

COST OF FRIDAY NIGHT LIVE! (FNL) TO HERNDON RESIDENTS

By
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A. INTRODUCTION

Friday Night Live! (FNL), an outdoor concert, is held in the Town of Herndon every Friday from May through August. It features local and regional bands that play rock & roll between 5 pm and 10 pm every Friday night. A little sprinkling of reggae, funk and other original music adds a little variety to the program. The concert is held on the “beautiful Town Green in Downtown Herndon.” About 1,000 people from Herndon and neighboring areas come downtown every Friday for an evening of good music, food, and entertainment.¹ Friday Night Live! is considered by some the most popular outdoor concert series in the DC area. According to the FNL’s website, the Northern Virginia Magazine named FNL, “the BEST of NOVA 2012”, as well as, “a Must See while in Fairfax County”. Indeed, the original objective of inducing families and young people from Herndon and neighboring areas to come to Herndon seems to have come true.

It may come as a surprise to many that the Dulles Regional Chamber of Commerce (the Chamber), not the Town, owns the FNL brand.² The Town provides facilities and personnel to enable FNL to hold the Friday night concerts. Originally, the Town authorized FNL to provide music and entertainment only. Over the years, it has allowed FNL to widen its umbrella to: (1) negotiate with local restaurants to sell food at the events, (2) request beer-buying-patrons give tips for the All Night Graduation Party, (3) permit the High School Band to sell pop corn, and (3) allow the local PTAs to sell glowing necklaces. The Town, in the process, has permitted FNL to claim credit for raising funds and give charitable contributions even though volunteers from the non-profit groups do all the work.^{3,4}

¹ FNL claims that 33% of participants are town residents, but this information has yet to be verified.

² The Chamber owns the FNL brand name, maintains its main office in Chantilly, Va and operates as a 501(c)(6) Non-profit organization under the IRS regulations. Section 15.2-953 of the Code of Virginia authorizes local governments to donate to chambers of commerce, which are nonprofit and nonsectarian. The code further states that donations shall include the lawful provision of in-kind resources.

³ The idea of a Friday Night concert series, and the use of Town’s personnel and facilities to hold the events, appears to have originated with Mr. Doug Downer, a Vice President of the Chamber. Mr. Downer is the primary person responsible for managing FNL. The Downers have lived in the Town of Herndon for more than 60 years and have been involved in Town affairs and its politics for a long time. They also own an insurance business in the town. Recently, though, Doug Downer and his family moved to Reston, VA. Mr. Downer ignored repeated requests for interviews for this article.

Many people believe that, (1) the Town is fully compensated for the in-kind services it provides to FNL, (2) FNL does not make any profit, or, that it gives away its profits as charitable contributions to the nonprofits, and that it contributes significantly to the economic welfare of the town. This report examines the validity of these beliefs.

Pursuant to a policy developed in 2011, FNL makes a contribution of \$10,000 or less every year. In return, the Town allows it to use its facilities to hold the concerts. The following section (Section B) discusses how the policy was developed, and the positions some councilmembers took while arguing their case. The objective of the policy was to articulate FNL's "fair share" of the Town's cost. Thus, the magnitude of the town's cost, the size of the FNL's profits, the ability of other non-profits to raise funds, and the effect of the concerts on the economic well being of the town have a large bearing on discussions about FNL's and, by association, the Chamber's "fair share" of the costs.

In 2011 two councilmembers had asserted that FNL's expenses were equal to its income, that is, FNL makes no profits. When it applies for a grant (to use the Town's personnel and facilities) in February of each year, the FNL submits the Chamber's latest tax return, its unaudited year-end statements for the previous year and Pro Forma statements that contain estimates of FNL's expected profits for the current year. Section C discusses the significance and quality of this information. FNL and others on behalf of FNL claim that, over time, it has contributed "hundreds of thousands dollars" to the town. Section D examines the validity of this claim.

In 2011, none of the councilmembers publicly asked questions about the validity of the estimates of the Town's costs of sponsoring the Friday Night concerts. They accepted the Town Manager's estimates of \$24,000 to \$28,000 per year. Section E classifies the Town's costs into several categories and shows that the 2011 estimates did not include the majority of the actual costs. Finally, many make claims about the contribution of the FNL to the economic development of the Town. Section F presents the increases (or, decreases) in annual revenues (and, profits) experienced by the participating businesses.

B. DEVELOPMENT OF THE 2011 POLICY FOR REIMBURSEMENT OF THE TOWN'S COSTS (By FNL)

Prior to 2011, the Town did not have a formal policy for reimbursement of the town expenses by non-profit organizations. As the then Mayor DeBenedittis stated during the consideration of the policy, "... when Friday Night Live! began, the Town offered to pay \$10,000 towards the expenses and that continued for a time, until FNL became responsible for paying up to \$5,000 of

⁴ The Town, not the FNL, should really take the primary credit for allowing the non-profits to raise money and contributing to the community spirit. After all, it allows FNL to use its grounds, streets, town green and other facilities at a deep discount. Furthermore, it permits free admission to the concerts.

the expenses incurred...” Sometimes prior to 2009, that number was increased to \$7,500 per year.

In 2011, the Town proposed that all non-profits defray 50% of the town’s expenses.

