

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Regular Meeting
April 12, 2022
7:00 p.m.

Town Council: Present—Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Donna McDonald; Diane Harrison; Grant Mazzarino; Kara Rodriguez.

Staff: Present--Keith Dalton, Town Manager; Christy Dunkle, Community Development Director; Cynthia Poulin, Treasurer; Paul Culp, Town Clerk; Chief Neal White, Berryville Police Department

Press: Mickey Powell, *The Winchester Star*

Also present: Matt Bass, Clarke County Board of Supervisors.

1. Call to Order

Mayor Arnold called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

3. Approval of Agenda

Recorder Gibson moved to approve the agenda as presented. The motion passed by unanimous voice vote.

4. Presentations/Awards/Recognitions

Ms. Dunkle noted that the Arbor Day Foundation requires an annual application for the Town's Tree City USA designation to continue, and that the Town's Arbor Day celebration would occur at the Clarke County Farmers' Market on May 7. She then read the **attached** Arbor Day resolution aloud.

Recorder Gibson moved that the Town of Berryville adopt the attached proclamation for Arbor Day 2022. The resolution passed by unanimous voice vote.

5. Public Hearings

Proposed Tax Rates for Tax Year Beginning January 1, 2022

Ms. Poulin said rates will remain unchanged, and Mayor Arnold asked her to read the **attached** ordinance setting tax levies for the year 2022. Mr. Dalton added that this year would be the last for 70 percent relief under the Personal Property Tax Relief Act, noting that few if any other jurisdictions had remained at that level for this long.

Mayor Arnold called the public hearing to order at 7:08 p.m. and in the absence of any comments closed the hearing at 7:08 p.m.

6. Discussion of Public Hearing Items

The Council engaged in no further discussion of the matter.

Recorder Gibson moved that the Council of the Town of Berryville adopt the **attached resolution providing for the implementation of the 2004-2005 changes to the Personal Property Tax Relief Act of 1998 for the tax year 2022. The motion passed by unanimous voice vote.**

Recorder Gibson moved that the Council of the Town of Berryville adopt the **attached ordinance setting the tax levies for tax year 2022 per the Code of the Town of Berryville, Chapter 16—Taxation, Article 1—In General, Section 16-1 Annual Tax Assessments; valuation of property. The motion passed by unanimous voice vote.**

7. Citizens' Forum

Bryan Bielinski, a resident of Montgomery Court, said he works from home and is concerned about the amount of heavy truck traffic caused by drivers who erroneously believe they can use the street as a cut-through. He suggested a no-outlet sign. He also suggested a four-way stop at Tyson and Dunlap Drives. He also expressed concern about the possible effects on his property of heavy rains on construction sites at elevations higher than his property. He said he had lived in Berryville for a few months and was very pleased with the Town.

Mayor Arnold said the Streets and Utilities Committee would address Mr. Bielinski's concerns.

Recorder Gibson and Mr. Mazzarino concurred with Mr. Bielinski's opinion of the truck traffic on Montgomery Court.

8. Consent Agenda

The consent agenda comprised the minutes of the March 8 Town Council regular meeting, the March 9 Town Council work session, the March 14 Town Council special meeting, and the March 28 meeting of the Streets and Utilities Committee.

Ms. McDonald moved to adopt the consent agenda as presented. The motion passed by unanimous voice vote.

9. Unfinished Business

Utility Projects Funded Under the American Rescue Plan of 2021

Mr. Dalton reminded the Council of impending water and sewer projects on Josephine Street, drainage improvements and repaving on Virginia Avenue, and extensive water/sewer projects and repaving on North Church, Bundy, North Buckmarsh, and Osborne Streets. He said he would like to have staff complete the plans and put the projects out to bid. He said he was still obtaining information from the engineer and working on obtaining easements. He said the size of the project would necessitate Council approval of the invitation to bid.

