear on that one also. If you are willing not to carry that further and let it go, that might be to your benefit at this point.
- Hammler: This might go under new business, but just for the sake of posing the question, given the cycle that is currently happening where there is a group reevaluating the rainfall threshold numbers and it doesn't coincide with the General Assembly, which you have already pointed out, what can we be doing now to influence that group because that's what I think we should also do concurrently so that we are actively representing Leesburg relative to a reasonable level of rainfall which presumably will be lowered, hopefully significantly lowered back to a reasonable amount like the 100-year seven inches, in which case the cost will come down considerably and in the meantime, we should be defining the strategy for ensuring that we don't take on the liability of state property and they also – that we start defining what it is and I am sure that is going to set a precedent for how these dams impact their property all over the state so that we can assist the entire state with that question so I would appreciate knowing who is involved in this decision about the rainfall and how we get involved in influencing that immediately.
- Fox: Just one quick question. Why hasn't the Exeter HOA just sent the deed back to the state saying this is not our dam. Have you tried that?
Easment: We have communicated with them. We have given them pretty much the exact same information we provided to Council. But, they have their own regulations and guidelines that they go under in the law and basically what it says is if you are the owner of the property, you are automatically deemed to be the owner. Now, when the legislators came up with this language, they obviously didn't consider a situation in which we find ourselves in where yes, Exeter does own the land that these structures sit on, but under the operable language of that deed of easement, the structures belong to the town. So, what we need to do is convince the state that Exeter does not own these structures – that they are town property and part of that is getting the town to acknowledge those ownership interests. We have made those arguments; however, they are still considering Exeter to be the owner of the dam for those purposes.

- Dunn: And I assume the HOA – the HOA is not trying to claim that they haven't had ownership going all the way back to the beginning. They are just claiming that they just recently became knowledgeable that they don't have ownership.
Easment: So, you all are familiar with the organizational structure of homeowner's associations? They have high turnover in their volunteer leaders. Management companies change. Law firms change. When my client asked us to evaluate this issue, I did some digging back in the day and this is what we discovered. This is a recent discovery. I am not sure if prior council was aware of this or the board. It may have been. The issue is present board, present council and present management have discovered this issue and we have to take some action with regard to that.
- Dunn: Looking at the deed, where exactly are you referencing that the town is the owner of the property?
Easment: Just a clarification. I am not referencing that the town is the owner of any real estate, but with regard to structures and appurtenances that serve a stormwater management purpose, that can be found in paragraph A1 of the deed and also on the very last page of the deed, about a middle of the way down, a third of the way down, there is language that states the owner grants and conveys in fee simple all appurtenances and facilities located within the above sanitary sewer or stormwater drainage and water easements to the town. That's on the last page.
- Dunn: And the – but the dam was built by who? The original owner?
Easment: I'll defer to staff on that. It sounds like it was originally constructed by the developer.
Staff answer: Pulte and Richmond American developed Exeter, so it was the developer – Pulte in Exeter under some corporate names that have constructed all the infrastructure in the Exeter Planned Development.
- Dunn: Okay. And when we have a developer putting in infrastructure that usually becomes the property of the town – is that correct? Or at what point does it?
Staff answer: It becomes the property of the town when it is completed and conforms to our standards and the approved plans and it is accepted into our inventory and the performance bond required under development regulations is released. The easement documents usually are the tool that identifies what has been transferred. It has been the practice of the town to make sure that the easements are in place before any construction is done and that the facilities constructed in those easements – it is usually water lines, sanitary sewer lines, storm drainage pipes are conveyed to the town and the town owns those facilities. In the case of stormwater ponds, particularly wet ponds, it has been the practice of the town not to accept the wet ponds because of the potential liability of both care and maintenance of it and in fact it is

some place that personal injury could occur due to the water features, so we have tried through the practice as documented in our design and construction standards and other places that we will take the pipes and we will take the inlets but the ponds, particularly wet ponds and the embankments are owned and maintained by the land owner.

- Dunn: Okay and looking at that paragraph that you referenced, I am not an attorney, but I did stay at a Holiday Inn Express. I do have experience in title and deeds. I read that paragraph to be that those items to be installed, projecting future, not what has already been done, would be the property of the town. We will have to let the courts decide that one unless we come up with just deciding we will make a political decision here. And I think this really comes down to two things. We are either going to make – and they are completely separate – either a legal decision that it is our legal responsibility for us to take this over because there is nothing that has gone before this point that would other than some light language in an easement deed – not an ownership deed, that would possibly indicate that the town has some responsibility for or that we are just going to make a political decision and say we are going to go ahead and cover this for a community. I think the legal argument is very light at best. Nothing personal. And I think that if it were challenged, it would be a tough case to win. So, it comes down to the town and I guess the town council deciding if we are going to make a political decision, because that is completely all this is – is whether we are going to go ahead and start taking on the responsibility for HOAs responsibilities. I will give you an example. Right across the street from you all is where I live. I live in Balls Bluff. We just had the town, for us, from the developer, build a park. The citizens who bought their homes – me. Bought my home in that community with the expectation that we were going to get a some 20 acre park. It is going to cost close – what was it Kaj? Two million? Something like that. The problem was is that it was taken out of our hands because the negotiation aspect of it was with the town. The town and the developer negotiated about a what was it, 600-900,000 something. It wasn't what we thought we were going to get. But now, if we make this political decision, myself and my other homeowners can come back to this council and say you guys owe us another \$1.4 million or \$1.1 million, whatever it was you did not properly negotiate for us with the developer. So, now, we want our full park because we were told that we could have that. And now, I am wondering while it is easy to say we are going to pander for votes and get a whole bunch of citizens on our side because we are going to give them a million dollar project, how many more people are going to ask that? I know that we hear from Beauregard. They are always asking for – there you go. They want their private streets taken care of by the town. Or Linden Hill. They have come to us for their private streets taken over by the town. These are decisions that homeowners and associations make

going back years and years and there are some other associations that are older than yours or definitely older than mine that should we start making these political decisions, because it is convenient then we have to also start expecting how many other associations are going to be coming before us because I don't think the weight is here on the legal side. Sorry. I don't think we will have to go to that point of it having to go to a court situation but I think that we have to recognize this for what it is and this will be a political decision that is being made.

Because, I unfortunately do not see the legal weight on this as far as ownership goes. We already determined that it is not going to cost \$10,000 per household – that we are looking at about \$1,200. And I don't know what your account is – what your balance is currently in your HOA – I know unfortunately we seem to be sitting on about a million bucks and I don't know why we've got that much money in our HOA, but you're not getting it by the way. You can't have that. And you all have been paying taxes on that property, is that correct? I mean this has just been part of your overall tax but you haven't divided that up saying no, that wasn't ours. In other words, the knowledge of this ownership has only been something that is new. It is nothing that you have tried to maintain in the years past.

Easment: As far as we know. That is all I can say today. We haven't done the research to find out if that is in fact the case dating back to 1990. Perhaps there was a few years where the association was operating that way and then through the years of volunteer leadership, it just became...

- Dunn: I don't know. Sandy has been there as long as I have been here in town, so you should have left him at home. He has been there forever. I hope that's okay to say, Sandy. Question for staff – so the town decides to pay for this. Coming out of General Funds or Utility? Which pocketbook is this going to come out?

Staff answer: It could not come out of utility fund since it is not water or sewer line oriented. It would have to come from general fund through the capital projects fund.

- Dunn: Okay. Then the other question I have is what project – should we decide to pay for this – what project is going to be put on hold in order to do this one?

Staff answer: We would have to look at that.

- Dunn: Or if we don't take it out of a project and we continue that, what other cuts would have to happen in order for us to pay for this because right now we don't have the money to pay for it.

Staff answer: We have not looked at anything like that at this time.

- Dunn: That would be something I would like to see – where else are we cutting in order to pay for this.
- Mayor: Mr. Easment, the council is going to need to know when we need to take action and our process is such that it can take us two weeks to get something on an agenda for a vote. So, if this is going to

require an additional work session discussion, which it might the majority of Council will need to approve that it go on a future work session. Generally at the Monday night work sessions, we do have additions to future meetings, so we could put it on the next work session in about two weeks for more discussion or at some subsequent one, but normally we will discuss it in work session before we vote. So, we will need someone to start monitoring the time period from your perspective and understand that we can have a two week lag time before schedule something and actually make a decision. It might be longer than that. But, we are going to need your assistance in that, so we would appreciate it very much – Exeter keep us informed of what kind of deadlines we are up against.

Easment: We will prepare a memorandum for the Council's review that sets forth what our deadlines we are under, which deadlines can be pushed back and what the requirements actually are especially with regard to that upcoming December deadline.

Exeter HOA: I think Dave did a pretty good job of making an estimate between \$80 and \$100,000. I would guess more like \$90 to \$110,000 per year for 20 years. Just for your information, that is about 12-13% of our overhead budget so we would have to make some cuts – 13% of our budget would have to go for this at \$100,000 per year for 20 years. We don't have that money. We don't have the ability to tax. We don't have any way to raise that money, so we would have to cut services – whatever we do within Exeter to do that. We do have a large reserve but that money is all allocated for the items it is supposed to be allocated for. We have parking lots, we have the private roads. We have pools. We have – whatever facilities we have – that money has been built up to take care of that obligation in the future, so we have no cash sitting to do this. We have never planned to do this. It has never been an item. I think Dave's number that he came up with – that's between – if you look at it over 20 years, it's going to be \$2 million - \$1.75 million. If you want to look at that as a per household charge, it's not the \$1,200 – it would be more on the order of \$3,000 – 2,500 to 3,000 over 20 years which is what the actual cost of that would be so, but I think your estimates are pretty good on what the cost to Exeter would be on this. It would be somewhere between \$1.5 to \$1.75 to \$2 million over the course of the loan.

- Butler: I was going say, yeah, it was only like a 30 second estimate so, just trying to be close.
- Easment: Just one point in close, if I may, Council. Mr. Dunn did reference that this may be a political decision; however, I would suggest and submit that there are legal reasons behind that political decision. There is a legal distinction here that is not shared by other HOAs. I would just request that before the Council makes a decision, that you do review that deed of easement, review the memo we provided and again we appreciate your time and consideration.

- Butler: I would just ask Council – at some point if we are going to, which I assume we will, discuss whether or not the Council is willing to take ownership of the pond, I would request two things. One, I would request that we get the language in the Stratford and Stowers agreements as well and I would ask that we discuss that specific thing in closed session since it is a legal discussion.

b. TLZM 2014-0005 Patriot Self-Storage Park

Michael Watkins gave a brief presentation on the redesign of the proposed self-storage buildings.

Key Points:

- The applicant has provided revised elevations for building 1 that take a story off the front of the building creating a stepback approach to the height of the front of the building.
- Building 2 remains unaddressed.

Council Comments/Questions:

- Mayor: Before we go to the applicant, Mr. Ecker, you are here. The impression I got from your email is that you were more satisfied with this design than you were with the previous design, is that correct?
Ecker: I guess for the record, I was stating that I believe the applicant is moving in the right direction, but I would not state that I am 100% satisfied. As I presented in that email, I believe if we took a little bit more time to potentially terrace the building in the way that I presented, it could be a little more accommodating to the neighbors and the community. But, I appreciate the opportunity to speak.

Tom Chamberlain thanked the Council for the opportunity to bring a different option for consideration.

- Adjacent properties will most likely develop with similarly massed buildings.
- Clear effort to reduce the impact of the mass on the neighborhood has been made through the reduction to three floors in the front of the building.
- Would caution the movement back from the street would reduce square footage and increase cost.

Mr. Brewer, architect for the project, presented the architectural changes that have been made.

- Changes were made using different sight lines that would obscure the bulk of the building.
- Reduction in height from the maximum height for the three story section.
- Changes to make the ground floor look more active included adding glass to indicate windows.

Council Comments/Questions:

- Dunn: I appreciate what you have done and I do think that it looks less institutional than it did before, so I think it is an improvement. Still pretty big. That's a lot of space. But as storage units go – storage facilities – it looks good. It is not your average storage facility. I think that what you have done is a good improvement, appreciate it.
- Butler: One question for staff, one of the things we asked for last time was you know if we voted this down and/or they went and did a byright development, what would be the summary of all the proffers that we would be losing? And I think they are going to do it one way or the other, but basically what is a summary of the proffers that we would be losing? What is the trade off here?
Staff answer: I don't have that slide for you, but included in the prior proffers were basically zero monies for the transportation (appendix b) and the fire and rescue contribution are the two principal proffer guidelines that apply to this project. To follow up with the other fiscal analysis that we were asked to provide – we estimate that there would be roughly \$45,000 a year in property real estate taxes, \$200 in BPOL and \$150 in sales tax. That is based on gross income and receipts of \$200,000. Those are provided by the applicant and we have reviewed those numbers, so that is additional information for you.
- Butler: Okay, so if I was going to put a number on the total proffers, what would you tell me?
Staff answer: Zero.
- Butler: So, they are providing zero dollars in proffers?
Staff answer: Right.
- Butler: So, we are giving a rezoning for...
Staff answer: I could say that per your proffer guidelines, you are receiving zero dollars.
- Butler: I do think this is an improvement, number one. Number two, I think that the total height of this building is not as significantly above – like say the height above sea level is not significantly above the hotels. I am still trying to come up with a compelling reason why we wouldn't just say do by right whatever you want and if it takes three buildings, so be it. Still working on that issue. Thanks.
- Burk: I have to say this, but Dave, I couldn't hear your question – what you were asking in regards to proffers.
- Butler: Yeah, what are receiving in proffers and the answer is nothing.
- Burk: By doing the rezoning, we are receiving nothing?
- Butler: Yes.
- Burk: And then by right, we would be receiving...
- Butler: Nothing.
- Burk: So, nothing to nothing. Nothing changes.
- Butler: Right, so then the question is what is my incentive to do a rezoning. Sorry, the acoustics aren't really good up here and I do

apologize I wasn't here at the last meeting and I was a little confused by the pictures that you passed around. I am not sure where they are. The white boxes that you are showing are not your buildings.

Brewer: They are on property that is owned by the same ownership of this property and that they are actively seeking to develop. In developing that parcel, the Crescent District requirements would have us have up to three stories and at that face of property line and that would be the volume of those buildings on that parcel.

- Burk: So, this thing you are talking about here, this white thing. That's a future building?

Brewer: Correct. Based on the requirements of the Crescent District, bringing everything up to and engaging the sidewalk and the street.

- Burk: Okay. The picture that you have up there, that's illustrative. Are you agreeing to put the trees in?

Brewer: The trees are a part of the site – actually I didn't put all of the trees in that are shown on the site plan because it would have obliterated everything, but those are the trees that are between the sidewalk and the building and there is a group of four or five trees that are in the space between the sidewalk and the curb also.

- Burk: Alright. I guess I still a little confused by the building. You are just saying by showing these pictures that you can build – you could build a big box building like this.

Brewer: We were just trying to put this in context of what is going to come and the comment that was made that you are going to see this building down to Market Street. As things get developed, it is physically impossible to see it.

- Burk: Oh, okay. Now I understand better what you were trying to accomplish here. Okay. Thank you.
- Martinez: I appreciate the fact that you came back with some changes – you made it more attractive. I am still concerned about the mass. I guess I'll just leave it at that – see where we go.
- Fox: At the last session, there was a little bit of talk about maybe having that front building be three stories, the back building be five stories and it looks like you decided against that. Why – why did you do that?

Brewer: As I understand it and I am not familiar with all of the details. [inaudible] there is a certain threshold of square footage needed to make the project viable. We were trying to maintain that, but each time we stepped back, we lose square footage, plus there are increased construction costs, because we have to move bearing lines that we are creating that have to be [inaudible].

- Fox: Remind me again the height comparisons. So, if you took that building and you compared it to the Homewood Suites and the Hampton Inn next to it, how would that compare? I can't remember if there is a slope down so they are almost even. I just can't remember.

Brewer: You had those in one of your slides. I believe the top of the building at the five story point was about the same elevation above sea level as the hotel because of the grading of the building, plus we aren't using typical floor heights. Because of the construction that we are using, we are only like a 10 foot height floor to floor where a typical office building would be 12 plus, which is why we are able to keep this building more compact.