Accordingly, FNL’s share of the costs was expected to increase to between \$10,000 and \$14,000.⁵ Mayor DeBenedittis decided to inform Doug Downer (who runs FNL) of the new policy and get his input. He asked the then Vice-Mayor Merkel to accompany him. Mr. Downer had already called the Vice-Mayor two weeks earlier to discuss the matter. During the meeting, Mr. Downer seemed offended by another request by the Town to increase FNL’s contribution and quickly moved to make sure that the Town did not ask for another increase in the future and that FNL would pay less if some of the weekly events were cancelled due to rain or unexpected events. Mayor DeBenedittis and Vice-Mayor Merkel worked with Mr. Downer to develop the following three terms for inclusion in the proposed policy:

1. Friday Night Live! would reimburse 50% of **the Herndon Police Department and the Dept of Public Works’** costs not to exceed \$10,000.
2. **If there are 12 or fewer concerts due to cancellations,** Friday Night Live would reimburse the Town’s costs not to exceed \$7,500. (Emphasis added)
3. **The 50% share would remain the same as long as Friday Night Live! is a free event** to the public and the Town is listed as a major sponsor of the event. (Emphasis added)

During the public hearing on January 21, 2011, the Town Manager indicated that FNL would have to pay between \$2,000 and \$4,000 more per year, if it was required to pay 50% of the costs under the proposed policy.

Not much discussion would probably have taken place, had Councilmembers Singh and Hutchinson not kept insisting that regardless of the contributions FNL might have made in the past, the proposed policy must be applied uniformly to all grant recipients.

Vice-Mayor Merkel, Councilmembers Wolf and Olem supported the move to cap FNL's "fair share" of the costs by strongly suggesting that they were quite familiar with the organization’s finances and contributions, and that FNL deserved the proposed special treatment. Lets take a look that the surprise motion and subsequent comments,

The Then Vice-Mayor Merkel

The Vice-Mayor after moving to amend the grant eligibility criteria stated that, the “FNL has (1) donated a lot of money to different groups over the years, and (2) provided fundraising opportunities for various groups, and that “putting a cap on their costs would be a good-will effort on behalf of the Town.” Later in the meeting, she stated that, “...she is not trying to play favorites, but **FNL has contributed hundreds of thousands of dollars to the community** and offers venue for other organizations to raise money.” (Emphasis added) It so happens that the Vice-Mayor was repeating some of the talking points given to her

⁵ The \$2,000-\$4,000 range is based on the erroneous estimates of the Town’s costs. Section E of this report, however, shows that the Town’s marginal costs of FNL are highly underestimated.

by Mr. Downer.

Councilmember Wolf

Ms. Wolf was more emphatic in her claims. She asserted that,

- “she is comfortable making this exception for FNL, because **anything they make beyond expenses is donated back to Town organizations and beneficiaries**” (Emphasis added),
- “this situation is different, **because no other organization donates all their money, except expenses. FNL does not retain any money.** FNL is the most efficient non-profit in Town and returns the largest amount to the community.” (Emphasis added), and
- “...if the straight 50% formula were used, the additional money would have to come from some of the small non-profit organizations.”

Councilmember Olem

Ms. Olem concurred with Councilmember Wolf and asserted that, “...she does not want to bicker over a few thousand dollars **when the organization has put more than \$230,000 into the community...**” (Emphasis added). Like Ms. Merkel, she also had picked up the figure of \$230,000 from the FNL-supplied talking points.

A casual observer of the proceedings probably would have been impressed by the apparent contributions of hundreds of thousands of dollars to the community by FNL, and its willingness to make charitable contributions.

In opinions of Councilmember Singh and Hutchinson, however, Merkel, Wolf, and Olem had not given sufficient justification for giving an apparently small benefit of a few thousand dollars to FNL. They voted against the amendment by stating that the Town should treat all non-profits equally, that is, they should pay 50% of the Town’s costs.

The following sections let the facts speak for themselves. They allow readers to decide for themselves whether or not Merkel, Wolf, and Olem were making phony claims.

C. FNL’S REVENUES & PROFITS

Prior to 2011, the Town had been “flexible” with the grant reporting requirements. It appears that FNL had submitted little or no information prior to 2012; in fact, the Town's file on FNL contained no pre-2012 documents. In 2011, the Town changed the regulations to require that those seeking grants must submit the IRS Form 990 (the tax return for non-profit organizations), a current income statement and a copy of the annual report.

Even though this requirement produces much better data than before, it fails to produce timely and completely accurate information.⁶ For instance, with its 2014 grant application, the Chamber submitted a copy of 2012 tax return, and its year-end 2013 unaudited financial information. The latter contains only a few details about FNL's operations, but provides reasonably accurate, even though, unaudited information. The FNL file also contained the 2012 year-end unaudited statements, and 2012, 2013, and 2014 Pro Forma statements. The Chamber/FNL submitted the Pro Forma statements even though they were not required to do so. However, the data in such statements can be used to mislead the intended audience (see Section 3 below).⁷

The available financial information from FNL is discussed in the following subsections. Section 1, describes the sources of revenues. Section 2 discusses the information given in the Chamber's 2012 return and Section 3 presents the Pro Forma data.