Ms. McDonald moved that the Council of the Town of Berryville direct the Town Manager to 1) finalize the plans and bid documents for utility and drainage work on North Church Street, North Buckmarsh Street, Osborne Street, Josephine Street, and Virginia Avenue and 2) issue the associated IFB as soon as said plans and bid documents are finalized. The motion passed by unanimous voice vote.

10. New Business

None.

11. Council Member Reports

Mayor Arnold said he had recently attended an event at Barns of Rose Hill for new Berryville residents, that Barns planned to have similar events quarterly, and that it would be a good idea for the Town to be represented there with Council members in attendance.

Ms. Rodriguez of Ward 4 said the committee appointed for planning the Town's 225th anniversary celebration had been meeting every two weeks and had decided on a series of events throughout 2023, possibly including a benefit concert, parade, and block party. She said the committee would seek financial support from local businesses.

The other Council members had nothing to report.

12. Staff Reports

Public Works

Mr. Dalton said the department is functioning well and that spring street cleaning is underway, though the sweeper is in need of parts. He said the Virginia Department of Transportation had been

helpful. He said meter replacement was proceeding, that work in Rockcroft subdivision was nearing completion, and that upgrades to the southeast sewer pump station should be finished in six weeks.

Public Utilities

Mr. Dalton said the FY23 budget for the department reflects the beginning phases of the planned expansion of the water plant.

Police

Nothing was added to the written report.

Community Development

Ms. Dunkle updated the Council on construction projects and on the activities of the various boards associated with planning, with particular attention to the Planning Commission's hearing on March 22 at 7:00 to address the blight abatement matters discussed in previous Council meetings, and the further discussion of that topic to occur at the Planning Commission's April 26 meeting.

Administration and Finance

Ms. Harrison asked Ms. Poulin whether the new budget provided adequately for recycling, and Ms. Poulin said it called for an increase.

There was a brief discussion of the fund match from the state for arts projects.

Town Manager

Mr. Dalton briefly updated the Council on developments related to the blighted properties discussed in previous meetings, explaining that the Planning Commission had determined in March that all of the properties under review were in an area listed on the National Register of Historic Places, a finding that required the attention of the Architectural Review Board. He said the Planning Commission is expected to make its final determinations, according to the Town Code, in its April 26 meeting and forward them to the Council.

Ms. Rodriguez and Mr. Dalton discussed the ARB's request that some of the properties be returned to a suitable condition by the end of 2022 and others by the end of 2023, and Mr. Dalton explained that those on the tighter deadline were deemed more likely to collapse if not given prompt attention.

13. Committee Updates

Budget and Finance

Recorder Gibson moved that the Council of the Town of Berryville set a public hearing on the Fiscal Year 2023 Budget for the May 10, 2022 regular meeting, with the hearing to begin at 7:00 p.m. or as soon thereafter as the matter may be heard. The motion passed by unanimous voice vote.

Community Development

Ms. Rodriguez and Ms. Harrison determined that the committee would not need to meet in April.

Personnel

Mayor Arnold said the committee recommended reappointments that the Council then acted on as follows:

Recorder Gibson moved that the Council of the Town of Berryville reappoint Diane Harrison to the Berryville Area Development Authority for a term of three years which expires on June 30, 2025. The motion passed by unanimous voice vote.

Recorder Gibson moved that the Council of the Town of Berryville reappoint Allen Kitselman to the Berryville Area Development Authority for a term of three years which expires on June 30, 2025. The motion passed by unanimous voice vote.

Recorder Gibson moved that the Council of the Town of Berryville recommend that the Clarke County Circuit Court reappoint Willie Jay Briggs to the Board of Zoning Appeals for a five-year term that ends on May 9, 2027. The motion passed by unanimous voice vote.

Recorder Gibson moved that the Council of the Town of Berryville recommend that the Clarke County Circuit Court reappoint Gwendolyn Malone to the Board of Zoning Appeals for a five-year term which expires on June 12, 2027. The motion passed by unanimous voice vote.