- Fox: Okay. And you said the back building would stand taller at this point than the flyover for the bypass, am I correct?
Brewer: I believe so, yes.
- Fox: One last question, this is for Mike. If I heard correctly, and I am not sure I did – this is why I am asking. The proffers for transportation, fire and rescue would be erased if they built by right?
Staff answer: Because the applicant has come forth for additional building height, it is a rezoning. In a by-right scenario, we would apply the Crescent district design standards and it would be reviewed administratively. Therefore, we would not apply proffer guidelines. So, for commercial rezoning, we typically apply the Appendix B, fire and rescue – those are the two principal ones that apply to the commercial rezoning.
- Burk: Now I am confused again. Sorry. I thought – Dave you just said that it is a zero to zero comparison.
Staff answer: Right, the applicant's proffers do not include a contribution towards Appendix B or Fire and Rescue so it is zero. The proffer guidelines have an amount. The applicant has not included that in their proffers, so it is zero.
- Burk: Have we asked them to include it in their...
Staff answer: Yes, ma'am.
- Burk: And they have decided not to?
Staff answer: Yes.
- Burk: Whoa, that is interesting.
Staff answer: I apologize, I don't have it with me. One of the things that the applicant has used in demonstrating why they haven't included the transportation guideline is the net impact on the transportation network with the self-storage building – there are relatively few trips associated with that particular use. Their justification is their net impact doesn't warrant the proffer guideline.
- Burk: What about fire and rescue?
Staff answer: I'll let them address why they didn't do that.
- Mayor: Would you like to address, Mr. Chamberlain, and team why you didn't include any proffer for fire and rescue?
Chamberlain: I am not sure how to address this to be perfectly honest. I think what we are bringing you is a product that has little or no – zero impact on schools. Little or no stress on the utilities provided and we have a product that compared to our 17th Street shopping center, I will tell you will be a cash cow for the town of Leesburg. Once your tax

department gets ahold of us and finds out the income flow – this is after the building is stabilized – you have a right to ask for it and we furnish it to you – it is available. It is not private information and it will be nothing but a tax producer for you. I thought that was a fair compromise from us and from the town to work it out [inaudible]. It stresses no part of your operation and produces very large income for you.

- Mayor: Mr. Chamberlain, there might be some concern amongst some members of Council that any new structure could present an increased fire risk and in that case, Council members might wonder why there was no contribution proffered for fire – at least for fire. I can see the logic of your transportation argument, but buildings do burn sometimes and the fire department needs to respond.

Chamberlain: We hope that wouldn't happen. I mean, you address it in a lot of ways. You have a system that will be compartmentalized in each floor so that you have total sprinkler control and no [inaudible] and those close offs that you seal. So, you do have – the building itself is fire resistant. Structurally, it is concrete and steel with compartments in it. The opening at the top allows circulation so whatever the heat, humidity, whatever the situation you are dealing with it and the sprinkler system sits in that same area. So, you really have a threat of fire greatly, greatly reduced. I mean this is a [inaudible]. You know, we have two of the same things out Seven Corners. Two of my grandsons have them at Merrifield. They do not visit them. I mean we only go to ours when it is required to find some file that we have put away that is ten years old. We may not go there for months so you don't have constant personnel, people or outside tenants walking in. They just put this away and hopefully forget about it. They don't, but they are things they can't or don't want to get rid of so they put them away so they forget about them. I know it is a strange animal to talk about but that is the way it works and there is a [inaudible] effect on the [inaudible] to make sure that fire [inaudible]. I just cannot imagine what can go on in this building and incidentally, I might add of all the ones I have visited and that is a question I have asked, there has never been a problem in any of the ones that are operational and they continue that way.

- Mayor: Thank you. Mike, do you have now the proffer guidelines? Could we hear those please.

Staff answer: Thank you, Lee Ann, for bringing up the slide. There is \$114,142 for the transportation contribution and \$25,275 for the fire and rescue.

- Mayor: And that is what our guidelines would recommend?

Staff answer: It is based on the ratio of the square footage to the appropriate amount per unit – in this case it is on a square foot basis – 1000 sq. ft. basis.

- Mayor: Okay, so am I looking at totals there for the entire project?

Staff answer: Yes.

c. Obscenity Laws/Zoning

Barbara Notar presented legal background on the regulation and zoning of adult oriented merchandise.

Key Points:

- Many complaints have been received about the window displays of a shop located at the corner of Market Street and King Street downtown.
- The shop has not broken any laws.
- State Code, which is the basis for town ordinance, is based upon the definition that the Supreme Court has laid out defining obscenity.
- The definition of obscenity involves a three part test:
 - Whether the average person, applying contemporary adult community standards, finds that the matter, taken as a whole, appeals to prurient interests (*i.e.*, an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion);
 - Whether the average person, applying contemporary adult community standards, finds that the matter depicts or describes sexual conduct in a patently offensive way (*i.e.*, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of the genitals, or sado-masochistic sexual abuse); and
 - Whether a reasonable person finds that the matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- The town and the state have tailored it down a little bit to be defined as something that the dominant theme or purpose is an appeal to the prurient interest in sex – a shameful or morbid interest in nudity or sexual conduct that goes beyond customary limits in candor in description or representation.
- This is criminal law, which must be strictly construed and must be proven beyond a reasonable doubt.
- In regards to juveniles, the state and town codes state it shall be unlawful for any person to knowingly display for a commercial purpose in a manner whereby juveniles may examine and peruse any picture, photography, drawing, sculpture of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct, or sadomasochistic abuse and which is harmful to juveniles.
- Obscene material is outside the protection of the first amendment of the constitution, but pornography is in many ways. Localities may prohibit its dissemination to adults as well as children.
- Obscenity can exist in the privacy of your home.
- Material may have an explicit sexual content, which while perhaps pornographic falls short of the definition of obscenity. Such material

may be entitled to the protection of the first amendment in so far as adults are concerned.

- The Commonwealth's attorney would have to prove beyond a reasonable doubt that the owners of the shop knowingly afforded juveniles an opportunity to peruse harmful material or took no reasonable steps to prevent such perusal when the juvenile's opportunity was reasonably apparent.
- Being able to see items for display in a store window does not satisfy the definition of perusal. Peruse is to examine, consider, or survey with some attention.
- The areas of town where Adult oriented merchandise sales can be located could be regulated through zoning, but the shop in question would be a non-conforming use and therefore continue to be allowed.

Council Comments/Questions:

- Dunn: Looking over the packet and what you went over tonight, am I understanding it correctly that there is nothing that we would do that would cause the closure of this shop? It could require the shop to cover up some of its displays that may be visible from the street – is it a possibility or that not even an option?
Staff answer: Could we require them to do that. I don't think so. Could they do that to be a good corporate citizen? Yes, and they have in the past.
- Dunn: Even if we create a new ordinance, the most it would do is they would have to conform to some of the new regulations?
Staff answer: No, they would be a non-conforming use. We could not prevent them from doing what they are doing even if you enacted a new section of the zoning ordinance.
- Dunn: So, let's take this out of the business in question. I was going through the regular magazine section the other day of a store. There were no adult magazines there, but I remember when I was a kid reading Mad Magazine, probably about the age of my son – 13-15 somewhere in that range. Well, I can tell you this – that ain't my Mad Magazine that is on the rack today. Holy mackerel. There was some very questionable material in there. Could that store owner be subjected to some of these guidelines if Mad Magazine is now having very questionable material?
Staff answer: That store is subject to these guidelines. So, I'm sorry, the zoning guidelines or the obscenity regulations?
- Dunn: Well, if we were to act zoning regulations?
Staff answer: Yes, any store would have to abide by those guidelines. Any new store, is that not what I said? New store.
- Dunn: So an existing store could still...
Staff answer: A nonconforming use.
- Butler: I guess there is a number of town councils around the country that have had to address this issue at some point. Basically I think what

I hear you saying is we have had some requests to not renew the lease or close the shop down and we have no authority to do any of that.

Staff answer: None.

- Butler: And since we are a Dillon Rule state, the state has to give us permission or do those things. We can't just enact a law to allow us to do it and the state hasn't given us permission so that is a dead issue. Cannot even be considered.

Staff answer: Our town code is as strict as it can be under the state code and the supreme court case law.

- Butler: So, I guess, how should I put this delicately or maybe just permit it – what I am hearing is there is a difference say for example if a store sells whips – take a hypothetical example. Where there are a lot of uses for whips and a lot of stores will sell them for whatever uses. Jockeys use them. Elephant and tiger trainers use them. So, the fact that a store sells a whip is not a problem, but if that whip might be hung suggestively around a scantily clad mannequin, then that might be suggestive of a different use and may start to creep into the category – one of the categories that you may have mentioned above.

Staff answer: Yes.

- Butler: Well, for instance, there is a difference between – say there are some objects in the store that taken by themselves are just objects and they are perfectly fine even if all of us in this room know what those objects could be used for but if there is a suggestive – say the object with a picture or a depiction of it being used in a patently sexual way, that could be on the other side of the line and be dealt with?

Staff answer: Hypothetically yes.

- Burk: Well, I most certainly would be interested in amending the zoning ordinance, that's for sure for new buildings, but your explanations may be because they are so legalese to me leave me wondering what is obscenity?

Staff answer: You know, that is a very good question and I wanted to go into it, but I could talk about this for a long time. I am only really touching on the surface, so I asked the Deputy Town Attorney when was the last time anything in town has been found obscene? Go research. We could find nothing because have you been to the movies lately? What is obscene now is child pornography. That is what the law enforcement agencies are really out to protect and enforce. I could not give you an example of anything obscene in the last 30 years for adults. It's child pornography.

- Martinez: I do appreciate your definitions. I know how amorphous they can be. How vague. What I would like to do is see if we can figure out if [inaudible] where we can section off maybe these questionable kind of stores – establishments, but we are pretty much left with what we've got. There is not a lot we can do, correct?

Staff answer: Correct.

- Martinez: My biggest concern is we have parades and we have events that go up and down and families are there. They are walking. They are right there. Is there any way we can work out an agreement, a memo of understanding or something with the store that they at least cover up during those events?
Staff answer: It wouldn't be enforceable.
- Martinez: I know it wouldn't be enforceable, but it would be some good will exhibited by them and the fact that we do care about the fact that we have families at those events that are walking up and down King Street and that is objectionable to a lot of them.
Staff answer: I will say that town staff has talked to the store manager, the woman who worked there at the time and they did – I think in response, well I know, in response to the emails they did tone down their displays – their window displays. So, I do think they are interested in not causing quite such a stir. I believe they are voluntarily trying to tone things down. Getting into an MOU with them regarding this – I think you are in sort of dangerous waters.
- Martinez: Okay. I'm just trying to find compromise that works for everybody and from the day they got there, I have been concerned about the fact that you know they have the right to exist but on King Street, that's where a lot of our residents go up and down and I was really concerned about that.
Staff answer: I will say also that I informed the shop and asked them to inform the owner of the shop that we would be discussing this tonight so I hope they are watching.
- Martinez: So do I. I guess that's all I've got.
- Hammler: Thank you Barbara. Thanks to everybody in the community who has raised the issue. I think that I can only speak personally but I have had many of the same feelings going by the store personally and had asked many questions since it started and opened to the town attorney. And the reason why I asked for this work session was I think it was important from a perspective of transparency that the entire community know that we have received so many emails as well as what our options are – or in this case the limited options we had as a Council for enforcing anything based on federal, state or local ordinances. That being said, I think kind of back to this good corporate citizenship, for starters, how many emails in total have we received complaining about, again, call it this quite frankly there is a specific statement earlier about sort of reasonable people coming to terms, but it just seemed like the store had crossed the line and we had a spike in emails because it just really went past that reasonable – almost like everybody agreed okay fine it is like a Victoria's Secret type of retail establishment, but it just seemed to be pushing the limits. But, how many emails did we in fact receive. I asked this days ago so we would have it available tonight. Hopefully we have that number.
Staff answer: I just need to find it. I will tell you.

- Hammler: And I say that and it sounds like to some extent you may have already followed up, Barbara, but I would support sending a letter from Council with a copy of every email to the store owner and basically requesting good corporate citizenship, for starters. I would certainly support now moving forward on a special use district. We all know that unfortunately the current store will be a non-conforming use and it will not be applicable, but those are at least two things we can do. I guess just sort of a couple of other comments, just for me personally. It is interesting I have had business meetings for instance at Lightfoot. Professional, executive bankers going by and just almost embarrassed with their clientele that they are saying we just sort of call that Le Tacky. Any walk of life, different types of constituents just feeling that sort of a – expressing a sense that this doesn't really display what we consider the values that certainly – those of us that might reasonably want some, you know, good corporate citizenship to represent us with that kind of retail establishment. That being said, you know, to be honest, also I am the type of person who will kind of at least raise an eyebrow just opening up any newspaper – local newspaper, national newspaper. Just look at the ads. Do we, honestly – whether it is a diet ad or do you really sell that many undergarments for ladies, that's always what the ads are. It is essentially the same sort of issue here relative to the displays and how women are portrayed and there are many classes that you know, I think as a society that we try to integrate into our educational system at all levels, to try to at least express to girls that you are going to see all these images and it doesn't mean that you are a sexual object. That we need you to know that we value you as individuals. So, I know that proactively society through our educational system that we do our best to try to communicate that. Unfortunately, legally as it relates to what the town council can do, unless someone has any other suggestions, those are the only two things I can support and think of which is moving forward with a special district as well as sending a letter.
- Fox: I have a few things. Just real quick. When you first had a presentation, you said something about an average person from prudish to liberal. How is that standard determined?
Staff answer: Well, it is a reasonable person and to answer your first question – it is a three part test – it is a three pronged test so you have to meet all three.
- Fox: When you said that this non-conforming use would be in effect until the owner doesn't own the building anymore – what about if the lease renewal? Is there any standard there? Is there anything that can be done that way?
Zoning Administrator: When it comes to the non-conforming status, should the town council direct staff to devise regulations that would not permit this in the B-1 district, but permit it someplace else, because this was legally established when it was, so long as they continue to do what

they have been doing and don't stop for a period of two years, they can remain there in place in perpetuity. So, there is nothing you can do. You can adopt ordinances that prohibit it all together, but because they were legally established at a time when there was no prohibition against it, they remain in place.

- Fox: So, are you saying that if this particular shop, business, decided to take their business and move somewhere else and there was another shop that came under a new lease within those two years, they could do that?

Staff answer: No. If this business closes for two years, they are gone from that premises for two years, someone else comes in. If you have regulations that say sell this that or the other that qualify as an adult oriented business that are no longer permissible in the B-1, then no new business can go in there but if this business is here, as long as they continue doing what they are doing there is nothing we can do to make them stop.

- Fox: Question on the legal side, I suppose. Maybe for the officer. I was asked by a constituent if it is unlawful to picket a business.
Staff answer: It is not unlawful to picket. The concern then would be whether or not there is any obstruction for the free flow of the public on the sidewalk.

- Fox: Okay, thank you. I guess in closing I just feel like we are weighing human decency against what Virginia State law says so in my opinion this is another issue for our legislative agenda and if we want to make any real changes we are going to have to go to the state and make those changes.

- Mayor: Barbara, if private citizens wanted to picket the business, would they need any kind of permit from the town?

Staff answer: No.

- Mayor: As long as they are not impeding either vehicle flow or pedestrian flow on the sidewalk, they could picket on the sidewalk.

Staff answer: Sure, that's correct.

- Dunn: So, regardless of this business or any others, so they could not be on the sidewalk or as long as people could get by, they could still be on the sidewalk.

Staff answer: Yes, you can't obstruct the flow of pedestrians. You can't assault pedestrians, but you can lawful assembly, yes.

- Dunn: Okay. Just a couple of comments about what some folks may – is that if we were to go forward, I would go forward cautiously with creating an adult district. I think that could yield you the opposite results that you want. I would enter that very cautiously. I – in relationship to this shop. I don't go in there. I don't look there. I don't have my kids go in there. I wouldn't recommend it; however, I am hesitant as a governing body to start wanting to get people to picket or to shun businesses. A business' success is dependent upon patrons. If people stop going there, they will stop being in business. All I can say,

is it is unfortunate that there are businesses that I would rather not have in town that I don't have anybody else complaining about, but by my beliefs, I don't necessarily see the need for it, but nor should I be the one also trying to get people to picket there. I think the best way to have a business, if you don't agree with the business, get neighbors, friends just not to go in. I mean, but – it makes it tough when you start having government start saying that we are going to shun certain businesses because it is not what we believe and I don't believe in this one but then if you start doing it here, where does it stop at the art shop that has pictures that you don't agree with or a drinking establishment that has activities that you don't agree with. So, it is a tough balance for government being involved. I think the best way to do it is, do it with your pocketbook. Just don't go in. I am sure those people who are complaining aren't going in there, but you have to say where do we draw the line then. I would be cautious if we were to try and consider a district, though. That would be – I would not want to promote a district that would actually possibly bring in more of these types of businesses. I don't want that. That would be my comment there. Thank you.