1. Sources of Revenue

The presence of large crowds every Friday night provides the FNL/Chamber an opportunity to raise funds and earn profits. The Chamber raises revenue by using the following four methods:

- **Selling Sponsorships:** Several members of the Chamber, including Volkswagen Group of America, Worldgate Center, Bud Light, Stone's Cove, Anthem Health Care, Zoomph & Party-DC, "sponsor" FNL through cash contributions and/or in-kind services. In return, they receive free advertising on banners (that are hung from the walls of the town hall) and on FNL's event announcement cards.⁸
- **Selling Beer:** The Chamber does not permit anyone, but FNL to sell beer, because the sales are a major source of "pure" profits. Each glass of beer commands a profit of as much as \$4.50 and thousands of them are sold or given free at each event. The profits are high partly because the Chamber does not have to use its employees to sell beer. Volunteers from various non-profit groups, including the Optimist Club, provide the much-needed manpower to sell beer and collect Tips for the All Night Graduation Party. Most volunteers take great pride in helping FNL because they believe it helps the community.

⁶The application for the grant has to be submitted by the end of February, because the Town has to allocate the necessary resources in the proposed Budget for its fiscal year that starts on July 1. However, the Chamber's fiscal year begins on January 1 and its tax return usually is not ready until June or July. The draft year-end (12/31) financial statements ("Statements of Activity") are usually ready a few weeks after the close of the year and are submitted by the Chamber with its grant application. To comply with the Town code the Chamber should send the tax-return as soon as it is available, but it waits until the next grant application cycle to submit it. Accordingly, the Chamber did not submit the 2012 tax return until February or March of 2014 – that is almost two years after the fact.

⁷In business, Pro Forma financial statements are prepared in advance of a planned transaction. The Pro Forma statements, thus, provide the anticipated results of the transaction. However, the U.S. Securities and Exchange Commission has cautioned companies that using pro forma results to obscure US GAAP results would be considered fraud, if used to mislead investors.

⁸Sponsorships have some unusual benefits. "Title" sponsorship that costs \$20,000, for instance, receives coupons worth \$9,000 for free beer and \$2,400 for food. Food coupons are used at the food stands run by several restaurants. **Thus, the food vendors subsidize the sponsorships and the FNL indirectly** (see Section E and Table 4).

- **Contracting With Restaurants to Sell Food and Non-alcoholic Drinks** Food sales go hand in hand with beer and wine sales. Every year, FNL negotiates with local restaurants to sell food during the concerts. In 2014, every selected restaurant paid a fee of \$4,000 for the right to sell food (some of it at highly discounted prices to sponsors and volunteers) during the 16 FNL events (or, \$2,000 for 8 events), and advertise their products and services on the announcement mailings. The 2014 vendors were JJ Deli, Jimmy’s Old Tavern, Dominos, & TurCuisine.
- **“Permitting” Sales by Other Non-Profits:** FNL “permits” some of the local groups to raise funds directly or indirectly. For example, it allows beer and wine buyers to give “tips” for an “All Night Graduation Party”. It also allows the High School Band to sell popcorn and thus helps defray the costs of the band’s performances. It also “allows” PTA volunteers to sell “glowing” necklaces. Section D indicates that FNL distributes a portion of the tips, and popcorn and necklace sales as charitable contributions to the very groups who work hard to raise the money. But, it is the one that gets to enjoy a portion of the fruits of their labor.

2. Profits Based On the Tax-Return and Year-End Unaudited Information

Table 1 shows that, in 2012, FNL generated gross sales of \$238,265, but incurred expenses of only \$153,668. Consequently, it realized a profit of \$84,597.⁹ In comparison, all fund raising events, including FNL, generated combined profits of about \$241,000 in 2012. Thus, FNL generated 35% of the profits generated by all of the fund-raising events.

The fund raising events, including FNL, make important contributions to the economic well being of the Chamber. The 2012 tax return shows that Chamber’s annual revenues amounted to \$679,000. The profits from all fund raising events amounted to 36% of the Chamber’s annual revenues. Of the remaining revenues, \$273,000 arose from membership dues, \$84,000 from its Education/Tourism programs and \$74,525 from sponsorship contributions (Table 2). Thus, FNL and other fund raising events are a very important part of the Chamber’s operating revenues and its economic wellbeing.¹⁰

⁹ This figure may be understated, because FNL’s revenues data in Table 1 does not appear to contain the sponsorship income. On the other hand, the 12/31/2012 “Statement of Activity” information (submitted with the 2014 grant application), shows that the Chamber lists sponsorship contributions of \$74,525 as a separate item. Consequently, FNL’s actual profits may have been much larger than the \$84,000 figure given in Table 1.

Nonetheless, if we ignore the sponsorship income, FNL earned profits of about \$69,000, \$48,000 and \$80,000 in 2010, 2011 and 2013 respectively. Interviews with some FNL volunteers indicate that the FNL has been profitable since at least 1997. If we use average profits from 2010 until 2013 as representative benchmark, FNL earned profits of at least \$1.2 million since 1997. If sponsorship income is also included in the profit estimates, then it may well have made more than \$2.5 million during the same period.

¹⁰ The question we must ask is, “Should the Town treat FNL and the Chamber as a non-profit organization for the purposes of equitable distribution of the profits? As far as FNL is concerned, the Chamber acts as profit-making organization. It would shut down any profit center including FNL, if it did not earn sufficient profits. For example, there are rumors that the Chamber is no longer going to sponsor the golf tournament in Herndon, because the event’s profits are too low to be worth the effort.