Recorder Gibson moved that the Council of the Town of Berryville recommend that the Clarke County Circuit Court reappoint Allan McWilliams to the Board of Zoning Appeals for a five-year term which expires on June 12, 2027. The motion passed by unanimous voice vote.

Public Safety

Ms. McDonald said the committee would meet on April 25 at 3:00 p.m.

Streets and Utilities

Ms. Harrison said the committee had met in March to discuss traffic matters, Virginia Avenue projects, and problems associated with children playing in the street. She said the committee would not need to meet in April.

14. Closed Session

No closed session occurred.

15. Other

Ms. McDonald spoke about problems associated with children playing in the street, saying that more parental control is needed, and perhaps more police intervention. Mr. Dalton clarified that the Streets and Utilities Committee had discussed the use of particular equipment, such as basketball goals, in the street, and had decided not to take action immediately. He asked Ms. McDonald to notify staff of particular hazards, which he said the police could address.

16. Adjourn

The Council adjourned by consensus on a motion by Recorder Gibson at 7:44 p.m.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk



TREE CITY USA
An Arbor Day Foundation Program

Official Proclamation

- Whereas, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and
- Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and
- Whereas, Arbor Day is now observed throughout the nation and the world; and
- Whereas, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and
- Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products; and
- Whereas, trees in our town increase property values, enhance the economic vitality of business areas, and beautify our community; and
- Whereas trees, wherever they are planted, are a source of joy and spiritual renewal.

Now, therefore be it resolved that the Council of the Town of Berryville does hereby proclaim May 7, 2022 as Arbor Day in the Town of Berryville.

Town Council urges all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands and urge all citizens to plant trees to promote the well-being of this and future generations.

By order of the Town Council this twelfth day of April, 2022.

Harry Lee Arnold, Jr., Mayor

Erecka L. Gibson, Recorder

TOWN COUNCIL
MOTION FOR APPROVAL: RESOLUTION TO PROVIDE FOR THE
IMPLEMENTATION OF THE 2004-2005 CHANGES TO THE PERSONAL
PROPERTY TAX RELIEF ACT OF 1998 FOR THE TAX YEAR 2022

Date: April 12, 2022

Motion By:

Second By:

I hereby move that the Council of the Town of Berryville adopt the attached Resolution providing for the implementation of the 2004-2005 changes to the Personal Property Tax Relief Act of 1998 for the tax year 2022.

VOTE:

Aye:

Nay:

Absent/Abstain:

ATTEST


Erecka L. Gibson, Recorder

Town of Berryville

Resolution

**To Provide for the Implementation of the 2004-2005
Changes to the Personal Property Tax Relief Act of 1998
For the Tax Year 2022**

WHEREAS, the Personal Property Tax Relief Act of 1998, Va. Code § 58.1-3523 *et seq.* ("PPTRA"), has been substantially modified by the enactment of Chapter 1 of the Acts of Assembly, 2004 Special Session I (Senate Bill 505) and the provisions of Item 503 of Chapter 951 of the 2005 Acts of Assembly, being the 2005 revisions to the 2004-2006 Appropriations Act ("the 2005 Appropriations Act"); and

WHEREAS, the legislative enactments require the Town to take affirmative steps to provide for the computation and allocation of relief provided pursuant to the PPTRA as revised; and

WHEREAS, these legislative enactments provide for the Town of a fixed sum to be used exclusively for the provision of tax relief to owners of qualifying personal use vehicles that are subject to local personal property tax on such vehicles.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Berryville in accordance with the requirements set forth in Va. Code § 58.1-3524(C) (2) and § 58.1-3912(E), as amended by Chapter 1 of the 2005 Acts of Assembly (2004 Special Session 1) and as set forth in Item 503 of the 2005 Appropriations Act, that any qualifying vehicle having situs within the Town during the tax year which begins on January 1, 2022, shall receive personal property tax relief in the following manner:

1. Personal use vehicles valued at less than \$1,000 will be eligible of 100 percentage of tax relief set by the Town Council during its annual budget deliberations.
2. Personal use vehicles valued between \$1,001 and \$20,000 will be eligible for 70 percentage of tax relief set by the Town Council during its annual budget deliberations.
3. Personal use vehicles valued at \$20,001 or more will be eligible for 70 percentage of tax relief on the first \$20,000 of assessed value set by the Town Council during its annual budget deliberations.
4. All other vehicles which do not meet the definition of "qualifying" (business use vehicles, farm use vehicles, motor homes, etc.) will not be eligible for personal property tax relief under PPTRA.

PASSED THIS 12th DAY OF APRIL 2022.

Harry L. Arnold, Jr., Mayor

ATTEST:

Erecka L. Gibson, Recorder

TOWN OF BERRYVILLE
TOWN COUNCIL
AN ORDINANCE SETTING TAX LEVIES FOR TAX YEAR 2022

Date: April 12, 2022

Motion By:

Second By:

BE IT ORDAINED, by the Council of the Town of Berryville, Virginia, that for the tax year 2022 there is hereby levied:

(1) A tax of \$.20 per \$100 assessed valuation on all real estate located within the Town of Berryville, such levy being also applicable to the real estate and tangible personal property of public service corporations;

(2) A tax rate of \$1.25 per \$100 assessed valuation on all taxable, tangible personal property, except machinery and tools, located in the Town of Berryville;

(3) A tax rate of \$1.30 per \$100 assessed valuation on tangible machinery and tools located in the Town of Berryville.

All tax levies shall be due and payable pursuant to the Code of the Town of Berryville, Chapter 16, Article I, Section 16-3.

VOTE:

Aye:

Nay:

Absent:

SIGNED: _____ Date: April 12, 2022
Harry Lee Arnold, Jr. Mayor

ATTEST: _____ Date: April 12, 2022
Erecka L. Gibson, Recorder

BERRYVILLE TOWN COUNCIL

MOTION TO SET PUBLIC HEARING FOR MAY 10, 2022 ON
PROPOSED FY 2023 BUDGET

Date: April 12, 2022

Motion By:

Second By:

I move that the Council of the Town of Berryville set a public hearing for its May 10, 2022 meeting to hear public comment on the proposed FY 2023 budget.

VOTE:

Aye:

Nay:

Absent:

ATTEST:



Erecka L. Gibson, Recorder

**BERRYVILLE TOWN COUNCIL
PUBLIC HEARING NOTICE**

The Berryville Town Council will hold the following public hearing at 7:00 p.m., or as soon after as this matter may be heard, on **Tuesday, May 10, 2022**, to consider the following:

Proposed Fiscal Year 2022-2023 Budget as follows:

<u>Resources and Revenues</u>	AMENDED FY 21-22	REQUESTED FY 22-23
GENERAL FUND		
Fund Balance	\$ 152,000.00	\$ 40,000.00
Revenue from Local Sources	\$ 3,219,200.00	\$ 3,278,200.00
Revenue from State Sources	\$ 952,382.00	\$ 3,212,815.00
Revenue from Other Sources	\$ 1,000.00	\$ 1,000.00
Total	\$ 4,172,582.00	\$ 6,492,015.00
WATER FUND		
Fund Balance	\$ 550,500.00	\$.00
Revenue from Local Sources	\$ 981,125.00	\$ 1,076,000.00
Availability Fees	\$ 346,000.00	\$ 745,000.00
Total	\$ 1,877,625.00	\$ 1,821,000.00
SEWER FUND		
Fund Balance	\$ 0.00	\$ 0.00
Revenue from Local Sources	\$ 1,840,000.00	\$ 1,735,500.00
Availability Fees	\$ 371,625.00	\$ 850,000.00
Total	\$ 2,211,625.00	\$ 2,585,500.00
TOTAL RESOURCES AND REVENUES	\$ 8,261,832.00	\$ 10,898,515.00