- Butler: Just a couple of comments. I would not be in favor of sending a letter to the business with everybody else's emails because I would feel that is an endorsement – it is a first amendment endorsement of the town on a specific type of speech. If you say – to give another example say to add on to what Tom said. Let's say it was a Muslim owned business instead of a Christian owned business and we had a bunch of people complain about it. I don't think we would be sending a letter to them and that's another first amendment issue. We shouldn't be in the business of endorsing or not endorsing things that are legal, as a town council. I would also suggest that picketing in many cases brings about exactly the opposite effect that you want because it brings publicity to the business and it may end up bringing more business. So, I'm not sure why if somebody wants to picket, they have the perfect right. I am not suggesting that you picket or not picket. I'm just suggesting that it is not an obvious result that you would have. The third thing is, if I am out of order, the town attorney can correct me, if she wants to, but in the past I have done some study of obscenity and stuff and no don't get any – draw any conclusions from that. I just was – had a lot of interest in the Supreme Court and back when I was younger, is when a lot of these obscenity cases came up. And we can go and talk with the General Assembly all we want, but they are not going to change the laws because frankly this business, while some people may find it offensive, it is not even close to what would be considered obscene. It is not even close. So, we can say it is offensive. We cannot like it and all that individually, but to try to move forward legally on it, I don't see that there is going to be any positive result other than negative. Thank you.

- Mayor: I would be interested in looking into a district creation so that this kind of thing doesn't happen again in the downtown or most parts of town. But as I look at the areas of town on the zoning map that are I-1, which is where other jurisdictions have put these kinds of businesses, we have a lot of I-1. So, I guess the question would become how large an area would need to be dedicated. Could we carve out of I-1 in an obscure part of town where there are no homes or decent businesses around an area where a business like this could locate?
Chris?
- Dunn: While Chris is coming to the mike, or if we could have legislation that doesn't allow it all so no need for the district. Is that possible?
- Mayor: That's what I heard Chris say, but I wasn't sure that is what you meant when you said we could outlaw this kind of business entirely. That was my understanding – we could not.
Staff answer: I don't believe we could because it has been proved at the Supreme Court level that it is a first amendment right to partake in these things as adults so long as it is not obscene. From a zoning standpoint, I don't know if we could legally designate uses within a zoning district to a specific area. I think if you have a use that is permissible in a zoning district, it is permissible throughout the entire district unless you create a new district in and of itself in a particular area where certain uses can be that aren't in others. So, I don't think it pares the I-1 down to a specific area.
- Burk: Can I ask for clarification on that before you sit down. So, we could change the zoning ordinance so that, let's just say downtown – you could not have a type of adult entertainment store downtown?
Staff answer: What you would do is you would permit adult oriented businesses within a specific zoning ordinance and not the B-1.
- Burk: So couldn't just say you can't have it here. We would have to say you can have it here?
Staff answer: No, you would say it is permissible in the I-1 district, for instance. That would be the only place it is permissible. So, if a business came to the B-1 that qualified as an adult oriented business and we would have to define that as part of the ordinance, if it meets the test for an adult oriented business, it is not permissible in the B-1. It is permissible in the I-1, or some other district – B-3, B-4, etc. So, that is how it works. You wouldn't be able to say you can't be here, but you can be there across the street if it is in the same zoning district.
- Burk: Right. I understand that part. By saying that it is not permissible in one area, you can't say it is not permissible – it still has to be allowed to be in other areas?
Staff answer: If you would decide to adopt an ordinance that is specific to adult oriented businesses – in other words you are going to qualify businesses by what they sell and what they produce for the public. You don't do that now. Retail stores – we don't care what they sell. If you

decide to do that based on an adult oriented business, then you are getting into the realm of Supreme Court designated this is what is permissible. You are going to say this use is permissible in this district. So, any of those uses that adult oriented business, are permissible anywhere in that zoning district. You can't say between First Street and Third Street is permissible if it is all I-1 around it or all B-2 around it or all B-3 around it. The way zoning works, if you permit a use in a particular zoning district, it is permissible throughout that entire district.

- Dunn: Can you have an overlay?
Staff answer: You could have an overlay.
- Dunn: So, you could have I-1 with an adult use overlay that was one block or even one building?
Staff answer: I don't know if you could restrict it like that.
- Butler: If you reduce it too much and somebody sues you, you are done.
- Dunn: Well, it starts to get to spot zoning.
Staff answer: If you decide to go ahead and devise an ordinance to permit this, we will do things, we will follow the lead of Manassas and Harrisonburg and other municipalities. A lot of these municipalities will permit them either by right such as Manassas does in their I-1 and I-2 districts or Harrisonburg does in its B-2 district, which resembles a lot our B-3 district, but each one of those places, whether they permit it by right or by special exception, they have specific use standards that establish distances from protected uses such as church, schools, daycares, etc. Or, you know, some of these standards – we would have to devise standards typical to a special exception. Now, we have use standards for a lot of uses. Look at Article 9. There is a whole litany of use standards for uses based on the specifics of those types of uses. Things you would expect. Basic minimum standards from which to start from and then you as a Council under special exception review can use those and add more based on the conditions where it is. Even in Harrisonburg, they have that provision that it must be 1000 feet from a protected use, but they also have a waiver that allows protected uses, if they want to locate closer than 1000 feet, they can waive their protection – knowingly, they can waive it. So, we would use these ordinances to do just that, if you so choose to have us write something. Now, right now, we don't have anything that is specific to adult uses. I sort of echo what Councilman Dunn is saying – you get a lot of advertisement with this. The word is going to get out. Hey, Leesburg permits these things now.
- Hammler: There is another question, if I may now ask it. What happened in Manassas and Harrisonburg before versus after that they implemented it? Did that happen? Could we find that out, please?

Staff answer: I did reach out to the folks in Harrisonburg, but they never got back to me. How it came to be that they wrote these ordinances.

- Hammler: Presumably, I would think that to say that, you know, Leesburg is trying to attract these businesses would mean that it is being misconstrued because you would simply have to look within the context in which we were discussing this, but I think at least looking at the lessons learned would be important for us.
- Burk: I know Manassas has a lot of them. If you drive right down through their main road.
- Butler: I think Council Member Dunn brings up a good point that if we do say it is not permitted in the B-1 but it is permitted in say the I-1 or the B-4 or whatever, it is almost an implied endorsement at that point and I will tell you frankly there is a whole lot of other adult oriented businesses that would be far more offensive than this business that could come in. It is always going to be a concern.

Staff answer: Since I got here in 2003, this is the only business of this ilk that I have seen come to the town. I have been zoning administrator for five years now and I have not seen anything come to the town like this. Also, bear in mind that you have the unlisted uses provision in the Zoning Ordinance, so if a business comes to town that is an unlisted business. For instance, in Manassas, they have an adult cabaret, essentially a strip club. The strip club comes to Leesburg. Mr. Zoning Administrator, can I open my strip club over here on East Market Street? I would tell them well, we don't have that use listed here. Under unlisted uses, as a Zoning Administrator, I can determine whether it is use by right based on the uses around it and the character of the district. It is a use by right – can it be approved as a use by special exception or is it not permitted at all. So, I can weigh them on a case by case basis and tell them one, two or three. Yes, no or with a special exception, you can go to Council. We have that protection right now. Is it fool proof? Is it all protected? No. But, we have something and that is one thing I want you to consider. If we go front page newspaper – Leesburg now adopted adult oriented business ordinance. You want to think about that.

- Butler: So, we have a red light district. Great idea. That's the risk. That's the risk.

Staff answer: Especially if you do an overlay. That's essentially what you are doing.

- Butler: It's a concern to go down that road.
- Mayor: Chris – we have this problem now. So, how do you make a distinction between the scenario you just outlined and the situation we are dealing with now?

Staff answer: The situation we are dealing with now – according to Barbara, and according to the Town Code – there is no obscenity here. You would have this store. You would have, and an example has been

thrown out – Victoria’s Secret that is in every shopping mall in America. Every kid goes with their parents. High school kids go to hang out. You know, kids that are 10, 12, 13, 14. Moms, dads drop them off. Go hang out and call me later. It is all – it is difficult, but if it is a clear use that wouldn’t meet or falls out of that gray area, like the example I gave you, that is a lot easier to deal with, but if it is a retail store that does...it is a tough one and we have to weigh it on a case by case basis. If you want to adopt an ordinance, we will certainly write you the best we can come up with.

- Hammler: Madam Mayor, if I understand this correctly. Juveniles are not allowed into that store. They are allowed in, they just can’t peruse material at the store we are talking about on King Street? Juveniles are not allowed. So, but juveniles are allowed into Victoria’s Secret so how are they different? That’s a clear distinction.

Notar: The store, voluntarily does not allow juveniles in really not because of the clothing. It is the merchandise that is for sale in the store. Do they have to under the law? I don’t think so because it is obscene for juveniles – harmful for juveniles. We went through the statutes. I think they could allow juveniles in there.

- Hammler: Wouldn’t a juvenile have the right to say I have every right to be here? I am just confused.

Notar: They ask. They voluntarily do not allow children – juveniles in there and they ask for ID. They told me that themselves and we have no documentation from the police that says they do not do that. So, to err on the side of caution, they require identification.

- Burk: Alright. We obviously need to think about this.

Notar: Let me just give you one – end with this. In a few months, we may be coming to you – we are going to look at our portion of the zoning ordinance regarding our sign regulations. A case has come down – I talked a little bit about it with you in some emails called Reed vs. the Town of Gilbert, where the Supreme Court has made distinctions about signs. Freedom of expression is getting a lot of attention from the Supreme Court and they are broadening that. They are protecting it more. So, don’t think the Supreme Court is going to tighten up the obscenity – it is the opposite – not the way this Supreme Court is going. It is broadening Freedom of Expression and this is Freedom of Expression.

- Mayor: Chris, because I pre-date you, actually this is the second problematic business we have had in the historic district, or proposed for the historic district. In the early 90s, a gentleman named Angel Moldato wanted to set up a Gentleman’s Club in what is Balls Bluff Tavern. That was one of the reasons we began to first look at our anti-obscenity ordinance, so it has happened before. We managed to prevent him from coming in, but I am not sure we are safe and I would want to make sure if we can continue to prevent that kind of business from coming in, we do so. I think Barbara has thoroughly analyzed the

law and found we have done everything we can with our ordinances, but we did have another event before, but it has been a long time between the two.

- Fox: Madam Mayor, may I just have one more comment, if I may. I regards to picketing, that we were discussing earlier. That was a question that was posed to me by a constituent. I wanted to know what would happen if that happened, what would the town need to do? I wasn't sanctioning it. So, I just wanted to make that distinction.

2. Additions to Future Council Meetings

Council Member Dunn: Had no additions.

Council Member Butler: I have two things. One is I had a couple of constituents come and talk to me about, you know, the heroin problem in Loudoun County. So, they were wondering what is our police force doing to try to ensure this not become a problem. So, I was wondering if the police chief could just send us a memo. I know [inaudible] in the schools and we are not responsible for the schools directly, but we do have resource officers in the schools. What are we trying to do to make sure this doesn't become a worse problem and hopefully becomes a less of a one because heroin is not a good thing. Among other things, I just wanted to mention that when I was downtown on First Friday, I always stop in a bunch of businesses, as I am sure all of you do. This time, when I walked in – every single – there were six businesses that I remember and all six of them, one of the first issues they mentioned even before I hardly had a chance to open my mouth, they are saying we are losing customers because of the parking rates. Just wanted to bring this up as a memo. We are going to talk about this in another month at our next work session and I would encourage our Council Members to go talk to some businesses downtown and see if they get the same flavor of response.

Vice Mayor Burk: I have got a couple of things. One, I hope that Council will allow me to bring up tomorrow an appointment to the Commission on Public Art – Cameron Orndorff. I think he is about 15 years old. He is in middle school.

Mayor: He is 16.

Burk: I guess he is not in middle school then. He must be in high school. He would like to be on the Commission on Public Art. He just got his material in to Lee Ann today. So, if we could put it on for the agenda tomorrow, I would really appreciate it. He is really excited and interested in participating. I would like to encourage him to do so as a young man involved in the process.

There was consensus to add this to the agenda for September 22, 2015.

I have a couple of constituents who would like Council to look at changing the ordinance for temporary storage. There is a couple of areas that have issues with those POD things that people put in their driveways or in their yard. One particular

neighborhood, it has been almost a year. We have no way of determining what is temporary, so they asked if we would look at that for future consideration. I think it is a legitimate concern. There has been more than one complaint that has come forward on this. If you are thinking your own neighborhood, if you have someone – you know, what is a reasonable time to be able to keep a temporary pod in your neighborhood? So I would like that at some point to be on the discussion. It is not immediate, but I would like it to go forward as a discussion in the future.

There was consensus to add this to a future work session for discussion.

Fox: Is that just on private property? I have seen them also on public access roads, even in neighborhoods.

Burk: It doesn't have to be limited. Mama Lucci's is celebrating their 20th anniversary in business in the town. It would be nice to recognize them. I will leave that up to you to decide if you want to do that. There is another issue that has come forward to me in regard to AirBnB. If you don't know what that is, it is an internet service to allow you to rent out a room in your house or even your house. We did have someone complain about it. Since then, we have gotten a couple of more. We don't have very many in the town, but it is a very popular service. There are people within neighborhoods that feel it would be very disruptive to have a short term rental situation in their neighborhoods when they don't know who is going in there, it disrupts the neighborhood. So, they asked that we have a discussion in regard to that.

Dunn: We already have regulations for that. You can't have anyone at your house unless they are related to you.

Burk: Can we get that in a memo. Because we most certainly have a number of people who are doing it now. Right there, I think it is confusing.

Hammler: So, a rental basement apartment?

Notar: I don't think that's true and we did look briefly into AirBnB, but it is a little complicated. If we could, I think an informational memo to begin with and then maybe if you wanted to discuss it further.

Burk: It is a big deal in some other locations. A lot of people do it, especially in big cities. But the small cities are being – it is beginning to be an attraction for small cities and I know that there are number of them that have banned them altogether – don't allow it. So, we don't have an issue with that. I think you said there are five or six people that do it now. It could become an issue further on so perhaps we should look.

Notar: Localities are looking into AirBnB and the regulations surrounding them because as the Vice Mayor said, there are certain residents don't like the turnover in rental properties.

Burk: How long can a – even on public streets – how long can a car stay on a public street without being moved.

Notar: We prohibit commercial vehicles, but residential – but what's the opposite – a passenger car can stay on the street.

Dunn: As long as it is registered. It won't get ticketed.

Martinez: Again, I think we need [inaudible] because I have gotten a ticket for my car not moving for weeks.

Burk: Sometimes it has happened. Sometimes it hasn't. I've gotten different information so that's why I am just trying to get a clarification so I can go back to these people and say this is how it is done.

Staff will provide a unified staff position memo.

Council Member Hammler: I would like a memo please regarding the CIF analysis. If there is a motion proposed hypothetically to request staff actually do that analysis, how would they reprioritize and what would have to fall off and/or when could they get to it for staff to actually do that analysis. I would appreciate that memo. Just to reiterate what was mentioned earlier, if I may get support. I guess I should ask for support for that first.

Staff will provide a memo.

Council Member Hammler: If I need to bring something under new business, what and how we could take action on influencing the PMF number that 37 ½ inch rainfall number dealing with the high risk dams and also the question regarding if we do a special tax district, what would we anticipate VDOT's percentage of a special tax district to be relative to the tax to pay for the high dam to be improved at Exeter. I would appreciate that research.

Mayor: I guess the question is, is any of that dam structure in VDOT's right of way. I don't know if it is. Adjacent to their right of way, they are not on the hook for it all.

Hammler: Even in a special tax district? I guess that is my question because it would seem that in a special tax district by definition, anybody impacted as a stakeholder contributes to the cost and maybe I am misunderstanding.

Mayor: I suspect we would not legally be permitted to tax a state entity.

Hammler: So, we will stick just to the analysis on how to influence the actual PMF number, please. If it would be possible to put the National League of Cities on consent agenda?

There was not consensus to move this to consent.

Hammler: I'll send another memo then. Just very quickly with Kim Winn now being on the Board from VML, there is very specific new opportunities for Leesburg to be more directly involved given the significant number of Federal issues not the least of which some of these TMDL and other things coming down. There are opportunities for us to get much more involved, so I will send out that additional information before tomorrow.

Fox: Just one item. I wasn't going to do it until I heard Kelly's laundry list, so I thought I'd better get it on here somehow. I made a request for a memo about a month ago regarding the information for telecommunications. I don't know if anybody had – it was tab 11 last time. I don't know if anybody had an opportunity to look at that, but I wanted to start a conversation about that. I was hoping to get that on a future work session.

There was consensus to add this to a future work session.

Dunn: At our last meeting, I had suggested folks read the memo about the H-2 and looking at it again myself, I am not sure if it was actually what I had actually requested initially. I thought that I had requested a memo asking staff to tell us how long it would take them to remove the H-2. That memo looked like it was more about the timeline that we are going to take to get to the H-2 guideline rewrites. I had no desire to see that at all. What I was looking for was what would it take for us to get the H-2 off the books because that is what I was looking for as far as a memo so the whole issue is we just don't have the staff time so if Susan could look at that memo again. I was just looking at okay how long will it take us to get H-2 off the books. What is involved with staff time on that.

Hammler: Do we need a memo requesting the impact for that special use district in Harrisonburg and Manassas or was that accepted as something that staff is planning to do and distribute to us?