The Chamber treats each of the fundraising events as a “profit center”. In other words, it brings FNL to Herndon mainly to generate revenues for its operations. Accordingly, even though the Chamber is a non-profit organization for tax purposes, it behaves like a profit-making entity as far as FNL and other fundraising events are concerned. The tax return suggests that the Chamber uses the profits to run their operation; that is, to benefit the larger Dulles Area businesses and not to put money back into the Herndon community.

Thus, Councilmember Wolf’s statement that **“anything FNL makes beyond expenses is donated back to Town organizations”** was phony. Likewise, her other assertion that, **“... no other organization donates all their money, except expenses ...”** was also misleading.

3. Pro Forma Profits

Even though it is not required to do so, the Chamber continues to submit Pro Forma Income Statements with its grant applications. Each Pro Forma Statement occupies a prominent place in an application. In fact, it is the first information a reviewer sees and helps him/her make two wrong first impressions -- that FNL earns low profits and makes large contributions. Let's examine some of the data.

The 2013 grant application contained (1) a Pro Forma Income statement, and (2) the unaudited 2012 income and balance sheet statements (in the form of the year-end “Statement of Activity”). The “Statement of Activity” statement provided not only the (year-end unaudited) 2012 income, it also provided the 2011 actual income of the FNL. Similarly, the 2012 grant application provided the 2010 actual income for FNL.

When FNL reported a Pro Forma Income of \$33,167 in its 2013 grant application (prepared in February 2013), it already knew that it had earned about \$82,679 in 2012, \$48,146 in 2011 and \$66,553 in 2010 (see Table 3).¹¹ Yet, chose to report a low estimate of \$33,167 without giving any explanation. The tendency to report low Pro Forma Income is evident in other years as well. As shown in the following table, it expected a Pro Forma income of \$22,517, but the actual profit turned out to be \$82,679. In 2014, it estimated Pro Forma income of \$30,717 even though it had earned much higher profits in the previous years:

Grant Application Year	12/31 Unaudited Income	Pro Forma Income Stated In the Grant Application
2014		\$30,717
2013	\$79,566	\$33,167
2012	\$82,679	\$22,517
2011	\$48,146	N/A
2010	\$66,553	

¹¹ The income reported in the 2012 tax return (prepared in June 2013) turned out to be \$84,597, that is, very close to the unaudited year-end income. Such a close proximity (of the unaudited and audited results) is the normal expectation in financial analysis.

Every year between 2011 and 2014, when FNL prepared its Pro Forma Income statement, it already knew that it had not only earned higher profits in the preceding year, it had also earned higher profits in the preceding years. However, every year, it projected a low income for the next year. In fact, people familiar with the FNL operations state that it has (1) earned substantial profits since at least 1997 and (2) strongly resisted requests for greater disclosure. Even under the new guidelines, it has not provided adequate information about its source of income and its expenses.

It is reasonable to deduce that **it makes low estimates of pro-forma profitability deliberately** in order to discourage the town or the general public from asking FNL for a higher contribution. A low estimate is one of the very first pieces of income information a reviewer sees in a grant application. It helps him/her to make a first assessment of FNL's profitability. Unless he/she has the ability and willingness to look into the details, the reviewer is bound to think that FNL is not that profitable. Because, the pro-forma profits are relatively low, after the first review, he is unlikely to think about asking FNL for a greater share of the Town's costs of in-kind assistance.

How does FNL manage to make low estimates of Pro-Forma profits? Table 3 shows that it did that mainly by reporting expenses that were higher than actual expenses, and incomes that were lower than actual incomes. In 2012, the Chamber reported tax-return expenses of \$159,616, but it reported Pro Forma expenses of \$177,183. On the revenue side, while it had reported a gross income of \$244,213 on its 2012 tax return, it had reported Pro Forma income of only \$199,700. Thus, it had underestimated the income by about \$45,000 and overestimated the expenses by about \$17,500, for a net reduction of \$62,500 in the estimate of 2013 Pro Forma profits.

This pattern of understatement of gross revenue and overstatement of expenses yielded low estimates of profit in other years as well. In 2013, FNL had projected Pro Forma profits of \$33,167. Its actual profits that year turned out to be \$79,556; that is, they were more in line with the profits in 2012 and substantially different from the projected ones. These figures strongly suggest that estimates were designed to be misleading.

D. FNL'S "CHARITABLE" CONTRIBUTIONS

As in the case of FNL's profits, the available data about charitable contributions in the 2012 tax return is very different from that in the Pro Forma statements. The 2012-2014 Pro Forma statements in Table 3 show that FNL was expecting to receive \$6,500 in "glowing necklace sales, \$3,000 in "popcorn" sales, and \$7,200 in Tips (for the All Night graduation and volunteer party) for a total of \$16,700; and, it was planning to give \$21,500 in charitable contributions. The tax-return, on the other hand, suggests that the Chamber gave charitable contributions of only \$5,948. These figures raise two questions:

- Why does FNL suggest that it gives more charitable contributions than it actually does?
- If FNL keeps the majority of the revenue raised by the non-profits for its own use, then does it really contribute to the Town's or the non-profits' welfare?