Expenses and Reserves

GENERAL FUND		
Maintenance and Operational	\$ 3,682,076.00	\$ 5,853,203.00
Debt Service	\$ 121,000.00	\$ 121,500.00
Capital Reserves and Expenses	\$ 258,962.00	\$ 341,715.91
Contingency	\$ 110,544.00	\$ 175,596.09
Total	\$ 4,172,582.00	\$ 6,492,015.00
WATER FUND		
Maintenance and Operational	\$ 828,884.00	\$ 1,204,551.00
Debt Service	0.00	0.00
Capital Reserves and Expenses	\$ 1,023,874.48	\$ 580,312.47
Contingency	\$ 24,866.52	\$ 36,136.53

Total	\$	1,877,625.00	\$	1,821,000.00
SEWER FUND				
Maintenance and Operational	\$	1,274,730.00	\$	1,157,080.00
Debt Service	\$	470,000.00	\$	470,000.00
Capital Reserves and Expenses	\$	428,653.10	\$	923,707.60
Contingency	\$	38,241.90	\$	34,712.40
Total	\$	2,211,625.00	\$	2,585,500.00
TOTAL EXPENSES AND RESERVES				
	\$	8,261,832.00	\$	10,898,515.00

Copies of materials may be examined at www.berryvilleva.gov. This information can also be obtained by calling Director of Finance/Treasurer Cindy Poulin at the Town Business Office at (540) 955-1099 and arranging the best means of providing you with the information in question.

The Town of Berryville does not discriminate against disabled people in admission or access to its programs and activities. Accommodations will be made for disabled people upon prior request.

By order of the Town Council
 Keith R. Dalton, Town Manager

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Special Meeting
April 19, 2022
5:00 p.m.

Town Council: Present—Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Diane Harrison; Grant Mazzarino. Absent—Donna McDonald; Kara Rodriguez.

Staff: Present--Keith Dalton, Town Manager

1. Call to Order

Mayor Arnold called the meeting to order at 5:00 p.m.

2. Approval of Agenda

Recorder Gibson moved to approve the agenda. The motion passed by unanimous voice vote.

3. Unfinished Business

Settlement Agreement between MDC Berryville, LLC; Clarke County; and the Town of Berryville Addressing Tax Overpayment Due to an Error in Property Evaluation

Mr. Dalton said the Council had reviewed this matter on March 14, 2022 and had no concerns about the agreement, and that the agreement had been reviewed by legal counsel and approved by the Clarke County Board of Supervisors.

Ms. Harrison moved that the Council of the Town of Berryville approve the **attached Settlement Agreement and Release, direct the Town Manager to execute the document on behalf of the Town Council, and authorize payment required by the agreement from the General Fund Contingency line item. The motion passed by unanimous voice vote.**

4. New Business

Ms. Harrison said she intended to seek reelection.

5. Other

No other business came before the Council.

6. Adjourn

The Council adjourned at 5:03 p.m. by unanimous voice vote on a motion by Recorder Gibson.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (the "Agreement") is entered into this ____ day of _____ 2022, by and between MDC Berryville, LLC ("MDC"), County of Clarke, Virginia (the "County"), and Town of Berryville, Virginia (the "Town") (MDC, the County, and the Town may be referred to individually as a "Party" and collectively as the "Parties.")

WHEREAS, MDC owns the improved real estate located at 430 Mosby Boulevard, Berryville, Virginia (Parcel No. 14 5 251B) (the "Property"); and

WHEREAS, the County and the Town assessed real estate taxes to MDC for the County and the Town's 2020 and 2021 tax years based on assessments that MDC contends are erroneous and at greater than the Property's fair market value; and

WHEREAS, the County and the Town have levied, but have not yet billed, real estate taxes to MDC for the County and the Town's 2022 tax year based on an assessment that MDC contends is erroneous and at greater than the Property's fair market value; and