Mayor: They have not been directed by Council.

Hammler: I would appreciate a memo on that to determine whether to bring that back for something so that there is no unintended consequences.

Martinez: I really am so tired of memos and all this stuff. I mean the staff has their job to do and I see this stuff in emails. I see this stuff coming over on Council. Can't we just leave them alone for one night?

Mayor: This could be a more complicated memo, but Kaj and Barbara, what are your thoughts on that?

Butler: What information are we looking for other than what they have already presented?

Mayor: Good question. Katie, you were not happy with what they presented?

Hammler: Tom raised a good point, which was we don't want to be in a position to attract more businesses, so there should be some reference kind of before and after what happened relative to the number of types of businesses before a special use district was created versus after. Unintended consequences.

Dunn: I don't need a memo on that.

Mayor: My suspicion is that will actually take some time to track down because I don't even know if Manassas or Harrisonburg has kept data on it so I guess we could send an email to the City Managers of both cities and say do you have that data and if they don't, then there is no point in us seeking it. But maybe a quick email, would that be possible? Katie, you and I could do it if no one else wants to do it.

Hammler: I will send an email tomorrow. Thank you for your support.

3. Adjournment

On a motion by Council Member Martinez, seconded by Council Member Butler, the meeting was adjourned at 10:17 p.m.

Clerk of Council
2015_tcwsmin0921

Council Chambers, 25 West Market Street, 7:30 p.m. Mayor Umstattd presiding.

Council Members Present: Kellyl Burk, David Butler, Thomas Dunn, Suzanne Fox, Katie Sheldon Hammler, Marty Martinez and Mayor Umstattd.

Council Members Absent: None.

Staff Present: Town Manager Kaj Dentler, Deputy Town Manager Keith Markel, Town Attorney Barbara Notar, Director of Planning and Zoning Susan Berry Hill, Director of Economic Development Marantha Edwards, Director of Parks and Recreation Rich Williams, Assistant Town Manager Tom Mason, Director of Public Works and Capital Projects Renee Lafollette, Management Analyst Jason Cournoyer, Senior Engineer Anne Geiger, Senior Planner Michael Watkins and Executive Associate I Tara Belote.

AGENDA	ITEMS
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1. **CALL TO ORDER**

2. **INVOCATION:** Council Member Dunn

3. **SALUTE TO THE FLAG:** Vice Mayor Burk

4. **ROLL CALL:** Showing all members present.

5. **MINUTES**

a. Regular Session Minutes of September 8, 2015

On a motion by Council Member Butler, seconded by Council Member Dunn, the regular session minutes of September 8, 2015 were approved by a vote of 7-0.

6. **ADOPTING THE MEETING AGENDA**

On the motion of Council Member Martinez, seconded by Council Member Hammler, the meeting agenda was approved after deleting Item 9b, by the following vote:

Aye: Burk, Butler, Dunn, Fox, Hammler, Martinez, and Mayor Umstattd

Nay: None

Vote: 7-0

7. **PRESENTATIONS**

a. Proclamation – Young Marines Red Ribbon Week

On a motion by Council Member Dunn, seconded by Council Member Butler, the following was proclaimed:

PROCLAMATION

Young Marines

Red Ribbon Week 2015

WHEREAS, The Young Marines is an educational and service oriented program for young girls and boys, ages eight through the completion of high school that promotes the mental, moral and physical development of its members; and

WHEREAS, Red Ribbon Week was established to commemorate the service of Drug Enforcement Administration (DEA) agent Enrique “Kiki” Camerena, who was murdered in the line of duty in 1985 while engaged in the battle against illicit drugs; and

WHEREAS, Red Ribbon Week has been nationally recognized since 1988 and is now the oldest and largest drug prevention program in the United States, reaching millions of young people each year; and

WHEREAS, The Young Marines encourage everyone to demonstrate their commitment to a healthy, productive and drug-free lifestyle by participating in Red Ribbon Week.

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that the Council endorses the Young Marines and their commitment to drug abuse prevention and living a healthy, productive drug-free lifestyle.

PROCLAIMED this 22nd day of September, 2015.

b. Proclamation Presentation – Blood Cancer Awareness Month and Lymphoma Awareness Day

The previously proclaimed Blood Cancer Awareness Month and Lymphoma Awareness Day Proclamation was presented to Mayor David Leake and Council Member Joe Pasanello of the Town of Haymarket.

PROCLAMATION

BLOOD CANCER AWARENESS MONTH

September 2015
LYMPHOMA AWARENESS DAY
September 15, 2015

WHEREAS, Lymphoma is the most common form of blood cancer and the third most common cancer of childhood; and

WHEREAS, more than 80,000 new cases of lymphoma are diagnosed each year in the United States, including 1,900 in the State of Virginia; and

WHEREAS, a cure for lymphoma can only be realized through advanced cancer research; and

WHEREAS, awareness and education are powerful tools in the race to find a cure for lymphoma; and

WHEREAS, the health and vitality of the people of the State of Virginia are significantly enhanced by local efforts to increase communication and education pertaining to blood cancers; and

WHEREAS, the Lymphoma Research Foundation offers a wide range of support services and programs for people with lymphoma, their loved ones and caregivers.

WHEREAS, Lymphoma Awareness Day helps to raise general awareness of the disease and provides hope to all those affected by a lymphoma diagnosis; and

THEREFORE, BE IT PROCLAIMED by the Mayor and Council of the Town of Leesburg in Virginia that September is Blood Cancer Awareness Month and September 15, 2015 is Lymphoma Awareness Day in the Town of Leesburg and all citizens are urged to support the efforts to find a cure for these diseases and to offer support to those who have been affected by them.

PROCLAIMED this 8th day of September, 2015.

c. Presentation: Mason Enterprise Center

Susan Henson, Director, Mason Enterprise Center, gave a presentation on things that are going on at the Mason Enterprise Center. She noted that the Center houses 42 businesses and 34 virtual offices – for a total of 76 companies. She stated the Small Business Development Center has relocated to the Mason Enterprise Center, which will offer tenants another resource to help them grow their businesses.

Council Comments/Questions:

- Dunn: It was my understanding that after the initial period that the enterprise center was going to be self sustaining and that the contribution that Leesburg

would have to provide would no longer have to be there. Is that your understanding?

Henson: I was not here when that particular understanding was happening. I believe that there was some discussion about that at the previous opportunity, but an incubator program like the Mason Enterprise Center, is the kind of entity as a public sector entity, not a private sector, you know, venture based or private sector funded incubator that will never be completely self-supporting as long as we are supporting economic development within the community. Now, if we took the model and had some investors come in and take equity in companies and begin to take some ownership – I don't know what the division of that is, you know, maybe that is a different model. We are looking toward this year creating a robust sponsorship program so that we will be able to bring in some additional funds, but we don't ever see the community contribution going away. It is certainly minimal and has not grown over the past four years. In fact, it has actually reduced since the initial investment in 2008. You know, if there was talk of that in the past, I wasn't part of that conversation. In my research across the nation with our national organization, any community based incubator program that there is out there is really not ever completely not receiving some public support.

- Dunn: Mason is a public university, so in an essence it is getting public funding all the way along.

Henson: It is but in terms of servicing the local community needs, we really need to have community partners help support the financial obligations and to be able to really create a program that serves the needs of the local community. You know, if Mason was, you know, all in, I guess they would probably they would probably say well let's turn it into an academic location and educate students. While we want to fold them into the process that we have with internships, we really want to keep this facility focused on economic development and the community needs.

- Butler: Thanks for the update. It seems that this has been mildly successful. The one thing, to expand on what Tom said, if we are 100% leased – have you been 100% leased for a while or is that a new thing.

Henson: No, it has been a while.

- Butler: In other words, I might say that if you are 100% leased all the time, then are you charging enough. Have you done a pro forma to see what would happen if we increased the rates to a certain amount so that the public contribution is lower or non-existent? What would happen to the model and all that. It would be interesting.

Henson: The challenge is we are above commercial market rates for those incubator companies anyway, so we just went through a rate of 3% increase, so our leases increase 3% every year and so we then are passing that increase along to our companies. If we raise the rent very much more, we are going to be prohibitive to the mission of the organization, which is to support and grow small companies. So, we have looked at that. The challenge that we have – our facility is an educational business support community. It is not just an office building where you rent an office, so that we have much more common space than you would get in a normal office building. We also have

staff that are there to help program and help consult with the businesses to make sure that they are growing and so we have some cost structure there that you would not have in a normal commercial office space. So, there are some costs that we have that are not exactly [inaudible] and we are – and I work very closely with the town in terms of cost and how much the lease is and how much to pass along. What is appropriate, so we charge not only what the rental space would be but we also charge an additional fee to accommodate the business services. Is it going to ever fully fund the overhead costs that we have? It won't without additional support. If we just had to pay the rent on the building, would the rents maybe cover it? Maybe. But, that would be a building with offices that are being rented. It wouldn't be a business incubator.

- Burk: Thank you. It is always interesting to hear what is going on over there and how successful you are. But, I do have a question, if we are so crunched for space, how come there are some companies that have two locations at the center?

Henson: Two offices? Yes, there is a couple of companies – two different companies that have two offices and that has just recently happened and that does often happen just before they kind of get ready to graduate. Both of those companies are coming up in this next year of their third year. As long as they aren't taking up more than two offices, we really like to be able to accommodate that. If you can get a company to a certain size, the likelihood that they will continue to be successful is higher and so if we can kind of keep them in the fold a little bit longer, we feel like we are accommodating the needs that we have. Those companies that we are referring to have two of the larger offices in the facility and so many of the companies that we have coming in will need smaller investments in spaces, so wouldn't be able to rent a full space anyway. So, dicing it into five offices, while you can accommodate a lot of companies, each lease you do adds to cost. So, if a commercial real estate business likes to rent the whole building to one company or a whole floor to one company, someone would have to manage all those leases. So, we do many times divide an office into more than one, but with these two particular companies we feel like they are growing at the right rate. Custom Software Systems in Leesburg had about 2 ½ offices before they graduated out a couple of years ago and they are doing very well and are a great community supporter. So, on a case by case basis, we kind of look at the situation.

- Burk: All these companies have a three year period. That's it. They are in and out in three years.

Henson: For the most part. We do have two companies that are providing some service to the organization – in other words, they have taken leadership of a particular program that we have. There is one company that is not at three years yet, but he may stay a little longer than that because he is leaving our internship program and we have another company that is doing some research projects for companies on kind of a pro bono basis and these are companies that have small offices. So, on a case by case basis, we like to make sure that we keep the balance in the facility –the mix right. In other

words not all of one type of company. We want to make sure that we have support services.

- Burk: So, how many companies would you say have been there longer than three years?

Henson: Right at this moment in time, there are none. There is nobody that has expired their three years. Well, we have [inaudible] who is graduating in October.

- Burk: I'll take your word for it if you say that. Alright. Thank you. Thank you very much.

Henson: Off the top of my head I am pretty sure and I usually have a pretty good feel for who is there. The thing probably is if we had a really long waiting list, there would be another decision that we would make on that, but at this moment in time, I have one company on the list that is looking for a particular space when it comes open, and we have another company that will [inaudible]. So, far so good. We are rolling them in.

- Burk: I don't have a problem if companies stay longer, but you have repeatedly said that after three years they move on so I just wondered if that was enough time for a company to get started and move on. That seems pretty quick.

Henson: And it most certainly is.

- Martinez: Well, I appreciate our guests from Haymarket hanging around, watching the way we do business. The only thing I got is you [inaudible], you said \$100 million?

Henson: I'm sorry. That's a big difference.

- Martinez: So, it is a \$1 million. Only a million.

- Hammler: Thank you, Susan. Great update. It is wonderful to see how entrepreneurial you are about running such a great entrepreneurship program. I guess, a couple of quick questions. When you say greater than \$35 million in revenue increases and more than 150 additional jobs – what is the base or are you basically just saying we have \$35 million in revenue from the companies and 150 jobs?

Henson: Since they moved in, whatever they were at at the point that they moved in – additional.

- Hammler: Thank you for clarifying that and I would really appreciate a copy of the power point so I have it for reference.

- Fox: About three hours before this meeting I hit Kaj, Marantha and Susan with about six or seven questions. Sorry about that. But they have been asked and answered. Thank you so much. I just wanted for the record, wanted you to state that the county has some interest in this enterprise as well, correct?

Henson: Oh, absolutely.

- Fox: And they contribute greatly to it as well.

Henson: Absolutely, [inaudible] for the organization. The other point, related to those community funds, is the SBDC program also receives funds through the SBA and those funds are community matched. So, the county, some of that comes through the town but the big portion of that then provides

the match that we need for the SBA funds. So, we get close to \$80,000 from SBA to support the Small Business Development Center.

d. Leesburg Arts Master Plan (Commission on Public Art)

Tom O'Neil, Chair, Commission on Public Art, stated in working with the Friends of Leesburg Public Art, it became apparent that a Master Plan would be a good idea to create a coherent approach to projects. He described the draft Master Plan and requested that Council give input.

Council Comments:

- Dunn: Very good report and something I had thought of. I'll just throw out to you and you can do what you want with it. Along the lines with your donated art 5 x 7 for \$50, there might be other folks like myself who have art in my house – I've got signed and numbered prints that are rolled up and sitting in a corner. I have just never gotten around to getting them framed, but there may be others who could donate art and then you all could maybe sell it at the Art Show or do an auction. Other ways to raise funds but you might also consider finding out if folks would like to donate other types of art that you can sell.
- Burk: The show is this weekend. You most certainly can connect with them.
- Dunn: If they want to. Let me know. If you want to sell it, I've got it.
- Butler: Alright, if I see a numbered print that Tom donated, I'll buy it. Anyway, thanks for the presentation. I loved the 5 x 7 guys. I have a couple of those at home. I think it was a really great event. For some of the performing arts groups around, the Council does do a matching grant for money from the state. So, I would encourage, maybe as part of the budget process we can include some money there for a matching grant that would be related to this but the one that we missed out on because we don't contribute any money. I think at least putting some money in there shows, you know, support/endorsement by the Council. To put no money in, I think some will perceive that we are not very serious about it and I would certainly like that to change.
- Burk: I am delighted to see this come forward. I love your graphics by the way. They were so much fun. Is that right? Obviously, I think this is very important and I am glad that you are putting it together and that we are getting it together and I want to commend all of you. I mean you are all volunteers and the amount of time and effort you guys have put into this to bring the idea of a mural from an idea to almost fruition and then the park – the statues in the park and then your fundraising ideas – I really appreciate all of your efforts and I agree with Dave that we do have other matching grants that we ought to consider doing the same thing. I was speaking with someone that started Reston – was one of the first developers of Reston and he was telling me the second thing they did after they created their plan for the town center was to create an arts plan. If you go there, there is quite a bit of art because they thought about it and they were committed to it and so I'd like to see the town do the same thing. Thanks. This was great.

- Martinez: I wouldn't expect anything less of a presentation than what you gave. Thank you. I appreciate you being here and I am looking forward to helping with the town plan – with your comprehensive plan.
- Hammler: Thank you for the report and as [inaudible] from a graphics perspective, that is the best power point I have ever seen up here. So well done. I loved it. It was really entertaining. I also would echo just a big thank you for all of you for sharing your talents. One thing I appreciate you also thinking about are policy recommendations you can be bringing to Council in the interim. I know we may want to look at say the mural regulations around town that may encourage private sector and where they may be able to encourage things like murals. I visited a beer garden venue in downtown and what was the big attracter there was they had in fact on the building put this huge Marilyn Monroe on the side and it has really become their logo and a huge attracter so I would like to see how we can really engage the commercial sector and get private citizens involved and along that line I had to give a big shout out to Sue, who is unbelievably talented and did the stained glass window in my home so there are so many ways we can all embrace your wonderful talents. The other recommendation is reach out to the Loudoun County subcommittee that is working on nightlife. They are specifically really delving into how they can create more arts and even arts and cultural districts around the county but that may be just an opportunity to network and so some more fundraising because it is really getting a lot of attention around this idea of getting more people involved in again nightlife and things that we are already seeing in places like Reston. Thank you so much.
- Fox: Thank you for your presentation. I think it was wonderful and I was wondering – I know we are going to discuss this a little bit later, but who came up with the idea to paint the snow plow blades? The snow plow blades [inaudible] – oh, did he really. That was my only question.
- Mayor: Thank you for mentioning the bridge banner because Hannah, the little girl who's idea it is just emailed me and asked what she should do to try to promote this idea so I just told her that you had mentioned her idea at the Council meeting and I have invited her to see if she could come to one of your upcoming meetings to explain her vision, but that would mean a huge deal to her that you took the time to mention her idea and let us know what we can do to move forward with that, if the Commission decides it is a good idea.

8. PETITIONERS

The Petitioner's Section was opened at 8:27 p.m.

