



**SUPPLEMENTAL AGENDA
PURCELLVILLE TOWN COUNCIL MEETING
JANUARY 9, 2018, 7:00 PM
TOWN HALL COUNCIL CHAMBERS**

- 1) Amendment(s) to **DISCUSSION/INFORMATION ITEMS:**
 - 11a. Warner Brook Annexation Application** (P. Sullivan) – this discussion item has been removed from the agenda at the applicants request.

- 2) Amendment(s) to **ACTION ITEMS:**
 - 12e. Appointment of Interim Town Attorney*** will be moved to after item **3. Invocation** (*revised staff report attached*) (J. Anzivino) (pgs. 3-10) (Motion pg. 6)

*Roll Call Votes

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SUPPLEMENTAL STAFF REPORT
ACTION ITEM

Item #12e

SUBJECT: Appointment of Interim Town Attorney
DATE OF MEETING: January 9, 2018
STAFF CONTACTS: John A. Anzivino, Interim Town Manager

SUMMARY and RECOMMENDATIONS:

Due to the absence of the Council's appointed Town Attorney for an undefined period of time the appointment of an Interim Town Attorney is necessary to ensure Town Council projects, contract development, review and interpretation of complex personnel actions, ordinance interpretation and day to day legal questions which arise are appropriately addressed in conjunction with State Code and Town Ordinances.

I initiated a search of potential candidates who have local government experience and who could serve as an Interim Attorney for a short, but undefined period of time.

As a result of outreach efforts, outlined in more detail below, Henry Day, a Warrenton attorney, has been invited to the January 9 Council meeting as a potential appointee, and given the short-term nature of the position I would recommend he be retained until the investigation, currently underway, is complete.

BACKGROUND:

The Town of Purcellville has retained the services of a Town Attorney full-time, or on a contractual basis, for many years. The Attorney, who is a Town Council appointee advises Council and staff on legal issues and serves as the chief legal advisor for the Town. As outlined in the Town Code (Article III, Division 2), the Town Attorney serves at the pleasure of the Town Council and is required to attend all Town Council meetings. In addition, he or she, as I understand it, serves as Council Parliamentarian. The Town Attorney is also expected to be available and able to advise Council and staff on a wide range of issues ranging from interpretation of the Town Code, to land use and zoning, to personnel, to contractual

matters. As such, the Attorney typically has responsibility to serve as initial point of contact as the Town's representative on all legal issues.

As advised by representatives of Wilson Elser, the Town Council's contractor investigating several prior allegations against, and actions taken by, the Town and certain staff members, Town Attorney Sally Hankins was placed on paid administrative leave on Friday, December 29, 2017 until the outcome of the ongoing Wilson Elser investigation is complete. The action taken was to ensure the independence and integrity of the investigation.

To identify potential candidates for the position, who would be readily available and had a background in municipal law, I reached out to Leo Rodgers, Loudoun County's County Attorney, for names of attorneys who may meet the Town's short term needs. Mr. Rodgers provided names and contact information for five (5) retired public sector attorneys who are located in the Northern Virginia area and have represented communities such as Leesburg, Alexandria, Falls Church, Vienna and several Loudoun County towns in the past. Unfortunately, each attorney contacted indicated an inability to serve based upon a lapse in their Bar license, personal travel during the month of January, distance from their home to Purcellville, or potential conflicts due to current clients. In addition, Wilson Elser was also contacted due to their current contract with the Town. In conversations with Yoora Pak, Wilson Elser's lead attorney to the Town, she indicated that the firm felt that a conflict might exist or develop and it would be best to decline to maintain the independence and integrity of Wilson Elser's work on behalf of the Town.

With that, I reached out to a couple of local government attorneys I had worked with while in public service, and one, Henry Day from Warrenton, indicated an interest to serve in the short-term.

Mr. Day has submitted both a resume outlining his past experience and credentials as well as a summary and hourly rate for the services he would anticipate to provide. Considering his past experience, he would be able to provide responses to most inquiries, including research and day to day responses to day to day issues; however, he may need to rely upon outside counsel, for highly unusual or complex litigation, if it was beyond his level of experience. To that end, he and I would inform the Council, before proceeding. He understands the Council meeting schedule and his obligations to attend and is not looking for a long-term commitment from the Town. In addition, while willing to step in as Interim Town Attorney, he has indicated that due to obligations with existing clients he would prefer to limit his time to no more that sixteen (16) to twenty-four (24) hours per week,

understanding that his obligation would end upon completion of the ongoing investigation or reinstatement of the Town's current Attorney.

Mr. Day is well-versed in municipal law and in discussions with him has significant experience in: Preparation of Motions, Legal interpretation of contract coming before governing bodies, Zoning and Land-Use Issues, Comprehensive Plan Review and General Government legal issues. He has had experience with annexations in the past and basic working knowledge of human resources issues and these issues would be handled in-house, unless they are highly unusual or require a high level of expertise in a specialized area.