WHEREAS, MDC contends that, if not corrected, the County and the Town will carry the erroneous assessment forward to be their assessments of the Property for their respective 2023 tax years; and

WHEREAS, MDC filed an application for correction of erroneous assessment, styled *MDC Berryville LLC v. County of Clarke, Virginia, and Town of Berryville, Virginia*, Case No. CL22000003-00 (the "Action"), in the Circuit Court of Clarke County (the "Court") requesting (i) correction of the County and the Town's assessments of the Property for their respective 2020 and 2021 tax years, (ii) correction of the County and the Town's assessments of the Property for their respective 2022 tax years or, alternatively, an exoneration of the payment of excess, erroneously assessed taxes for the County and the Town's respective 2022 tax years, (iii) refunds of the excess taxes MDC paid to the County and the Town due to the erroneous 2020 and 2021 assessments, plus interest as required by Virginia law and the County and the Town's ordinances, and (iv) a declaratory judgment that the County and the Town should assess the Property at its fair market value, in an amount no greater than \$16,700,000, for their respective 2023 tax years; and

WHEREAS, the MDC, the County, and the Town have agreed to resolve MDC's claims set forth in the Action on the terms set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each Party irrevocably acknowledges, MDC, the County, and the Town represent, warrant, undertake, and agree as follows:

1.0 Settlement and Payment. In full and final settlement of MDC's claims asserted in the Action, the Parties agree as follows:

1.1. Assessment Corrections. The County and the Town agree to correct their respective total assessments of the Property for their 2020, 2021, and 2022 tax years to

\$16,700,000. The County and the Town further agree to assess the Property at \$16,700,000 for their respective 2023 tax years.

1.2. Real Estate Tax Refunds. The County agrees to refund the excess real estate taxes paid by MDC based on the County's 2020 supplemental assessment of the Property for the County's 2020 and 2021 tax years in the total principal amount of \$77,691.71. The Town agrees to refund the excess real estate taxes paid by MDC based on the Town's supplemental assessment of the Property for the Town's 2020 and 2021 tax years in the total principal amount of \$24,856.51. The County and the Town agree to deliver their respective payments to MDC by checks made payable to MDC and delivered to MDC's counsel (Williams Mullen, Attn. Shane L. Smith, 999 Waterside Dr, Ste 1700, Norfolk, VA 23510), no later than thirty (30) days after the County and the Town's respective governing bodies have approved this Agreement (which approval must occur no later than April 19, 2022).

1.3. 2022 Real Estate Tax Levies and Bills. The County and the Town agree to correct their assessments and levies of real estate taxes to the Property for their respective 2022 tax years to the correct tax amount based on an assessment of \$16,700,000 and the County's and the Town's respective real estate tax rates for their respective 2022 tax years. The County and the Town agree that their respective real estate tax bills to MDC for the real estate taxes due for their respective 2022 tax years will be based on their corrected real estate tax levies.

1.4. 2023 Real Estate Tax Assessments, Levies, and Bills. The County and the Town agree that their respective assessments of the Property for their respective 2023 tax years will be in the amount of \$16,700,000. The County and the Town further agree that their real estate tax levies and bills to MDC for their respective 2023 tax years will be based on assessments of the Property in the amount of \$16,700,000.

1.5. Waiver of Interest Claims. In exchange for the County and the Town's assessment corrections, real estate tax refunds, and other actions as set forth in Sections 1.1, 1.2, 1.3, and 1.4 of this Agreement, MDC agrees to waive and release all claims for interest owed to MDC on the excess real estate taxes collected by the County and the Town for their respective 2020 and 2021 tax years.

2.0 Dismissal of Action. Within five (5) business days after the execution of this Agreement by all parties, the Parties shall endorse, and MDC shall submit to the Court for entry, an Agreed Dismissal Order for the dismissal of the Action in the form attached as Exhibit A.