Jay Greeley: It has been a long time since I have taken this podium, but I wanted to thank the folks at the incubator. I didn't want to tell her, I think I have been there for about five years, but I took a two year broken neck time off – they have kept me alive and I have my mail box there and we are maybe 24 hours away from our first contract, so [inaudible]. The real reason, I am here tonight – my name is Jay Greeley and I live at 1209 James Rifle Court. I think I have been here for over – since 1993, so it is over 20 years. I have reached this podium maybe three times, but it has always been for volunteers and I want to thank

these guys right here for what they do and the reason I rise to speak to each and every one of you is how important our volunteers are to our rescue unit that we have here in Leesburg. We probably have the best rescue unit – well, they didn't save my neck, but they sure helped me get to the hospital. In case any of you don't know, I had this really long military career jumping out of perfectly good airplanes 14 times, landing on my 6 point contact – your head but you are supposed to not do it once [inaudible]. Seriously, these guys are great. I have a lot to [inaudible] and I want to express to each and every one of you that we need these volunteers. Volunteers means taxpayer dollars being used to the best because we are training them and they are helping the community and they don't charge. What little we do pay them is pennies on the dollar. So, one of the most important things we can do as citizens is to support them. I have a problem and it was clarified for me before I got up here – I wanted to make sure I had the facts straight, but one of the facts is that they are being held back. They are being held back by training. So, not to point fingers at the city, the county, the state, or whatever. Let's just put it this way. We need to train these volunteers. We need to encourage the volunteers. We need to make sure that the county provides the time, space and equilibrium in their quest to become good servants. They are the kind of servants you want. They are not there with their hand in the pocket. They are there with their hand held out to help. Think about that. I think they had over 4000 bus rides last year and they are almost going to 50 this year. I had the correct number, but I can't remember it. So, just one too many jumps. Seriously, that's the reason why I rise. I would like each of you guys – thank you for what you do. I am here to ask that the mayor or the staff request the county to give an accounting for how they are going to train our people in this city to do their job instead of saying well we can't put you on there. You just came off the battlefield, you are a combat ready medic. You have treated more soldiers. You have done more things, but you are not allowed to drive this truck. Are you kidding me? Anywhere else they can go across the river and go down here to another county, they can do everything. I just have a real problem with people putting – I like the training. They need the training. Let's do it. But let's do it smart and let's make it fair to where the volunteers get the same thing. So, with that being said I want to hear what you have to say. I yield my minutes back to the chair.

Mi Ran Powell: Thank you for allowing me the opportunity. I apologize, I will quickly to try to make my five minutes. My name is Mi Ran and I am a resident of the Town of Leesburg for almost 11 years. I live at 119 Shana Drive. I represent myself, the individuals who were here last night as well as others. I am an actress and model and therefore have a personal understanding of the way women are portrayed in the media and the use of the female form. I was disappointed last night at the comments made specifically by some of the male members of the Council as well as the Zoning Administrator specifically and it is for this reason I have come tonight unprepared as I am to address some of the comments that were made, but first I would like to read some excerpts from an email I sent Council woman Suzanne Fox yesterday in preparation for the meeting. That a small town tourist shop like Leesburg in the heart of one of the richest, most diverse and well educated counties in the nation is on its way to becoming known for a one-stop fetish shop catering to 50 shades of gray acolytes and there is nothing that the tax paying citizens can do because of an oddly interpreted obscenity law is simply wrong. Laws are supposed to protect the citizens and we have heard about the obscenity laws, is there not one for indecent exposure that would include symbols or simulations such as mannequins. Is there

not a more appropriate, G-rated, family friendly way to advertise this type of shop that allows for all types of citizens, all ages of citizens, to enjoy. King Street is not in Baltimore. Not in New York City, LA or Manassas. It is the main thoroughfare that parents use to take their children to Ida Lee for classes. It is a destination town for shopping and taking in restaurants for families. It is not yet the college town that Mr. Devine hopes it will become. Le Tache is on one of the most prominent corners of the town where children cannot avoid being exposed to inappropriate images. It mocks the very laws housed in the courthouse across the street. I could go on ad infinitum about the negative messages it sends to my 15 year old daughter – that this is what she should strive for to be a sex object stared at lewdly on the street corner. That the world only wants one thing from her in the end – that she is vulnerable. It is this kind of negative message to my 13 year old son that society approves of looking at women in the most menial of objectified ways that is feeding the international epidemic of rape, torture and sex trafficking of young girls and women. It begins with the desensitization of society and the eventual cultural acceptance of such views. It is any wonder that the incidence of anxiety, depression, eating disorders and other self harming behaviors are more rampant among girls than boys? I would urge you to more seriously consider the impact that the accepted use of these images has on young people today. What people do in the privacy of their own bedrooms is their business and that is where it should remain in their bedrooms, not uncensored. Not on public display and impossible for citizens of all ages to avoid. It is also my right as a mother and woman to enjoy a safe and respectful town environment and have a voice in the very town that takes my tax dollars that is not representing the welfare of my family. If I have over gone my time, I will stop. I have three statements that were mentioned last night that I would like to address. It is for my children that I am here. That is the job of the generation that goes before to ensure that their future is not in jeopardy of being sold for the profit of an unscrupulous [inaudible] which is what I feel is being done to this town. A small town in America symbolizing the decline across this country. Councilman Butler, you chose to go against the town council sending a letter to the owner of La Tache because you said the town council should remain neutral. I don't believe that any of you were voted into office to remain neutral to the issues. I would appreciate further clarification of what that means. Furthermore, any emails that you have received from the public, especially the citizens of Leesburg that condemned the window displays, I feel you have an obligation to share with the owner as well as the property owner. Regarding Councilman Dunn's suggestion that we simply avoid patronizing the shop, that we close our eyes and pretend that this isn't there. That we cannot picket – that we remain silent. That we keep the status quo is what brought us to this place today – whips around the necks of scantily clad women because that is what they are. The mannequins are symbols of women. Citizens have been complaining about the shop from the beginning when it came to my attention, I did send an email to you about the shop and there was no response. When one of the members of our group that was here last night, when I asked her what she could do two years ago, she was told by a friend of yours to remain silent and it would eventually go away. Silence for me means that I avoid driving through the Town of Leesburg, shopping in the Town of Leesburg, going to restaurants in the Town of Leesburg, bringing my children to the Town of Leesburg, bringing my husband to the Town of Leesburg and even stopping [inaudible] at that traffic light so I can avoid viewing a shop that offends my sensibilities, that challenges my desire to not see those images. I am an adult. I can do that to protect myself and my children. But at what cost to the town, so that it can cater not to its taxpaying citizens, but outside groups specifically

seeking an adult entertainment store in the heart of horse country. There is a reason why Middleburg does not have shops like this. There is a reason why the town of Upperville where I am thankfully moving remains a sleepy town with few shops because it requires the approval of the town's people to open a business there. What of the children? We heard a lot about juveniles last night. What about the younger children? Do you think I am the only family who has taken such severe measures because Leesburg is not a family friendly town anymore. It is unfortunate that Leesburg has other sensibilities. Finally, I have already mentioned the negative effects of the excessive use of the female form in this way on young girls and boys. Your response and the response of the zoning administrator are perfect examples of desensitization. The minimizing – the reduction of women and girls to a piece of plastic. Le Tache is a known advertised adult entertainment store. It is not a Victoria's Secret. The key word is adult. My children are not among those who are dropped off at the mall and allowed to run wild without adult supervision because your town of Leesburg is not the same venue as a shopping mall. The mannequins used by Le Tache make it stick out like the ugly eye sore that it is in the heart of town and they are impossible to avoid without avoiding the whole town altogether. If zoning approved it as a lingerie store, I would think the town has been deceived and tolerance, it goes both ways.

Connie Graham: Thank you. This is my first time doing something like this, but I felt it was important to be here. I was here last night as well with Ms. Powell and I represent myself. I represent my husband and I represent my five children ages 11 as of today through 22. Three boys and two girls and also feel like I represent posterity through them – that is future posterity. Discussing the obscenity laws that were brought up last night, I would like to share my concerns about the window displays at the Le Tache adult lingerie store and how they affect my family and in my opinion, the community of Leesburg. Ms. Powell said everything that I wish I could say beautifully. But, I do agree that those displays objectify women and they send a real bad message to girls about their bodies, to boys about the girls that live around them. I believe it encourages improper treatment of women and girls and it encourages a disrespect that I am sad to see this happening more and more in our society towards women. Last night, a comparison was made relating this store to Victoria's Secret and I have to say I don't live at the mall. I don't have to go to the mall. I can avoid going near those stores at the mall that may have lingerie. There are images that I object to in newspapers and magazines and last night it was brought up that we are surrounded by these images and we can't avoid them. However, I can avoid purchasing a newspaper or a magazine that may have these images so they are avoidable. There are risqué and improper and inappropriate images on TV and in movies, but I have the choice of going to those movies or turning on those TV shows. However, in the heart of my town where I have lived for 15 ½ years now there is a store that has overtly sexual and inappropriate displays in their windows. It is a major thoroughfare that provides one of only two ways to travel north from our neighborhood. I forgot to mention that I live at 105 Cedargrove Place in Greenway Farms. Today is my daughter's 11th birthday. I should be and wanted to be home with her. But, I felt it was important enough for the wellbeing of my daughter to come here tonight and advocate for a healthier environment for her, an environment that sends her the message that she is not a sex object. Last night, finally, it was discussed that there are trends in society and even the courts are trending in certain directions. I want to say that just because things are trending in a certain direction does not mean they are going in the right direction.

Doris Kidder: Madam Mayor, Madam Vice Mayor and Members of Council. I am Doris Kidder, resident of Leesburg here to speak on behalf of the arts and skateboarding. I know we just had an art presentation on the agenda, but I just wanted to remind you that though the town established an arts and cultural district, it is virtually invisible. Art needs an identity in Leesburg. We need signs or banners or flags letting people know letting people know that we have an arts and cultural district and we need art that is visible. I am going to give you a couple of ideas. One, we could start in the town parking garage, which you know is gray and dark. We could – it is a blank canvas. We could have each school in Leesburg be given a wall in the garage to decorate, to brighten with bright colors and we need an information kiosk in the garage so people know where they are and where they can go. Now, with this idea, this was brought up some 20 years ago by a former planning director and it never went anywhere. Actually you guys could just give permission to staff to dig up that idea and resurrect it. It wouldn't cost you anything to do that and the same way with the garage walls – ask staff to bring forth some ideas for you to consider. So, those were my ideas about the art. I will just end up with my favorite quote from the Virginia Commission on the arts – there is an \$8 return for every one dollar investment. Okay, now I am moving on to skateboarding. I have asked [inaudible] to come up and help me. Wanetta Langley. The August 3rd cover of the New Yorker magazine featured a skateboarder. [inaudible]. This was the August 3rd cover of the New Yorker Magazine. You will see a skateboarder soaring above the traffic in Manhattan. I think it is a great photo. Thanks, Wanetta. Here is the next one. On September 4th, the Washington Post had a double page photo of a skateboarder announcing Kennedy Center Surprise season opening, which was creation of a temporary skate bowl on the front plaza. Did any of you see that? The Kennedy Center actually constructed a skate bowl in their front plaza to have combination jazz and skateboarding going on this week for the opening of their season. It was a wooden structure – 30 pieces. The bowl will have a permanent home in the district. So, that's that and then I have one more, if you will just bear with me. This was a September 14th, again in the post on the front page of the Metro section. Again, skateboarders are featured on the Washington Post. So, here is my point. Skateboarding has become mainstream. I think it is pretty important that is happening and as such it deserves to stay front and center on the main street, where it is on Catoctin Circle, which is plainly visible as a town attraction. It is accessible all local residents and via the bike path to all Northern Virginia. Thank you for bearing with me for my presentation.

The Petitioners Section was closed at 8:50 p.m.

9. APPROVAL OF THE CONSENT AGENDA

On a motion by Vice Mayor Burk, seconded by Council Member Butler, the following items were moved for approval as the Consent Agenda:

- a. *Performance Guarantee and Water and Sewer Extension Permits for Walmart #1904-05 (TLPF 2014-0027)*

RESOLUTION 2015-100

Authorizing an Agreement and Approving a Performance Guarantee and Water and Sewer Extension Permits for Walmart Store #1904-05 (TLPF 2014-0027)

- b. License Agreement for Public Communication Facilities in Public Right-of-Way

RESOLUTION 2015-101

Authorizing the Town Manager to Execute a License Agreement Between the Town of Leesburg and NOVEC Solutions, Inc. for Telecommunications Facilities in Town Right-of-Way

- c. Commission on Public Art Project to Paint Town-Owned Snow Plow Blades

RESOLUTION 2015-102

Authorizing the Commission on Public Art to Approve Art to be Painted on Town-Owned Snow Plow Blades

- d. Awarding a Contract and Sole Source Procurement to Refurbish the Sand Filter Facility and Equipment at the Water Pollution Control Facility by Aqua-Aerobic Systems, Inc.

RESOLUTION 2015-103

Authorizing the Execution of a Contract Between the Town of Leesburg and Aqua-Aerobic Systems, Inc. for Refurbishment of the Sand Filter Facility and Equipment at the Water Pollution Control Facility; and Authorizing a Sole Source Procurement for the Project and Authorizing the Town Manager to Procure these Services

- e. Making An Appointment to the Commission on Public Art

RESOLUTION 2015-104

Making an Appointment to the Commission on Public Art – Cameron Orndorff

The Consent Agenda was approved by the following vote:

Aye: Burk, Butler, Fox, Dunn, Hammler, Martinez and Mayor Umstatt

Nay: None

Vote: 7-0

10. PUBLIC HEARINGS

- a. None.

11. RESOLUTIONS AND MOTIONS

- a. Renewal of Memorandum of Understanding – Mason Enterprise Center
On a motion by Council Member Butler, seconded by Vice Mayor Burk, the following was proposed:

RESOLUTION 2015-099

Authorizing the Mayor to Execute a Memorandum of Understanding between the Town of Leesburg and the Mason Enterprise Center - Leesburg

Council Comments:

- Dunn: Just briefly, as mentioned earlier, it was my understanding that the town was going to support funding for the center up until this point and then at this point, they would support themselves. It is obviously not the case. Just to point out a couple of numbers. You often talk about the county paying their fair share. The town paying \$66,000 compared to the County paying \$177,000 – we are paying about 27%. If you look at the numbers, the town pays in taxes in and population to the county, we should be paying about 12% of that. But, again at this point I think we should be relieving ourselves of having to pay anything towards the enterprise center. I think – I am guessing the budget of George Mason is bigger than the budget of the town of Leesburg. Just a guess, but I would think that it is. Also, I think that the enterprise center is absorbing more costs, but I am not sure because it didn't get mentioned when they decided to take on the SBDC, it sounded like there was a cost there, so that cost is an additional cost, one that it sounds like we are having to pay for that wasn't planned. So, I wish we weren't having to pay this. It looks like we are going to go forward with it anyway, but I would like to hope that next time around that the enterprise center is able to support itself.
- Hammler: I will firmly support a continued partnership with Loudoun County and George Mason. What I think is really important to understand is what a force multiplier this investment is. We provide services all over the town. You can look at Balch Library – we provide a service. We provide parks and in many cases we don't get any return on investment relative to direct revenue and we are getting – there has already been \$35 million in direct revenue generated, jobs being created which means presumably property is being acquired – personal property taxes, perhaps real estate taxes. We know that the businesses are statistically staying in town and I think it has been a remarkable and tremendous kind of poster child for this great partnership bringing in a university. We were trying to bring a university prior to this – spent millions and millions of dollars trying to do that, but this was our big hit getting on first base being able to bring in the type of services that Mason has brought in the center. So, I fully support this and just wish it continued success.

The motion was approved by the following vote:

Aye: Burk, Butler, Dunn, Fox, Hammler, and Mayor Umstatt

Nay: None.