1. Discrepancy Between Pro Forma and Tax-Return Information

It is reasonable to assume that the \$5,948 figure given in the tax-return is correct for at least two reasons. First, the Chamber is legally required to report accurate information on charitable contributions to Federal and state agencies. Second, this figure is consistent with the understanding, among some FNL volunteers, that FNL used to give about \$1,000 to each of the non-profits. This implies that the figure of \$21,500 given in the Pro Forma statement is overstated. The Chamber, it appears, has deliberately used the high figure to indicate that it earns relatively low profits and to develop, maintain and even enhance its reputation as a great beneficiary of the Town. In the process, it misleads the reviewers of its grant applications and discourages others from asking it to defray more of the Town's expenses. This is the only conclusion that can be developed from the available information.

2. Does FNL Contribute to the Welfare of the Non-Profit Groups?

The real question is, "What contributions does FNL really make to the Town or its non-profit groups? If it makes contributions of only about \$6,000 per year, then over the last 20 years, contrary to the claims by some council members, it has contributed no more than about \$120,000.¹² On the other hand, if it has kept a substantial portion of the sales for its own use, it has padded its profits by more than \$200,000 over the same period (this conclusion is reached by Assuming that the Pro Forma information on the revenue raised through beer tips and by selling "glowing" necklaces and popcorn is correct). **It is then reasonable to deduce that the non-profits have contributed more to the FNL/Chamber than the other way around.**

There are many who believe that all of the money, so raised, should be returned to the non-profit groups. After all, they claim, the FNL neither pays all of the Town's "marginal" expenses nor does it "rent" the Town Green. After all:

- The High School Band and or Herndon Boosters to set up their tent and provide the volunteers to sell popcorns at the events. The volunteers do all of work. The FNL only "permits" them to do so.
- Similarly, FNL "permits" those attending the events to give tips for defraying the costs of the All Night Graduation and After Prom parties for high school graduates. Volunteers from the Optimist Club and parents do all of the work; some even provide the food.
- In the same vein, volunteers from several PTAs and PTOs raise all of the money by buying and selling Glow Necklaces.

¹² This calculation does not take into account the net costs imposed by the FNL on the Town.

For these reasons, they contend that the claims of charitable contributions on the part of the FNL are, at best, disingenuous. Many believe that the Town should assert its sovereign authority over these non-profit sales and require the FNL to return all of the money to the participating non-profits.¹³

E. ERRONEOUS ESTIMATES OF THE COSTS OF TOWN'S IN-KIND CONTRIBUTIONS TO THE FNL

1. Town's In-kind Contributions to FNL

The Town is a major sponsor and contributes many in-kind resources, including the following:

- **Use of Municipal Center**
 - The Outdoor Stage (behind the HMC) for band performances
 - The Main Lobby for holding FNL sponsorship parties
 - Electrical Outlets and Electricity
 - HMC Parking Lot for placing porta-johns

- **The Town Green** – A large open space between the Municipal Center and the Library for people to enjoy food, beverages and music, and for FNL to set up vendor sales tents and sponsor parties.

- **Town Streets and Parking Lots** for Town and Out-Of-Town concertgoers

- **Police Officers** to provide public safety

- **Public Works employees** for hoisting FNL and Sponsorship Banners, installing perimeter fences, cleaning the Town Green and surrounding areas and disposing of the refuse after FNL events, and reseeding the Town Green, if necessary.

- **Town Supplied Equipment and Town Administration:** Town resources used by the assigned police and public works employees including, but not limited to: town vehicles: town buildings; police cars (including all of the equipment in them): fuel for vehicles; support services provided to the assigned police officers; maintenance of vehicles, equipment, buildings, lawns, flower beds; disposal of FNL refuse, maintenance of parking lots and local streets (they get much greater use during FNL events); the cost of supervising staff (to select and assign the personnel, to establishing policies, monitor performance, to tally costs, to submit invoices to the Finance department, to prepare and send invoices to FNL, receive and record payments, process FNL's grant application, etc). These indirect or associated with the use of personnel are normally classified as overhead costs.

¹³ Knowledgeable sources inform us that FNL/Chamber is required to make charitable contributions to non-profit group(s) as a condition of receiving the liquor license. They contend that FNL does not necessarily give the contributions out of the goodness of their hearts. The business necessity plays a major part in the giving. FNL also receives great positive publicity for helping local non-profits raise funds that otherwise would not be available.

2. Town’s (Faulty) Method for Estimating its FNL Costs – Accounting only for Direct Personnel Costs and Fringe Benefits

During the public hearing in 2011, no councilmember questioned how the town had developed its estimates (\$24,000 to \$28,000) of FNL’s costs and whether its methods were valid. The costs of in-kind services can be divided into four categories: (1) direct labor and fringe benefit costs (of assigned personnel), (2) overhead costs associated with direct labor, (3) the “rental” cost of streets, parking areas (a garage, if and when it is built), and the Town Green, as well as (4) noise, air pollution, and other costs imposed by FNL on the Town residents.¹⁴