3.0 Releases.

3.1. MDC's Releases of the County and the Town. Effective upon payment by the County and the Town of the refunds set forth in Section 1.2 of this Agreement, MDC releases and forever discharges the County and the Town from any and all claims, demands, causes of action, or right or entitlement to relief, known or unknown, which MDC ever had, has, or may have arising from or relating to the County and/or the Town's assessments of or to the Property for the 2020-2023 tax years, excepting any assessments, levies, and/or bills of any ad valorem taxes, fees, or charges other than real estate taxes for the 2022 and/or 2023 tax years, which the

Parties understand and agree are not within the scope of this Agreement (and, for good measure, are not contemplated by the County and/or the Town).

3.2. The County and the Town's Releases of MDC. Effective upon execution of this Agreement by all the Parties, the County and the Town each release and forever discharge MDC and its predecessors, successors, assigns, and/or heirs, from any and all claims, demands, causes of action, or right or entitlement to relief, known or unknown, which the County and/or the Town ever had, have, or may have arising from or relating to their respective assessments of or to the Property for their 2020-2023 tax years, excepting any assessments, levies, and/or bills of any ad valorem taxes, fees, or charges other than real estate taxes for the 2022 and/or 2023 tax years, which the Parties understand and agree are not within the scope of this Agreement (and, for good measure, are not contemplated by the County and/or the Town).

4.0 Representations and Warranties. Each Party represents and warrants to the other Party as follows, and acknowledges that reliance upon such warranty and representation by each other Party is intended, reasonable, foreseeable, and anticipated and that each warranty and representation shall survive the execution and delivery of this Agreement:

4.1. Authority. Each Party is duly and fully authorized to enter into, execute, deliver, and perform under this Agreement. Each person signing this Agreement on behalf of any Party represents and warrants that he or she is authorized to bind the Party for whom he or she is signing this Agreement, and each such Party represents and warrants that the person executing this Agreement on its behalf is authorized to do so.

4.2. Competency. Each Party is fully competent and able to enter into, execute, deliver, and perform its obligations under this Agreement.

4.3. Good Standing. Each Party which is an entity represents and warrants that it is in good standing and authorized to transact business.

4.4. No Bankruptcy. No Party is a debtor in any bankruptcy, insolvency, or similar proceeding.

4.5. No Breach or Violation. The Parties' execution, delivery, and performance under this Agreement shall not constitute, either alone or in conjunction or combination with any other events or circumstances, a breach or violation of any other agreement, law, statute, ordinance, or regulation. The Parties are not aware of any reason why this Agreement shall not be binding and enforceable according to its terms.

4.6. Counsel and Advisors. The Parties have read this Agreement, have had the opportunity to consult with counsel and advisors of their choosing, and fully understand every term of this Agreement and the legal effect of this Agreement.

4.7. No Assignment. The Parties have not granted, assigned, pledged, hypothecated, sold, or otherwise transferred any right or claim against the other Parties, such that there are any other parties necessary fully to accomplish the terms of this Agreement.

4.8. Investigation. The Parties have had the full, complete and unfettered opportunity to investigate all facts and circumstances pertinent to this Agreement and are fully satisfied with the terms, conditions, and effect of this Agreement.

4.9. Consideration. This Agreement is executed solely for the consideration herein expressed, the sufficiency of which is expressly and irrevocably acknowledged.

4.10. No Inducement. No promise, representation, or inducement has been offered or made by any Party except as set forth in this Agreement.

5.0 Miscellaneous Provisions.

5.1. Binding Effect. Each provision and term of this Agreement shall inure to the benefit of and be binding on the Parties and each of their respective successors, heirs, personal or legal representatives, assigns, directors, officers, shareholders, agents, and/or employees.

5.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the matters set forth herein.

5.3. Modification. This Agreement, including the provisions of this paragraph, shall not be amended or modified, in whole or in part, except in writing signed by each Party.

5.4. Severability. If any provision of this Agreement is held to be unenforceable or invalid, such provision shall be fully severable and shall not affect the validity of any otherwise valid provision. In lieu thereof, there shall be added a provision that is as similar in terms to such unenforceable or invalid provision as may be possible and be enforceable and valid.