Vote: 6-0-1 (Martinez absent)

b. School Intensity Factors

On a motion by Council Member Dunn, seconded by Vice Mayor Burk, the following was proposed:

RESOLUTION 2015-105

To Update the School Capital Intensity Factors Previously Approved through Resolution 2005-111

Council Comments:

- Dunn: Just briefly. These are funds that are directed by the county and funds that in turn go back to the county for county schools that happen to be located in Leesburg and at this point we don't have any hard factual concrete reason for charging extra so I think we need to fall in line with the county funds versus risking possible litigation.
- Burk: Well, this is a complicated issue. We have the county coming to us – in our resolution we say the Town of Leesburg was requested by the Board of Supervisors in 2005 to consider adopting the County's proffer guidelines for the school capital construction, whereas the town adopted the per unit factors for single family detached and the county updated per unit school capital intensity factors December 2014, so we have the county telling us with the schools that they would like us to collect a certain amount of money. And as much as I would absolutely love to collect more money for the schools, I'd love to have that as something we could do, I don't see how we can legally do that when we have no justification or even idea what we would – what the schools would spend the money for. I am a huge supporter of schools, school funding. Again, I would love to be able to put that money – to keep it at the higher level, but our own resolution says that we are doing what the Board of Supervisors requested of us and what they are requesting is not as much money as we had previously asked for. So, that is why I seconded this because I don't know how we could possibly say to anyone coming in to do business in the town, we are going to charge you more than the county is asking for. We don't have anything to do with the schools. We are not sure where the money will go, but we are going to charge you more. So, I think we are on really shaky ground by doing that kind of thing. I do question – I would like to add a number 6 that we put some wording in there that talks about that after we receive assurance from Loudoun County that the funds are going to be used for schools in Leesburg, that we authorize the collection of those proffers and then when we get them, they go to the County rather than – I don't think it is specific enough in here telling us how the money is going to get there. I think it is important to come out and say that we – you know that the funds will be used for schools in Leesburg and that they are authorized to collect them and we are going to transfer those to the county in a very timely manner. So, that would be something I would like to see added to it. As much as I would like to ask for more money, I don't see how we can do it. Until someone can tell me how we as a town, who have nothing to do with the school system, can ask for more money than the school system is asking for, that the county is asking for, I don't know how we can sustain that and defend it. So, that's where I am stuck.
- Martinez: I think Kelly said it well enough.
- Hammler: I agree with Kelly's reasoning as well. We are doing this begrudgingly for so many reasons I have already mentioned, based on what seems reasonable to me with even the recent discussion about all of a sudden new policies like all-day kindergarten, that could very substantially change this sort of equation in terms of you know capital dollars needed to achieve some of the policy you know priorities that the community is going to be

asking for and that it sends a message that we are basically creating additional incentives for residential development by lowering the school capital intensity factors. That being said, I agree with the fact that both Tom and Kelly had mentioned which is that we have to be in alignment with the county just based on the research and methodology that they brought forward to the table and my other frustration is that we did not pass our own study and certainly will look forward to still figuring out how the staff can get involved in the overall capital intensity factors for the town. Just look at the next ordinance that we are passing – you know, proffers in terms of you know contributions to fire and rescue for example and our police aren't being represented. So, I think we have work to do, but I will have to begrudgingly support what is on the table with this motion tonight.

- Fox: Thank you. I have a couple of questions related – no initial comments. Is it okay to go with questions? According to the staff report, there is precedent that we have trusted the county in the past when it comes to the CIF. So, I am wondering if the reason we are questioning it this time is because of a decrease instead of an increase? Is that the general feeling here? Okay. I was also wondering why down further and no geographic area restrictions – it says here for the updated resolution staff does not recommend retention of Section III in resolution 2005-111. I was wondering why the staff does not support retaining that. I wasn't clear on that.

Staff answer: The 2005 resolution was fairly specific about when proffer money is collected in a portion of Leesburg and the children from that development will go to, say it's Loudoun County high school, but there are no projects in the school and county CIP for Loudoun County High School, then we can't spend that money any place else in Leesburg. The 2005 resolution was very limiting in terms of that. Now, rather than building schools, the school board is really looking at programs to continue maintenance or provide additions or doing other things in terms of capital construction in Leesburg, so we want to be able to be as flexible as possible to direct that proffer money that we collect to the schools in Leesburg and the projects for the various schools in Leesburg, not just where the school children may be districted.

- Fox: Makes sense to me. Is there a wording that is going to replace this wording? Or is it just going to be stricken?

Staff answer: I think the resolution just directs that the money be used for schools in Leesburg.

- Butler: I won't be supporting this resolution because I think it encourages residential development and yeah, we can't legally require \$21,000 a house. We can't really legally require \$19,000 a house either. So, some of the concerns that I have are it doesn't seem to be that there is no methodology when they calculated the new numbers but there are some pieces of methodology that concern me. One, for instance is that the school board – the county estimates the total population of growth for the county on a county wide basis, which is about 2.5%. They don't break it down specifically by subarea. Some of that part, you can let it go and say it doesn't really matter because if we need to spend more money on schools in Leesburg then they

expect then they will get money from somewhere else because we just are not going to have the money to give them so it's just too bad for them. But, a bigger concern is that the subareas that the capital intensity factors come into place is just Leesburg whereas it doesn't match the subarea for the schools, which is – the subarea goes north and south. So, the capital intensity factor equations assuming that there is going to be one more elementary school in Leesburg. The school board equations don't call that out specifically. You can't find one elementary school in Leesburg. They do it by a larger region, which like I said goes up both north and south of Leesburg, so the new schools may or may not be in Leesburg depending on where the kids are, where they find land, where it might be deeded through developments or whatever. Another concern is that, for instance, the reason why the number went down significantly in Leesburg primarily is that with one elementary school – it assumes one elementary school is going to be built. It assumes no middle schools and no high schools. So, therefore, what it does is it takes the total amount of capital money that a kid would use going through school and it takes 6/13 of that because the child would spend six years in elementary school and the other seven years, middle school and high school – it doesn't take that into account so that's basically free because they don't expect another middle school or high school to be built within the planning zone of the estimates. So, that's great, but what that means is one of two things – either currently our high schools are at half capacity that would be able to fill up a certain number of children over the next coming number of years or kids in Leesburg would be placed in a high school outside of Leesburg and it would be those regions whose proffers would be higher that would be paying for additional middle schools or high schools. It is all kind of complicated, but what it turns out to be is because they have done it by these subareas and these subareas don't match each other, that it is very likely that every two years, the proffer numbers could change radically because let's say in six years that for some reason there would be another high school in Leesburg, well then our proffers are going to go up a lot because we are all of a sudden going to be factoring in a high school in there, so it might go to \$35,000-40,000 for a couple of years as opposed the \$19,000 that we have now. So, I have concerns about the methodology and I think what it does when it is low, it is going to encourage more development and then it is going to encourage more schools and then a new school is going to [inaudible] then the proffer numbers are going to go way up so it is going to discourage development. So, it is all going to work out in the end over a long period of time. But, I have concerns about it and I think that Leesburg – I am concerned about such a significant drop in proffers, but the bottom line is that I don't really care that much whether it passes or not because over a long period of time, it is all going to come out in the wash and they are going to update it every two years so I just hope that if the numbers change radically every two years that they adjust their methodology to take it into account and that's probably a much longer answer than any of you in the audience [inaudible] but I thought it would be interesting for Council.

- Mayor: Thanks Dave. I thought you made some very good points.

- Dunn: Thanks, Dave, you brought up one of the points I was going to make, which was the fact that if they change it, we will change right along with it in just a couple of years. Just to put in a little bit of perspective. A 1000 unit development, this is \$10 million. We don't have any 1000 unit developments on the books. Anything close to that, right Suzanne? And that \$10 million a development is very, very small. That's a drop in the bucket to a developer. Ten million dollars is ten million dollars. But I don't agree that this is going to encourage development. I don't think that we are going to have a lot of folks showing up at your office, Susan, saying that now that we have lowered this they are going to come in and put in a huge development. This unfortunately does not work that way. It takes a lot more, so. I think we are okay. I think that as Dave said when the county says that we have to raise it, we will raise it and move on from there. Thank you.

The motion was approved by the following vote:

Aye: Burk, Fox, Dunn, Hammler, and Martinez

Nay: Butler and Mayor Umstatt

Vote: 5-2

Vice Mayor Burk asked for clarification as to whether her change in the wording to indicate that school CIF money will be used for schools in Leesburg was accepted. It was noted that language was not included as it is part of the process that is already in place.

c. Police Appreciation Day

On a motion by Council Member Dunn, seconded by Council Member Martinez, the following was proposed:

RESOLUTION 2015-106

To Recognize Thursday, October 15, 2015 as Leesburg Police Appreciation Day

Council Comments:

- Dunn: I just thought that this would be a good way for us to say thank you, especially to our thin blue line that is here in Leesburg with so much of the negative press and negative actions that we see going on in many parts of the country right now, I thought that this would be a good way for us to just say thank you to our officers for having a day set aside just to say thanks and offering them a very small token of gratitude by inviting them to a meal before or after their shift and Kaj, we are going to have the families on that too?
Staff answer: Yes, they are invited.
- Dunn: And when you are a first responder, it is not just you, it is your families because they have to live with your decision every day and they don't have as much say in it. You guys would know more of that than I do. I am glad that we are able to also invite the families in and I want to thank Kaj and the Chief for really pulling this together. They actually have some great ideas that I think we may be able to build on in the future and hopefully even bring

in some corporate sponsorship that could help with that and really make it a nice day for the families.

- Martinez: I just agree with Tom and I was glad he brought this up and we were able to make it a reality.
- Butler: I agree, this is a great thing. I look forward to attending.
- Burk: Fine, great. Ready to support it.
- Hammler: I will enthusiastically support. It gives me the opportunity to say thank you to all of our police officers who work 24/7 to keep us safe. I appreciate it.
- Fox: I agree 100%. Anything that we can do to show them that we appreciate them, I think is a good idea. Thanks for bringing this up, Tom.
- Mayor: Very good idea. Our police officers exercise tremendous restraint every day, are extremely responsible individuals and members of the community. We already have a corporate sponsor, John Marshall Bank, is very interested in donating to this cause. So, good idea.
- Dunn: Once every six years I'll do one.

The motion was approved by the following vote:

Aye: Burk, Butler, Dunn, Fox, Hammler, Martinez, and Mayor Umstattd

Nay: None.

Vote: 7-0

d. Skatepark

On a motion by Council Member Martinez, seconded by Vice Mayor Burk, the following was proposed to move the skatepark to the gravel lot next to its current location:

RESOLUTION

Approving the Physical Location for the Redevelopment of the Catoclin Skatepark

Council Comments/Questions:

- Martinez: I don't think I need to beat this to death.
- Burk: I am going to beat it a little further. I think – I appreciate the Rescue Squad's input in this and I understand where they are coming from. They most certainly need more room and I am glad we will be able to provide them with that, but I think that moving it over to the gravel lot is where it needs to go at this point. It is walkable. It is close to the trails. It is close to the rescue when they break their arms. The town owns the land. In the future, you know, this has been here for ten years. It had to be redone – ten years from now, we will have to look at it again to see where we are. But, it serves a part of the town that is underserved now and I think it is really important to leave it in the location where it is located and it is known that it is there. I think that by moving it to the park, I think we end up with it is not walkable any longer. It can't be lit, so it won't be useful in the winter and the fall. The Parks and Rec does not want it at Ida Lee. So many of the recreational amenities are on that side of town and I think, as I said

before, I think the other side is underserved, so I most certainly would like to see it stay where it is and just moved over to the gravel lot so that the rescue squad could expand and we could keep the park there.

Council Member Hammler offered a friendly amendment to accept the contribution of the Fire and Rescue as directed in their letter and follow-up email that would be the differential between the original amount allocated and the amount it will take to move it to the gravel lot. It was clarified that amount is \$200,000.

Council Member Martinez did not accept the amendment as friendly.

On a motion to amend by Council Member Hammler, seconded by Council Member Butler, a motion was made to accept \$200,000 as offered by the Rescue Squad enable the move to the gravel lot.

Council Comments:

- Butler: I think the whole the reason to move the park over to the gravel lot was to accommodate the rescue squad, so I think to not include that at this point, I don't know why it would make sense to not include it.
- Fox: I have no comments on this motion, although I do not support the motion Katie just made.
- Dunn: Suzanne, did you say the motion that Katie just made? I thought you said Dave at first. I had a bit of an issue with the \$200,000 seeing that the cost is supposed to be \$260,000. I understand the membership's desire to keep this cost down, but I also have to really beckon the membership and the town. The rescue squad is a county function and I think you all are doing – raising funds for the expansion yourself. Are you getting any funds from the county for that? Okay, the county is already – there were as far as I know at least three other rescue squads that received county funds for their expansions and I am not sure why you all don't want to go after county funds unless it is a control issue and I guess if that is what you want, but I do not think that your desires to not seek county funds that they have already paid to other rescue squads that we should lay this burden on the taxpayers.
- Rescue Squad: We haven't decided how we are going to proceed with building or expanding our property. [inaudible] there are strings attached to the county funds [inaudible] not as attractive [inaudible].
- Dunn: And the only reason I am asking is because when you were at another meeting we had that discussion, I asked that specific question about where is the funds coming from and when do you see yourself building this out and I think the response was 2 ½ years. So, if you have an idea of when you are going to be able to do it, you must have some idea of how you are going to fund it. Again, my only issue is I would rather see this be fully funded by the rescue squad because you have the ability to go after county funds. You are a county function

and if you are choosing not to have strings attached with the county, it makes it tough for me to say well then I am going to have the taxpayers pay the extra amount so that you all can have more flexibility in dealing with the county. I would rather see that you are paying the full cost to have us move this because my understanding is you are not being charged anything for leasing the property, is that correct?

Staff answer: I believe that is correct. You are not being charged.

- Rescue Squad: [inaudible] correct.
- Dunn: So, there is no charge for that. You are a county function. You don't want to use county funds for expansion but you want us to discount the cost to move the park's footprint so you can have space, which I am all for, but it is shorting the amount of the cost. You are only wanting to pay \$200,000 when it should be approximately \$260,000.
- Rescue Squad: [inaudible] take that into consideration. [inaudible].
- Dunn: And they are already giving you roughly that in an annual donation. I don't know what it is, \$300 something. So, I would – who made the motion? I would feel more inclined to make it \$260,000, but along with Marty's point, I don't know if adding it at this point is something that is required. Should we do that now, or is this something we can work out in negotiations moving forward?
Staff answer: I think so, you can.
- Mayor: Which one?
- Dunn: I guess the amount of donation from the squad for moving the footprint.
- Mayor: As in you want further negotiations.
- Dunn: Marty is saying you don't need to do it right now. Katie has made a motion to do it now and...
- Martinez: The reason why I am saying you don't need to do it now is if we say \$200,000 and we are stuck. We can't go higher and we can't lower depending on...
- Mayor: No, I wouldn't agree with that. The way Katie phrased her motion was to accept \$200,000 if the rescue squad decides it wants to add \$60,000 or \$40,000, they have that right and the town would have the right to accept it. So, I don't think we are limited.
- Martinez: I just don't like the perception that goes out.
- Fox: Just something real quick. I got my motions mixed up a little bit, so I apologize. I do support, you know, the \$200 whether \$260,000. I think I would go for \$260,000 as well, but not the main motion.
- Hammler: Was it a friendly amendment or not? It is confusing.
- Dunn: From me? Is that what you are asking. We got off track.
- Hammler: I don't think we actually made the friendly...
- Dunn: I haven't yet, but I am trying to still figure out whether we have to put this whole dollar amount in now or not.

- Burk: Let's ask Kaj.
- Hammler: Well the point I would make and Kaj can please respond – at least we are on record as accepting what's in the letter that has been submitted and to your point, if there are any additional negotiations, I don't think that is mutually exclusive, we just are on record as acknowledging it and accepting it as part of our discussions this evening.
- Dunn: My issue would be then if we are accepting something and it is putting it in writing, then it should be the amount that we would rather see. So, I am either inclined to go with Marty and say don't put any dollar amount in or if we are putting a dollar in, make it the dollar amount that is needed to move the property.
- Hammler: Is that a friendly amendment or it is up to you.

Council Member Dunn offered a friendly amendment to change the amount to \$260,000. The amendment was accepted as friendly by Council Member Hammler, but not by Council Member Butler.

Council Comments:

- Butler: I've got two issues. One is that I am still of the mind of why would we move the park at all if we are not going to figure out how to give it to the rescue squad, but the second thing is the \$260,000 since it includes a 20% contingency, which we may not spend. I don't want to take \$260 from the rescue squad and end up paying \$220.
- Mayor: Right.
- Butler: Or \$200 but on the other hand, I don't want to say that it is actual cost because then there might be overruns and it might be \$350 or something. Since we pay the rescue squad a significant amount, I don't really care whether the amount is \$200. I think \$200 is fine. You know, \$60,000 over 20 years is a rounding error and there is all kinds of opportunities every budget to figure it all out. I think I would rather stick with the \$200.
- Mayor: I am going to take that as a rejection of Tom's friendly amendment. Tom, I'm not going to let you make a motion to amend at this point, but you will get a chance to make it after we vote on this first amendment. Otherwise this is going to become too convoluted. So, we have Katie's motion seconded by Dave. Katie, your initial motion to amend was for \$200. Dave has not accepted a friendly amendment to raise that to \$260, so are you comfortable going forward with a vote on the motion to amend at \$200 at this time?
- Hammler: I am hesitating answering in as much as there may be a way to better phrase this based on the variables that we are all trying to get to. I think we are all trying to get to the same place – accepting the contribution of Fire and Rescue to the best of their, you know, building ability from their membership to offset the differential in cost but to the extent that we need to keep this simple, my answer is yes.