ISSUES:

The Town operates a fairly complex organization and is dealing with multifaceted issues that transcend a wide variety of projects and topics (annexation request, contract review, personnel, etc.) and is currently without a point of contact for day to day legal issues. Consequently, I am concerned that both Town Council and staff do not have an identified 'go to' legal advisor at this time to ensure issues are resolved in an appropriate and timely fashion with sound, unbiased advice. Not knowing what the outcome of the current investigation may be and when it will be finally resolved, a short term appointment would fill the void and allow the Town to continue to move forward.

Questions may arise concerning whether or not the Virginia Public Procurement Act comes into play in obtaining legal services. Under the Virginia Code (Section 2.2.4344 of the Virginia Public Procurement Act, attached) a governing body may obtain legal services without undergoing a formal procurement process.

Mr. Day has indicated that to most effectively use his time, to limit costs to the Town and to ensure issues are responded to in a timely and coordinated fashion that request for opinions and work be coordinated through the Interim Manager's office. While this may be a change in recent practice when a full-time Town Attorney was accessible to staff and Council on a routine basis, to best control costs a central contact point would ensure better controls over time and costs in regard to Mr. Day's hours.

BUDGET IMPACT:

Funds for this item will be considered as part of the Town's mid-budget amendment.

MOTION(S):

“I move that the Town Council approve the hiring of, and formally appoint Henry Day, as Interim Town Attorney, at a rate of \$ 350 per hour, for up to twenty-four (24) hours per week until the current investigation is complete, in accordance with his letter dated January 4, 2018. “

ATTACHMENT(S):

1. Henry Day Resume
2. Henry Day Outline of Terms of Service
3. Section 2.2.4344 of the Virginia Public Procurement Act

HENRY CLEAVES DAY**Attorney At Law**

POST OFFICE BOX 1096

WARRENTON, VIRGINIA 20188

Office (540) 349-4300

EDUCATION

Bachelor of Arts University of Tennessee Knoxville, Tennessee	1975
Juris Doctorate George Mason University School of Law Arlington, Virginia	1982

**PROFESSIONAL
EXPERIENCE**

Private Practice of Law Fairfax and Warrenton, Virginia	1982-Present
Fauquier County Water and Sanitation Authority Legal Counsel Warrenton, Virginia	2005-Present
Town Attorney Warrenton, Virginia	1993-2002
Partner: Thacher, Swiger and Day Fairfax, Virginia	1986-1990

**CIVIC
ACTIVITIES**

The John Page Turner Hour Foundation Chairman The Plains, Virginia	1995-1998
The Plains, Virginia Architectural Review Board Chairman	1988-2002

HENRY CLEAVES DAY
Attorney At Law

**CIVIC
ACTIVITIES
Cont**

George Mason University Alumni Association Board Member	1980s
George Mason University Law School Dean Search Committee Member	1985
Fairfax Bar Association: Legislative Committee Chairman Membership Committee Long Range Planning Committee	1982-1990
The Plains Business and Professional Association President	1980s
Fauquier Hospital Development Committee Member	2000-2002
The Plains Community Center Board Chairman	1995-1998
The Fauquier Club, Warrenton, Virginia Former Secretary and Governor	

HENRY CLEAVES DAY
ATTORNEY AND COUNSELLOR AT LAW
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WARRENTON, VIRGINIA 20188

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(540) 349-4713

January 4, 2018

Sent via email to:
Janzivino5269@gmail.com

John Anzivino
Interim Town Manager
Town of Purcellville
221 South Nursery Avenue
Purcellville, Virginia 20132

RE: Legal Services

Dear John:

This will respond to your request for legal services. I am enclosing herewith a copy of my current resume to provide background information as you requested.

As you will note from my resume, I have served localities in Virginia over the years including being the Town Attorney for the Town of Warrenton from 1993-2002. Additionally, I represented localities on behalf of the Virginia Municipal League Insurance Pool, and since 2005, I have represented the Fauquier County Water and Sanitation Authority, a municipal water and sewer authority organized under Chapter 51, Title 15.2.

I am prepared to assist you and the Town Council of Purcellville on an interim basis beginning this month of January. I understand the services would be limited to the completion of certain investigations and reinstatement of a town attorney.

I am prepared to provide services on an hourly basis at the hourly rate of \$350.00, and to be responsible to you and the Town Council. As you aware, I am out of town this week but will be back next week and available to attend the Town Council Meeting on Tuesday, January 9th.

Very truly yours,

Henry Day

Henry Day

HCD/vls

Code of Virginia
Title 2.2. Administration of Government
Chapter 43. Virginia Public Procurement Act

§ 2.2-4344. Exemptions from competition for certain transactions.

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or

b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

B. An industrial development authority or regional industrial facility authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902 or "facility" as defined in § 15.2-6400.

C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

D. The State Inspector General may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the State Inspector General.

1982, c. 647, § 11-45; 1984, c. 764; 1987, cc. 194, 248; 1989, c. 235; 1990, c. 395; 1991, c. 175; 1993, cc. 110, 505, 638, 971; 1996, cc. 145, 897, 902, 950, 1038; 1998, cc. 222, 619, 666, 697, 791; 1999, cc. 160, 194, 1021, 1024; 2000, cc. 242, 696, 927; 2001, c. 844; 2008, c. 52; 2009, cc. 813, 840; 2011, cc. 798, 871; 2012, c. 632.