Of these four categories, the Town estimates the costs associated with only the first category, that is, it considers the costs of the direct labor and fringe benefits of the assigned personnel as the Town’s cost of FNL. This method, in an equation form, can be written as follows:

$$\begin{aligned} \text{FNL Costs To the Town} &= \text{No. of Hours worked} \times \text{\$/hr (salary rate)} \times (1+\text{FB}) \\ &= \text{No. of Hrs.} \times \text{\$/hr} \times (1.35) \quad \text{where, FB} = 0.35 \end{aligned}$$

Using this method, in 2012, the Town estimated the cost of FNL to be:

<i>Police Department</i>	<i>= \$ 7,946.00</i>
<i>DPW</i>	<i>= <u>\$16,305.80</u></i>
<i>Total</i>	<i>= <u>\$25,481.80</u></i>

Similarly, the Town has estimated that FNL costs in 2011 and 2013 were equal to \$24,368 and \$28,425 respectively. FNL’s share of the costs would have been equal to \$12,184, \$12,241, and \$14,212, in 2011, 2012 and 2013 respectively, if FNL had agreed to pay 50% of the costs. By setting their contribution at a maximum of \$10,000 per year, the 2011 town council (particularly councilmembers Merkel, Olem and Wolf) saved FNL an average of about \$2,900 per year over the three-year period. However, the savings are much larger, because the Town should have included the following costs in its calculations.

a. Accounting for the Town’s Overhead Costs

As discussed in the preceding section, the Town not only pays Police Officers their salaries, but also provides them with, among other things, police vehicles and all associated equipment, the uniforms, guns, crowd control equipment, communications equipment, and the training to help them achieve their professional certifications. In addition, Police Officers cannot possibly do their jobs without the help of their “operations” and “support” sections and without the assistance provided by their supervisors and services provided by the Finance

¹⁴ These costs must be contrasted with the benefits of FNL that include the additional sales (of food, drinks, etc.) and, what some call, a positive image of the Town.

Department and the Town's other Administrative offices.

Similarly, the employees from Building Maintenance, Ground Maintenance, Street Maintenance, Refuse & Recycling and General Services departments who provide services to the FNL could not possibly do their jobs without the use of Town vehicles and without receiving the help from their direct supervisors, the upper management of the DPW and the Town's Administrative staff.

Using the information from the 2012 Adopted Budget, the author of this article calculated the following rates in order to approximate the overhead costs:

Overhead rate for Police Officers	= 1.07
Overhead rate for DPW Personnel ¹⁵	= 1.49 to 1.68

If we use the lower value of 1.49 for the DPW overhead rate, the 2012 costs of providing police and DPW personnel to FNL would amount to:

Costs of the Police Officers = \$7,946 x (1+1.07)	= \$ 7,946 x 2.07	= \$16,448
Costs of the DPW Personnel = \$11,027 ¹⁶ x (1+1.49)	= \$11,027 x 2.49	= \$27,457
Total		= \$43,905

This figure of \$43,905 is the low-end of the estimates of the Town's costs of FNL events, because it does not include the following two types of costs.

b. Accounting for Rental Costs of Town Facilities

The figure of \$43,905 does not include the "rental" costs of (1) the Town Green, (2) municipal parking areas, and (3) street parking. If the town were to build a parking garage, for instance, the town would incur tens of million dollars in construction costs, but FNL patrons will get to use it for free under the current arrangement. The town could estimate the rental costs by examining the costs of similar private facilities (The Nissan Pavilion in Manassas, for example). Even a nominal charge of \$2,000 (or, about \$2/attendee) for the Town Green would bring in additional revenue of \$32,000 per year. The parking areas have a considerable

¹⁵ This rate is applicable only to labor provided by an "average" person from the Building Maintenance, Green Maintenance, Street Maintenance, and Refuse Collection and Disposal sections of the DPW. The rate does not account for major repairs to buildings and equipment and the repaving of the streets.

¹⁶ Since the estimated DPW overhead rate applies only to the labor from the building, ground and street maintenance sections. One needs to identify the corresponding costs to make the correct estimates. The 2012 data supplied by the Town shows that the Town spent \$11,027 for buildings, ground & street maintenance.

value as well. A parking rate of \$0.5/hour (or, \$2 per concert/car), if it can be implemented, should bring in another \$10,000 assuming that 66% of concert goers come by car. Thus, the hidden costs of the Town Green and parking areas is about \$42,000 according to this calculation and is equal to another benefit for FNL and its patrons,

c. Accounting For The Cost Of Noise Pollution

FNL generates two kinds of pollution – air pollution by vehicles coming into the town and the noise pollution from concert bands. The costs of the noise pollution include: (1) reduction in the value of nearby properties, (2) increase in the costs of (soundproof) windows and doors, (3) inability of residents to use porches and decks during the summer months, and (4) the cost of not staying at home on Friday Nights and spending their money outside the Town.

In summary, depending on which costs are included in the estimate, the Town’s cost of FNL is likely to vary between \$50,000 and \$90,000. Accordingly, while FNL pays the Town about \$10,000 every year, the Town incurs indirect losses of between \$40,000 and \$80,000.¹⁷

F. QUESTIONABLE CLAIMS ABOUT FNL’S CONTRIBUTIONS OF SIGNIFICANT ECONOMIC DEVELOPMENT

The Town presumably benefits by attracting a large number of people from the surrounding communities. Over time, the non-Herndon crowd at FNL has grown, because the people have become aware of the Town and FNL. They come every Friday during spring and summer, sometimes before the concerts to eat, drink and be merry. Many town residents (by FNL’s count 33% of the total) and their families join the crowd as well. For the participants, it is a fun atmosphere, as it should be. The question is who benefits from this apparently welcoming atmosphere?