- Burk: I would just like to say, I don't know how you can say \$260 when they have offered \$200. It doesn't make any sense to me.
- Mayor: The amount we are dealing with is \$200 right now.
- Burk: Okay, so that's why I was supporting it.

The motion to accept \$200,000 from the Rescue Squad was approved by the following vote:

Aye: Burk, Butler, Fox, Hammler, and Mayor Umstatted

Nay: Dunn and Martinez

Vote: 5-2

Council Comments:

- Butler: I didn't have a chance to speak on the main motion, so let me just speak quick. I think this has been a difficult process because all the way through I know and people are bringing some fairly persuasive arguments about moving the skatepark. We have checked at least three different places to see whether it may be feasible to move it there and what the pluses and minuses would be and you know I appreciate everybody's comments. Suzanne has made some very excellent comments about the whole thing and doodled around a whole bunch of things. The primary reason I am going to support moving the skatepark to the gravel lot – the primary reason that gives me pause why I wouldn't is because it is definitely going to be disruptive to Dulles Motorcars. I don't know how disruptive. I mean the parking lot itself is small, compared to the total lot so I think that is easily overcome, but I think there is still the issue of a lot of skate parkers in the area is somewhat disruptive to his property and business, or could be. So, that gives me some pause, but then I weigh all the factors, pluses and minuses all around, I will support the Vice Mayor's motion. The one thing I would like to make a friendly amendment.

Council Member Butler offered a friendly amendment to initiate the process to subdivide the lot so that the town can allow the Rescue Squad to build on half.

- Dentler: Madam Mayor, at this point, I would like for the town attorney to give you some information on what you are – some of the things that you need to address before you go further in your vote if you are going to move the skate park and really lease the existing footprint of the skate park.
- Butler: We are not talking leasing. I just asked to subdivide because I would be completely against a lease. That is a nother conversation. You have to subdivide at any case.
- Notar: The main thing you have to keep in mind right now is the motion, as it is now, one cannot build across a lot line. Remember, how it is now, is the town owns the skatepark property and the rescue squad owns the rescue squad property. It was donated to the rescue

squad by the town many years ago by a deed of gift. So they own that land. There is a reversionary clause, meaning if they leave, the land comes back but it is owned by them. Under the town zoning ordinance, you cannot build a building across a lot line. So, if you are going to move the skate park over to the gravel lot, the rescue squad could build another building, but they could not expand over that lot line.

- Butler: Which is why the first step is to subdivide the land and then they have to combine the two lots. That is the only way they would be able to do what they want to do.
- Notar: Well, so if you are going to subdivide that land, you may need six votes.
- Butler: I'm not subdividing.
- Martinez: The question here is all we are doing is making a motion that we want to move the skate park to the gravel lot and we are leasing or giving or however we want to do it to the rescue squad to allow them to expand. Everything else, I am assuming that once this resolution passes, [inaudible] that you are going to go and look at all of the things that we need to do to make it work and I do not want to sit here tonight and hash it out for the next two hours and micromanage what you are going to be doing anyway.
- Dunn: Can I offer this in conversation? If we look at the resolution, Marty, there is nothing in there about the rescue squad. There is nothing saying that we can't go forward, approve the moving of the skate park tonight and deal with the rescue squad at another time.
- Martinez: That's what I am saying.
- Dunn: Dollars, subdividing, everything. If we know we want to do that, let's just get the skate park passed. Move it over to the other side of the lot and then we work with the rescue squad and everything else. I think there are too many moving parts to this to get it done tonight.
- Martinez: Right. And the resolution says skate park moves to gravel lot to allow rescue expansion and that's what the resolution is and that's where we need to go and anything after this, we definitely need to talk about and you need to let us know what we have to do and how many votes we need to have to get it done.
- Dunn: This resolution doesn't say anything about expansion.
- Dentler: We are happy to do that. That is not a problem. We are prepared to give you all of the options tonight. We can do that the next step. We just don't want you to not know something you may wish to know tonight. That's all. If that makes sense.
- Butler: Okay, what if we do this then. Here is what I am not comfortable with. I am not comfortable with moving the skate park and then for some reason the whole thing with the rescue squad falls through because then we have spent \$260,000 pretty much for nothing. So, what if we put in there how about if I make this as a friendly amendment?

Council Member Butler offered a friendly amendment to remove the amendment that was just made about the \$200,000 and then put a clause in about locating the skate park to say that we don't move forward with the skate park project until they have handed out what we are going to do with the rescue squad.

- Martinez: Again, the scope of the resolution, you have accepted the fact that they are going to give us \$200,000. I think that is commitment enough to let us go and move forward and get this thing done.
- Burk: We can't hold off on the skate park anymore. We are months and months behind.
- Butler: We are not, but the point is why move it and spend \$260,000 if we don't know what we are going to do with the rescue squad. The only point to moving it is to accommodate the rescue squad. So, why would we commit to \$260,000 when we are not committed to the rescue squad.
- Martinez: That amount was not accepted as a friendly amendment.
- Mayor: Got it. Got it. Dave, had you wanted to pursue your previous friendly amendment to initiate process to subdivide the lot, or did you want to drop that?
- Butler: Marty has not accepted that as friendly, so I would like to make that as a motion.

Council Member Butler made a motion to amend the main motion to add starting the process to subdivide the lot to give the rescue squad comfort that their \$200,000 is actually going to be used to acquire some land.

- Mayor: Barbara, are you comfortable with the concept that subdivision of the land will cure the cross border problem?
- Notar: Subdivision of the land does not require six votes, but once you subdivide and if you sell or donate to the rescue, you would still need six votes. I just think at least unless I am misunderstanding Mr. Butler's motion, subdividing moves the process forward and I understand that and you could do that now and that helps us go forward, but you are still going to be faced with the problem later on what you do with the land. Once you subdivide, yes, I understand the lot line will disappear and that's good, but there still may be a vote problem in the future. You will still be under the same constraints, because it is still our land. It is just now two lots.
- Butler: Yeah, but it certainly would not ever be a park. We can discuss that at a different time, and I can't imagine if we subdivide the land and we get \$200,000 from the rescue squad and we build the skate park, I can't imagine that there would be any council member that would then vote against providing the land to the rescue squad.

- Notar: And that may be so, but I don't – I couldn't agree that it wouldn't be a park anymore once you subdivide. I would still think you would need the six votes.
- Mayor: Dave, are making a motion to add the subdivision land?
- Butler: Yes, and that's basically to protect the rescue squad.

The motion was seconded by Council Member Hammler.

- Butler: I don't know why we would be adding the \$200,000 in the motion and not be giving the rescue squad some assurance that they are actually going to be able to build on the land that we are supposed to provide.
- Fox: I will support the subdivision.
- Martinez: Other than the fact that I am really frustrated that this is just a simple motion to move the skate park to the gravel lot and then you have got a \$200,000 commitment from the Fire and Rescue, that shouldn't be part of the discussion and now we are going to subdivide lots, which shouldn't be part of the discussion. We are micromanaging what our town staff should be doing, not what the council should be doing. That is not our job.
- Burk: I will vote for that, just to get this done. I don't think it is necessary. I agree with Marty, but you know if we have to micromanage, we have to micromanage. Let's get this done so they know what we are doing and we can get the skate park moved and get going.
- Dunn: Respectfully, Kelly, only because you are the one that mentioned it, it is probably a feeling that other people have, but I don't think we should be making a vote just to get something done. I understand where you are coming from. I think that there is too many questions still involved with this whole subdivision. It not necessary. I don't think that if we vote on this tonight, to move the skate park, and whatever the funding is from the rescue squad that they have any inkling that we are not going to let them have that property and to say tonight that we are going to go through a subdivision process not even knowing if we can, is completely out of order. So, I would not feel – you can say no to this motion and still just as quickly move this thing forward. I won't be supporting it.
- Mayor: Barbara, is there any other advice that you would like to give the council before we have a vote on the subdivision aspect?
- Notar: I think I have said everything I can think of – is that subdividing helps move the process forward and it gets rid of the boundary line problem, but you then will still – once you subdivide, there is still going to be an issue of a text amendment that will have to be passed by this council under the Crescent Design District. There is standards for development of the rescue squad.

- Burk: Would you say that it would be better to leave it as clear as we had it or is it better to add the subdivision.
- Notar: I would leave it – phrase your motion to give us direction and then I would let us work out the details to the best of our ability. If we can't work it out, then we will have to come back to you, but there are steps we need to take. We understand your intent. It sounds like you want to move the skate park over to allow the rescue squad for expansion. There are steps that need to be done to the zoning ordinance. We will have to advise you as to the votes that you need. There may be a subdivision that is required so I guess the more open ended that your resolution is, the better off staff will be to accomplish that.
- Dunn: The other question I have is are we doing something that affects the park status by subdividing this, and are we removing the park status from the subdivision portion? Is this a way of us usurping state code to get around the sale of a property?
- Notar: and that's what I was saying is that I would advise against, so even though you subdivided, once you subdivide it, let me say it that way. Once you subdivide it, you can still lease the property over to the rescue squad and that does not take six votes, but if you donate it or give it to the rescue squad it is still going to take six votes. So, subdividing only alleviates the boundary line issue. Now they can expand over, but once again, yes you can lease it. But not you have leased property to an organization that is going to put a building on land – do you see what I am saying?
- Burk: So, let's just make it as clean as possible.

The motion to add in language to initiate the process to subdivide the lot, failed by the following vote:

Aye: Butler and Hammler

Nay: Burk, Dunn, Fox, Martinez, and Mayor Umstadd

Vote: 2-5

Council Member Dunn made a motion to take out the \$200,000.

- Hammler: Based on the discussion this evening, I had originally made a motion to accept what was directed in the letter and email and after that somebody else decided on a figure. Because of the additional conversation, it does seem that there would be a much more streamlined direction to staff, which would have been helpful if Council had just received that verbiage this evening knowing what you know that we don't know which are all the things you know you have to work out but you could make a motion basically summarizing that but in memory of the two previous amendments that redirect staff to negotiate with Fire and Rescue based on their letter and email about contributions differential of the cost to move the skate park as well as

our additional zoning and legal requirements to accommodate moving the skate park.

- Dunn: Well all that is going to happen anyway. It is all part of the process. Right, Marty?
- Martinez: I feel like being ironic and saying I second your motion, but I can't.

The motion was seconded by Council Member Butler.

- Butler: I'll second it because I think there is no point in taking any money from the rescue squad if we are not committed to giving them half the land.
- Burk: We are committed to it.
- Butler: No, we are not. We are thinking about it and we are talking about it. But until we have the details, [inaudible] we are not committed until we vote on it. If we can't vote on it all, then we really shouldn't be moving forward.
- Dunn: The only other thing I would say, and Kelly and Marty know in my discussions about this, is that this started with funding a skate park. That is where we started in the CIP. I wasn't exactly thrilled that we were moving it forward but that bridge has been crossed. This is nothing against you guys. You are trying to do what is best for the squad. The squad has interjected themselves into this discussion and that is where we are now. I just don't think that we are ready to finalize our discussions with the squad tonight. To try and talk about subdividing and funding and based off of some emails and notes, I just don't think we are there. I would rather just say we are going to work with the squad. We need to go forward. If we want to put a date on it for your department, Rich, so you can start design, I would say – I know you are going to hate this, Marty, that we have these final discussions done in two weeks. But, I think to do it in two minutes.
- Martinez: I agree.
- Hammler: So, are you going to table it?
- Dunn: No, no, no. I am not saying table it. I say pass this resolution as it is. As simple as it is right here. Let's finalize discussions and give Rich October 1 date or whatever two weeks are – next meeting, that's when the design starts. By that time, we have time to discuss...
- Martinez: Actually, they can start design now.
- Burk: Right, as soon as we pass this, they can start design.
- Dunn: Okay.
- Martinez: And the discussion with the rescue squad can all be a side discussion that the town, we let them do their job and work it out.
- Dunn: My motion is we take the funding out of the motion.
- Hammler: Would that not be rescinding a part of the motion, which would require someone other than Tom to make such a motion?

- Mayor: Theoretically, but let's give up arguing that point. My big question is for those members of Council who think that the \$200,000 was important because I would like to get this resolved tonight. Will we lose support for this motion if Tom and Dave's motion to remove the \$200,000 passes?
- Hammler: Madam Mayor, I actually think we are all saying the same thing, but unfortunately the language wasn't presented for Council to very succinctly embrace that we know that there are things that we as a council want represented this evening so that staff is directed to negotiate and accept the contribution to offset the differential in cost and all the related things that have to happen. I believe we are all trying to get to that end. I felt it important to express that in the motion so that would happen. I am open to – if we have said enough on the dais that is the direction to staff, I have no problem supporting the motion, but other than having it in the motion I have no other indication that is going to happen.
- Mayor: Okay, the reason I am asking is I am not going to support the motion to amend if I am going to lose your vote. That's as direct as I can be. I don't want to see this thing go down in flames because of their motion to remove the \$200,000.
- Hammler: You will not lose my support except that I don't want to lose \$60,000 if they are going to contribute the entire amount as well as I would expect and they have in fact directed so this is where ultimately I am happy to figure out the best language to make sure that Council's will is represented in the motion.
- Dunn: I don't think that we have a problem going forward tonight with the resolution to move the skate park over to the gravel portion. I think that our negotiations with the rescue squad can be separate.
- Hammler: You should say that. That's all you have to say.
- Dunn: You didn't have to say anything about the rescue squad tonight.
- Butler: Point of order. If you pass Tom's motion, I think we are back to the original resolution that was in the packet.
- Dunn: Exactly. My point, Katie, and I know you have been there and many people on Council too, is that again this is a county function and once again the citizens of Leesburg are having to saddle some of that burden of supporting a county function and that is where the rub is.
- Hammler: I guess just to simplify it. At this point, Kaj, as town manager, I think you have heard enough from the Council, what do you recommend that we do if necessary to amend this motion, if at all.
- Martinez: I don't – you know....
- Hammler: Because he is going to have the direction to proceed so I think he needs to know....
- Martinez: I think Kaj is a big boy and he can figure it out. I mean you are wearing your big boy pants, right?
- Hammler: I don't appreciate your sarcasm.

- Martinez: I don't appreciate that you have a basic, simple resolution and everybody has to sit there and [inaudible].
- Hammler: It's not that simple [inaudible] didn't make the original motion. So, that's my question.
- Mayor: We do have Dave and I think Tom's motion to remove the language about \$200,000.
- Butler: Which brings it back to the original.

The motion to remove the language regarding the \$200,000 failed by the following vote:

Aye: Martinez, Butler, and Dunn.

Nay: Fox, Hammler, Burk and Mayor Umstattd.

Vote: 3-4

Council Member Dunn made a motion to change the amount to \$260,000 to cover the full cost of the relocation. The motion was seconded by Council Member Hammler.

- Dunn: Just real quick. If we are going to have the funding, it might as well be the full funding.

The motion to increase the \$200,000 to \$260,000 was approved by the following vote:

Aye: Fox, Hammler, Martinez, and Dunn

Nay: Burk, Butler, and Mayor Umstattd

Vote: 4-3

- Mayor: Just be aware, if the rescue squad is getting nervous that the town does contribute funds every year. Theoretically, I suppose the town could deduct from those funds to cover the \$60,000, if it wanted to.
- Butler: So, so far what we have is we are going to move skate park and it is going to cost us another \$260,000. We are going to get it from the rescue squad. There is no particular – but we haven't figured out a process on how to get there yet, so we are not micromanaging by asking for a process we are not micromanaging the staff. What we are doing is we are doing our job and making votes to commit to what we are doing. This is a horrible resolution and it's [inaudible] the rescue squad. If I were you, I would go out of here very nervous and very worried because it is still going to be a long time before Council has committed to actually providing you this land yet we are going to put a skate park on it with a half empty lot, which we hope at some point is going to go to the rescue squad. This is not good government in action.
- Mayor: I'm basically fundamentally with Dave that the rescue squad should be nervous. I think that every member of Council has expressed their desire to accommodate the rescue squad's expansion, maybe not as much as some of us might have wanted. I would have been happy to support moving the skate park to Ida Lee so that the

squad could expand over the next 20 years into the entire parcel, but I think getting something – providing them with room to expand now is better than nothing. I don't think they are in the dark of our process. Staff has worked out the process already. We didn't give them an opportunity tonight to go over it, but they have already briefed the rescue squad on what that process has to be. Barbara mentioned the text amendment, subdivision, etc. We don't need six votes to move the skate park to the gravel lot.

- Butler: But we need six votes to give them the land and so if we...
- Hammler: This has been a long time in coming, so I am sorry, Marty, that is going to ten o'clock and beyond but it has turned into a complicated issue given a lot of different variables where we were trying to accommodate a lot of very important constituencies. Including the fact that I appreciate Suzanne coming forward with trying to take the time to create a partnership with the school board. I would have been very open to taking the extra time, even selling the land in order to get the skate park to the best possible place where it could have offset the most cost, where we could have potentially sold the land, recouped perhaps \$2.9 million or at least a good portion of that that we may have donated part of the land to the fire and rescue given as much land as you needed. Ultimately that requires a super majority. So, once it became obvious that there was not support for selling any of the park land then I think the options were in fact reduced to finding the best possible solution at that point. I just want to summarize by saying because it has been such a community wide effort, I appreciate everything that the parks and recreation commission has done, that staff has done, to bring all of the additional research. I appreciate the time the fire and rescue department has spent with us individually so we can fully understand your needs which is really important in this process. I appreciate Mr. Saghafi who has very specific needs for his business and because of all of those things and everybody working towards a positive end, I will be supporting the resolution this evening.
- Fox: I am in the minority. I support the rescue squad's request to move the skate park to Ida Lee. I think that moving it to the gravel lot is a band aid and I don't support that. I feel like there could have been a lot of winners here. There is a lot of problem solving going on here and I think there is a scenario where all parties and all stakeholders could have been served and served well and I am sad that is not going to happen. I think Dulles Motorcars has been left out of this equation. I feel pretty bad for them. They are a well-respected business and now they are going to not have their problems alleviated with this vote. The rescue squad is a function of our commitment to health, safety and welfare of the town and I feel like we are putting recreation above that. I don't support that. I feel like we have a recreation center in Ida Lee and this would fit in with the active nature of Ida Lee now. I see the skaters wanting a park, which I agree with. I think they want it

regional in nature, which I think Ida Lee is more conducive to, not just this little gravel lot on Catoctin Circle. I would rather have the rescue squad be in a central location than I would the skate park and I think the taxpayers lost out here with the passing, you know, with not considering the sale of the property. I think that, you know, I disagree with it all in theory and I stand firm in that and I will vote against the motion.

- Dunn: Just real quickly and I agree with the Mayor. Please don't fall out of your seat. I don't think that the rescue squad needs to be nervous in knowing that the town is moving forward in trying to work with you for this property. If we weren't you wouldn't be here tonight. The answer would already be no. And you are here tonight because we are working to get to yes. We may not be at yes tonight, but I think we are going to get there somehow, someway. I know that you all don't want to have to work with the county, but for my point, it does make it difficult knowing that you are a county function, not a town function, that as we move forward, the things you want to accomplish, I think are going to be better if you were working with the county. I can't make you do that. That is on you. But, the one thing I don't want to have to is we already contribute to the county funds and I just can't have town taxpayers taking up more and more costs that should be shared with the county. So, hopefully we can move forward with this quickly. You can work with the town staff - I know you will and let this process go smoothly. I hope that what you have seen from tonight is that you do have overall the support from the town council.
- Martinez: Let's vote.

The motion to approve the gravel lot for the redevelopment of the Catoctin Skate Park as amended with the language about funding was approved by the following vote:

Aye: Burk, Butler, Dunn, Hammler, Martinez, and Mayor Umstatt

Nay: Fox

Vote: 6-1

- e. Organizational Membership with National League of Cities
On a motion by Council Member Hammler, seconded by Council Member Butler, the following was proposed:

MOTION

I move to approve an organizational membership with the National League of Cities for the Town Council in the amount of \$3,813 for Fiscal Year 2016.

Council Comments:

- Hammler: Yes, very quickly. Just a great new opportunity to renew our participation in a really important organization that lobbies on behalf of municipalities around the country at the Federal level. Increasingly federal issues are causing a great deal of issues for us as one of the – we are arguably the size of a city. With Kim Winn, the executive director of VML now being

on their board, we have a great opportunity for Leesburg to be accepted on council, leadership and committees to have a much more direct involvement on things such as energy, environment, natural resources, things like the unfunded mandates coming down for TMDLs, transportation for things such as federal funding for an interstate problem on Route 15 and there are specific councils that are directly aligned with us as the size of organization that we are – the first tier suburbs council, which represents cities and towns outside of central cities, such as Washington, DC and also the small cities councils which are municipalities like us – 50,000 or just shy of 50,000. We appreciate giving us this shot this year to get one or two of us really involved and hopefully make a difference.

- Butler: I know that some people – we have voted down things that cost less than \$3,800 but I think this can be a huge opportunity for the town and the fact is that if we try it once and we find that we are not getting the value out of it, then we just don't renew. It is not a life commitment, but a potential huge upside, so I would be enthusiastically supporting it.
- Fox: At first, I wasn't really keen on this idea but I read through this memo that we have got and I was really excited to see that there might be some possibility where transportation is concerned, so I kind of agree with Dave. Let's try it out for a year, see if anything comes of it. If not, don't go any further.
- Martinez: No comments.
- Burk: The only comment is we tried it out before and we ended up not renewing it because it didn't prove to be particularly effective. It seems like if we've got the representative from the VML on there, that they would be representing our interest, so I am not in support of it at this point.
- Dunn: Katie asked me about it earlier. I did take a look and I think I'd rather pass. I just don't see us needing to be on just another commission. It seems like so often these commissions talk about the same thing all the time. So, I'm going to pass on this one.
- Mayor: I mean, I completely understand Katie's proposal and it looks attractive. But, Kelly is right. We did try this out a number of years ago. We might assume that maybe things have changed, but we would be a very small player in this organization. I don't think we are going to get a whole lot of out of it. My concern is that given that these committees and the group meet all over the country for Leesburg to play a very active role, it is going to require air tickets to the west coast, etc. for however many council members we have on these committees and I am not convinced it is going to be a good return on our investment. I wish I could support it, because I think Katie's heart is in the right place pushing for this, but I just can't having seen it in action before.
- Hammler: I do appreciate everybody's consideration. I think we are greatly underestimating the importance of our own leadership in that we really don't give enough attention and never have and that's why we haven't properly utilized the organization and how important federal lobbying is and to think that an executive director who represents every municipality and Leesburg

can help us individually probably isn't the best, you know, estimation of how we are going to make that happen, but rather that she can help influence us getting on these committees so that we as individuals that are represented to do could in fact get involved and I don't agree that we would have to fly anywhere in the age of webexes and teleconferences. I think it is just an opportunity for us to do a great job, which is ultimately what we are elected to do and federal lobbying is a key component.

The motion failed by the following vote:

Aye: Butler, Fox, and Hammler

Nay: Burk, Dunn, Martinez, and Mayor Umstatt

Vote: 3-4

- f. Virginia Municipal League Voting Member
On a motion by Vice Mayor Burk, seconded by Council Member Hammler, the following was proposed with Council Member Martinez nominated as the voting member.

RESOLUTION 2015-108

Designating a Voting Member for the 2015 Virginia Municipal League (VML) Business Session

- Council Member Martinez accepted the nomination.

The motion was approved by the following vote:

Aye: Burk, Butler, Dunn, Fox, Hammler, Martinez, and Mayor Umstatt

Nay: None.

Vote: 7-0

12. ORDINANCES

- a. TLZM 2014-0005 Patriot Self-Storage Park.
 Michael Watkins updated Council that the proffers have been revised to include \$0.10 per gross square foot of building area for Fire and Rescue. The estimated total is close to \$25,000 in revenue for transfer to Fire and Rescue services serving the property.

On a motion by Council Member Dunn, seconded by Council Member Martinez, the following was proposed:

ORDINANCE 2015-O-016

Approving TLZM 2014-0005 Patriot Self-Storage Park to Permit Additional Building Height in the CD-C District

It was clarified that this will include the amended proffers and three stories fronting Fort Evans Road.

Council Comments:

- Burk: I am glad that the owner realized the importance of making sure that our fire department was covered in this so I appreciate him reconsidering and

putting that in part of the proffers. I know that it is not exactly what some of the people in the area wanted, but it is what we did agree to, so I don't have any problems supporting this.

- Hammler: I still have concerns about the massing on behalf of the neighbors and just some questions in general on the impact on the neighborhood, so I cannot support it.
- Fox: I have some issues about the massing too, but I also took what the neighborhood said into consideration, what the applicant said into consideration. I also saw this was approved by the commission and the applicant did make an attempt to mitigate the massing. I did appreciate that. Seeing that it would be a fiscal good thing for our community, I will support it.
- Mayor: Mike, do you remember what the differential between how much tax revenue that property brings in today versus how much it is estimated to bring in if this building is approved? Do you have any sense of those numbers?
Staff answer: I don't, but the property is vacant now so we are getting real estate taxes for unimproved property. It is in the Crescent Design District, so those land uses are available to them in the densities that are provided with the underlying zoning. With that said, the Crescent District does permit a higher density in terms of land use. It is designated commercial, so we anticipated a commercial use to bring in a significant amount of revenue. I don't have a sense of the numbers just because there are a litany of different uses on the use table that could occur on the property. Retail, office, self-storage and those are all permitted uses in the district. They would have their respective tax revenues in terms of BPOL, real estate tax, etc.
- Mayor: I am really torn over this. The neighborhood is not a big fan of this project and they are concerned about the massing. That carries a lot of weight with me. If they don't have any hard figures on additional revenue, then I can't really rely on that assumption to support it. I will mull it over as we get final comments.
- Dunn: I appreciate the Mayor's concerns about the tax revenue, but I think if we were to look at some other self-storage facilities that we have in town and know what those tax values are and this one is larger than I think most others in town, I think that regardless of what the increase is, it is going to be an increase because it is improved property versus unimproved. I think also that the massing is mitigated by the trees on the property. It is also mitigated by the elevation in that the property will actually be nearly the same elevation as other properties there because it is on a lower piece of ground than some of the other properties. I think that the architecture has been greatly improved and I appreciate it. I think that what originally came in with the planning commission is not what is going to be leaving here from Council through your efforts throughout this process and I think this being another building that is going to be at our gateways of our town I think is going to look as good if not better than some of the other properties that are at that same gateway and the residents are affected by those other large properties that are right on the same street. So, for that reason, I am supporting this.

The motion was approved by the following vote:

Aye: Burk, Fox, Dunn and Martinez

Nay: Butler, Hammler and Mayor Umstatt

Vote: 4-3

13. UNFINISHED BUSINESS

a. None.

14. NEW BUSINESS

a. None.

15. COUNCIL MEMBER COMMENTS:

Council Member Dunn: Had no comments.

Council Member Butler: I have a disclosure. I met with Dan Knutsen on a potential rezoning off of North King. I am concerned about the rescue squad and I want to reiterate that if they want to extend their building across the property line, we can't lease half the lot to be able to do that so we do have to subdivide and combine it, which is going to take six votes per the town attorney. I am concerned because we have already had a couple of Council members say that they don't want to give away any more land or anything like that, so I think it might be risky. It is going to be tough to get six votes to give them that land. I just want to reiterate that I stand by my remarks that if I were them, I'd be a smidge nervous. The last thing I do want to talk about is I do want to address the question that was posed to me earlier tonight about sending a letter to Le Tache with all the attachments. Could we turn it down a little bit out there? Thanks. Yes, absolutely don't want to do that because it is putting us in the middle of any first amendment [inaudible] that are completely outside of our purview. We are happy it is possible for us to send opinions like that up the chain to whatever governmental agencies, the state or federal government, but to pressure a local business with changing how they – what they sell or how they sell it based on our feelings of a first amendment issue is wrong and I believe could get us into trouble and it would be no different than what if we did the same thing with gun shops, churches, or bars, all of which are first or second amendment issues that have the same kinds of concerns by some people. There are definitely people that would think that bars, restaurants that serve alcohol are far more dangerous than anything that Le Tache might be presenting and it is not our job to opine on that. We have to follow the law. I would also like to say yes, does Le Tache – some of their stuff objectify women? I think absolutely. There is no question about that, but it is not our place to decide whether that is a good thing or a bad thing. That is up to the Supreme Court and the Supreme Court has very solidly spoken on that. So, basically the summary of what the message that may have been lost last night is that we don't really have the legal authority to do anything with that business. So, you can ask us and we can all agree 100% with you but we can't do anything. I would also like to mention that if we are going to send – if we were to send letters, which we are not, including all the emails that we have received, we would also want to include the 79 posts that were put on the Leesburg Today facebook page that basically were crucifying the Leesburg Town Council for even discussing this issue. The inaccurate headline from the Leesburg Today didn't help matters, but we were crushed and I think it would be helpful for Council to go read some of those comments to find out that the vast majority of people, including some

very conservative members of the public think that our discussion last night was much ado about nothing. So, I will get off my soap box and hopefully I have answered the question that they have asked and we can move on. Thank you.

Vice Mayor Burk: I need to disclose that I met with Hobie Mitchell on September 15. I wanted to congratulate ECHO. They had their yearly picnic and what a wonderful group of volunteers and paid staff that work with our adult disabled population. It was really a wonderful picnic. I wanted to congratulate Stilson on a wonderful Cancer Can Rock afternoon. Did a great job and raised a lot of money for cancer research and that was great. I want to remind everybody that the Art Festival is this weekend, Saturday and Sunday, along with the Airshow and that on Thursday, the Town Council, Middleburg Bank, and Palios is sponsoring a discussion on the downtown businesses and retail. This is an opportunity to come down and participate and listen to a panel discussion from experts on what are some things that we could do downtown to get more feet on the ground and what are some things that we need to do. Finally, I would like to end by just saying Happy Birthday to Marty because his birthday is coming up.

Council Member Martinez: I just wanted to say I also talked with Hobie Mitchell and Christine Gleckner on the 14th about his development. I also want to say that the Town of Leesburg has got a busy weekend. We have got a lot of stuff going on. We have Leesburg Airshow, the annual art fair, the Nats are playing Philadelphia. We have the NAACP, which is really [inaudible]. Then we have the Phillies on Friday night and..., but I also [inaudible] to coach the kids baseball team in Warrenton because their coach couldn't make it. [inaudible].

Council Member Hammler: I wanted to first of all to thank everybody involved in putting on such a moving 9/11 ceremony. As usual, Madam Mayor did a wonderful job on what is an occasion – I do appreciate that the town makes an effort to bring everybody together considering how significant that event was for us. I just wanted to say thanks in advance for all of you for coming to Town Hall on October 2 for our first official pilot for the Civics Program. We will have 60 eighth graders from Simpson coming in. They will be in two groups divided between the Mock Session in the Town Council and also have the opportunity to meet Council Members. Of course, the most special [inaudible] as well as a staff directory so they will learn about great kind of career opportunities and most importantly how to develop their passion for contributing to the level of government that they will probably have the most impact as leaders. I will be visiting three civics classes this week just to help prepare them so they are ready to come into the town hall chambers and [inaudible] and the issue and who is going to be what petitioners, are going to be ready to even come to a vote that day and make it as meaningful as possible but also just a learning pilot so that we can kind of debrief and figure out how to make it even better and expand it next year, but I must say a huge thank you to Keith Markel who has been the program manager and doing a great job keeping this all organized as well as Mr. Runfola, the principal from Simpson and his staff as well as Abby Fisterer from Morven Park. She has come up with all the working materials and the classroom and has just made this extremely meaningful for the kids. Along that line, I think it is great Kelly nominated Cameron Orndorff to be on an actual Arts commission. I think he is – he is a teenager. I have known him since he was a little kid, so it is kind of awesome to see him stepping up and getting

involved in the town. Finally, speaking of participation, I am so glad that Marty is going to take an active role down at the VML annual meeting. I am looking forward to seeing him and Kelly down there. I will be participating in the Executive Committee meeting and also be presiding at the Women in Local Government Breakfast. So, it should be a great annual conference and we will look forward to reporting back.

Council Member Fox: I have one disclosure. I met with Hobie Mitchell on the 18th along with Christine Gleckner of Walsh Colucci. That is my only disclosure. Just a couple of things. I, too, enjoyed immensely the 9/11 observance. It was very humbling to take a look out there and see all of our first responders. I hope they know how much we appreciate them. I did get to observe the preservation awards at the Thomas Birkby House although they didn't know I was there. But Kelly was there. That was a really nice party, I guess award ceremony. I had to leave a little bit early but I am just going to go ahead and keep it short and sweet. I do appreciate one thing. This downtown discussion that is coming up – I think it is really needed. I wanted to thank Kelly for bringing this about. I know that there was a lot of work on her part and I really look forward to this Thursday.

16. MAYOR'S COMMENTS

I appreciate Katie's work on the Civics program, Kelly's work on the downtown business program. These are both very good projects. I would just like to give you an update on the motorcycle ride that you all supported. They had over 100 motorcyclists to sign up for the ride to raise money for canines for warriors and these dogs are all rescue dogs and they all rescue the veterans that they are paired with and it is an extraordinarily successful suicide prevention program. Not one veteran has been lost who has been paired with one of these dogs. So, it works really well. We are very grateful. Everybody wanted me to make sure that we thanked you guys for your support for the ride.

17. MANAGER'S COMMENTS

Mr. Dentler had no comments.

18. ADJOURNMENT

On a motion by Council Member Martinez, seconded by Council Member Butler, the meeting was adjourned at 10:28 p.m.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council
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