The Chamber - The Sole Beer Vendor

The Chamber keeps close tabs on “beer” sales. Volunteers, primarily from the Optimists Club, manage the booth; therefore, the Chamber does not incur any personnel cost. No commercial establishment is permitted to sell beer or wine at the premises, because beer sales generate the largest amount of profit. According to those familiar with this business, a glass/mug of beer is likely to sell for \$5.00, but its cost is less than \$0.60. In some sense, those buying beer (Residents of Herndon and the Surrounding Areas) contribute to FNL’s profits for the privilege

¹⁷ According to a well-established theory of equitable allocation, the Chamber should pay 100% of the Town’s costs plus 50% of the resulting profits.

of enjoying the music and the concert atmosphere. The Chamber though takes all of the profits from beer sales and uses it to run its operations. *Very little, if anything, comes back to the Town. And, as discussed before, the Town ends up footing most of the bill.*

Food Vendors

Hot and spicy foods generate beer sales; therefore, the presence of food vendors increases the Chamber's profits. The Chamber should treat them well, but it hardly considers them as partners in this endeavor. In fact, it extracts every penny out of them for its own benefit. It requires them to (1) sell food at discounted prices to FNL sponsors and volunteers and (2) pay a fee for setting up tents and selling their products. In 2014, each of the full-time vendors was required to pay a fee of \$4,000. FNL charges this fee whether or not some of the events get rained out. This means, the vendors have to throw out food prepared in advance of a concert, if it is cancelled due to rain. In comparison, under the policy negotiated in 2011, FNL reimburses the Town \$7,500, if 12 or fewer concerts take place cancellations (for any reasons). Otherwise, it pays the Town \$10,000 per year. *FNL does not extend such benefits to its vendors.*

1. Subsidizing of FNL Operations by Food Vendors

Over the years, many vendors have come and gone.¹⁸ They have generally found that, except for receiving publicity, free advertising (in FNL's brochures and promotional cards), it is really not worth the effort to sell food and other products at the FNL events. Food vendors deeply resent the discount prices at which they have to sell food to FNL sponsors and volunteers.

Table 4 shows typical losses suffered by participating restaurants as a result of the discounts given to sponsors of FNL events. According to the data available on FNL's website, a company buying sponsorship of \$20,000, receives coupons worth \$9,000 for free beer and \$2,400 for discounted food. The cost of free beer is only \$900; consequently, the Chamber suffers a relatively minor loss of revenue. In contrast, food vendors incur significant losses because they are required to sell food at 50% discounts by their contracts with FNL. In the example above, food vendors would lose \$2,400 as a result of the discounts.

The food discounts can also be viewed in an entirely different manner. They lower the cost of sponsorships on the one hand and entice volunteers to provide their time free of charge to the FNL. Thus, while food vendors subsidize FNL's operations, FNL takes the credit for contributing to the Herndon community. The benefits of highly subsidized Town facilities and personnel, on the other hand, go mainly to FNL and the Chamber.

¹⁸ Hard Times Café, Euro Bistro, and O'Sullivan's are some of the restaurants that have serviced FNL in the past.

2. Estimates of Increases in Restaurant Sales

The following paragraphs represent a summary of the discussions with owners/operators of restaurants that set up booths during FNL events or that have been affected indirectly by FNL crowds. They describe the effect of the FNL on the restaurants' sales and profits and thereby give some sense of FNL's contribution to the Town's economic well being.

Jimmy's Old Tavern: The Tavern's sales at the events average about \$1,700 per week, or about \$24,000 per year. Of this amount, it has to pay \$250 for the "right to sell", and \$700 for groceries. In addition, it has to pay its staff (and a cook) that is hired specifically for each event. Jimmy Cirrito, the owner, claims that by the time everyone gets paid, he is lucky to earn a few dollars. He complained that he has to sell hamburgers at a steep discount, because (1) he cannot sell them for \$10 (the price of hamburger at the Tavern) and (2) FNL volunteers buy the food at half the advertised price.¹⁹

He estimated at he loses about \$200 per event due to the discounts given to FNL sponsors and other volunteers.

Asked why he still participates in the FNL, he states that FNL gives him access to 1,000 or so people every Friday. They have now come to know Jimmy's Tavern and identify it with Herndon.

When asked about the increase in sales at the Tavern on Fridays, Jimmy guessed that 50 more people come in for happy hour before a concert and 80-100 people come in after the close of each FNL event. He estimated that these "new" patrons generate additional sales of about \$43,000 per year. He stated that he earns a small profit on these sales, because he does not have to sell food at a discount and he does not have to hire any additional staff. These sales though amount to only about 2% of his yearly revenue. He promotes his business constantly throughout the year and considers FNL just another promotional opportunity. He claims that before O'Sullivan's (an Irish Pub) opened across the street in 2010, he used to get twice as many patrons before and after the events. People used to stand and wait outside his tavern. All the lines are gone now, because people not go to O'Sullivan's.

JJ Deli (JJs): JJs, a small family owned deli located in the Herndon Centennial Golf Course's club house, offers, among other things, beef brisket, pork sandwich, and bbq pork. Since, 1997 it has developed a reputation for tasty barbeque sandwiches. JJs share the food stand with TurCuisine – a Turkish restaurant in the Worldgate complex, each serving 8 FNL events.

JJs is different in that the evening hours of FNL events do not conflict with its operations at the golf course. As a result, the owners do not have to hire any additional staff for the FNL events and are able to keep the proceeds of the sales within the family. For him,

¹⁹ FNL attracts volunteers with the lure of, among other things, cheap food and free beer.

FNL is mostly a labor of love. They have to sell a lot of sandwiches to break even. The FNL sales add about 3% to his yearly revenue, but it is a lot of hard work. The sales average about \$1,500 for each show or about \$12,000 per year. He does earn a small profit, or, as he puts it, "I make good hourly salary" for my work. Like Jimmy's, JJs also complained about the loss of significant profits due to mandatory food discounts for FNL volunteers.

O'Sullivan's: This restaurant/bar started business in Herndon in 2010 and needed all the publicity it could get to get started. Therefore, it agreed to serve hamburgers and pies every other week at FNL during 2010 and 2011 seasons. O'Sullivan's earned little or no profit on the FNL sales for a variety of reasons, including:

- They were not in the catering business; therefore, they had to borrow food-making equipment from others at great costs.
- They had to hire 3 or 4 people for about 4 hours every evening.
- They lost considerable revenue, because they were required to sell food at half the advertised prices to FNL sponsors and volunteers.
- Like others vendors, they had to pay a \$250 fee to the FNL for each event.

O'Sullivan's also suffered losses for another reason. According to their contract, FNL could cancel any event as late as 4 pm during the day. If FNL cancelled an event late in the day, the pies that had been prepared in anticipation of the concert had to be either given free to the restaurant's evening patrons or thrown away.

Notwithstanding the cancellations, FNL has increased O'Sullivan's annual sales by 2 or 3 percent. Many patrons visit O'Sullivan's before and after each FNL event, and, more than make up the losses the restaurant suffers when of their regular customers stay away from downtown Herndon on Fridays due to a lack of parking. Overall though, O'Sullivan's earn about \$1,500 extra in sales for each FNL event. **Thus, on an annual basis, FNL contributes about \$24,000 to O'Sullivan's sales.**

Ice House Café: FNL events have a negative effect on this small iconic restaurant. The manager estimated that, on average, at least two of their Friday evening customers cancel their reservations due to the lack of parking. Many cancel their reservations after searching for parking for extended periods. Thus, on average, they lose about \$1,600 in sales every year due to FNL events. The potential loss of additional customers is of some concern to the restaurant.

Mediterranean Breeze: This restaurant is located on Station Street (near the Town Green). Over time, it has experienced increased sales for two reasons. First, many concert goers order pizza from the restaurant during the events. Second, many people come to the restaurant after FNL events to drink and eat. The restaurant hires an extra bartender in the evening to serve extra customers every Friday during the concert season. The manager estimated that FNL contributes between \$24,000 and \$32,000 in the restaurant's sales every year.

Dominos: This well-known pizza vendor is located half a block from Jimmy's on Elden street. The new manager, based on a limited experience, asserted that Dominos sells pizza at a deep discount and does not make any money at the events. When asked to explain the reason for its participation, the manager stated that the company's management believes that FNL gives them some additional publicity.

Taken together, FNL has increased the sales of these restaurants by about \$120,000 per year. This money, however, amounts to, at best, 3% of their annual sales. The extra sales might give them a sense of greater financial security and generate some goodwill, but ultimately, they do not materially affect their profits. The effect of the increased sales is minimal on the economic well being of town residents, because:

- The sales do not generate much tax revenue for the town
- many of owners, managers, and employees do not live in Herndon; it is reasonable to assume that they spend their earnings outside Herndon.
- The chamber takes the profits from beer sales and uses it for its own purposes. Very little, if any, is spent in Herndon.

Notwithstanding these limitations, FNL does bring relatively large crowds from the surrounding jurisdictions, helps some of the non-profit groups to raise some money, provide a sense of community to those participating in the events and give the town some publicity. At the end of the day, though, it does not improve the economic well being of the average resident in any meaningful way.

Most important of all, the FNL is structured to raise significant amounts of profits for the Chamber of Commerce through beer sales, through subsidized sponsorship sales and sharing for profits generated by volunteers of different non-profit groups, through fees and discounts given by restaurants and through almost free use of Town facilities and personnel. FNL's main objective is to make money for the Chamber and it does a very good job of that. All of its policies and practices are designed to accomplish this goal.

Thus, almost everyone, except the Town, benefits from the FNL events. The Town and by implication, most of its residents, though, bear losses of at least \$40,000 every year by providing various in-kind services to the FNL. The estimate of \$40,000 does not include the "rental" costs of the Town Green and various municipal parking areas, and the costs of noise generated by the FNL bands and its patrons and cost of traffic jams. If the latter costs are included in the estimates, the Town's losses would increase by at least another \$40,000 or so.

It can be safely asserted that the residents of Herndon contribute more to the economic welfare of FNL and the Dulles Regional Chamber of Commerce than the other way around.