5.5. Headings. The headings to the various provisions of this Agreement are for the convenience of the Parties and are not intended, and shall not be construed, to give guidance on the proper interpretation or construction of this Agreement.

5.6. Governing Law. This Agreement shall be governed, construed and enforced under the laws of the Commonwealth of Virginia without giving effect to any conflict of laws principles.

5.7. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one agreement. This Agreement shall not be enforceable against any Party until an original or counterpart has been executed by each Party.

5.8. Drafting. Each Party has borne equal responsibility for the drafting of each provision of this Agreement, and this Agreement accurately, fully, and correctly reflects the agreement of the Parties. This Agreement shall not be construed in favor of or against any Party by virtue of his or its role in drafting this Agreement.

5.9. Further Assurances. Each Party agrees, without further consideration other than reimbursement for reasonable out-of-pocket expenses, to take such further action as is

reasonably required to accomplish the purposes of this Agreement, including but not limited to procuring and providing such resolutions, in suitable form, as may be necessary to document the authority of each corporate Party to enter into this Agreement.

5.10. Enforcement. Any action to enforce this Agreement may be brought by any Party in the Circuit Court of Clarke County, Virginia, and each Party irrevocably consents and submits to that Court's jurisdiction and to waive any objections to jurisdiction and venue in any action concerning this Agreement.

WHEREFORE, the Parties execute this Agreement to reflect and acknowledge their agreement to the terms set forth above.

[Remainder of Page Left Blank Intentionally]

MDC BERRYVILLE, LLC
By: MDC Berryville Advisors, LLC,
its Managing Member
By: Mark-Dana Corporation,
its Managing Member

By: _____
David Mark Koogler, President

STATE OF TEXAS,
CITY/COUNTY OF _____, to wit:

The foregoing instrument was duly acknowledged before me, a Notary Public in and for the city/county and state aforesaid, this ____ day of _____ 2022, by David Mark Koogler, president of Mark-Dana Corporation on behalf of MDC Berryville LLC, who

- is personally known to me
- has produced a _____ as identification before me.

Notary Public

My commission expires: _____.

Notary Registration No. _____

[Remainder of Page Left Blank Intentionally]

Approved as to form:

COUNTY OF CLARKE, VIRGINIA,

[Redacted Signature]

Robert T. Mitchell, Jr.
County Attorney

By: [Redacted Signature]

Print Name: Chris Boies

Its: Administrator

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Clarke, to wit:

The foregoing instrument was duly acknowledged before me, a Notary Public in and for the city/county and state aforesaid, this 11th day of March 2022, by Chris Boies, Administrator of the County of Clarke, Virginia, who

is personally known to me

has produced a _____ as identification before me.

[Redacted Signature]

Notary Public

My commission expires: 12/31/2022

Notary Registration No. 7794054

CATHERINE DIETZ MARSTEN
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7794054
My Commission Expires December 31, 2022

[Remainder of Page Left Blank Intentionally]

Approved as to form:

TOWN OF BERRYVILLE, VIRGINIA,

Robert T. Mitchell, Jr.
County Attorney

By: _____

Print Name: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to wit:

The foregoing instrument was duly acknowledged before me, a Notary Public in and for the city/county and state aforesaid, this ____ day of _____ 2022, by _____, _____ of the Town of Berryville, Virginia, who

is personally known to me

has produced a _____ as identification before me.

Notary Public

My commission expires: _____.

Notary Registration No. _____

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EXHIBIT A

VIRGINIA: IN THE CIRCUIT COURT OF CLARKE COUNTY

MDC BERRYVILLE LLC,

Plaintiff,

v.

Case No.: CL22000003-00

COUNTY OF CLARKE, VIRGINIA,

and

TOWN OF BERRYVILLE, VIRGINIA,

Defendants.

AGREED DISMISSAL ORDER

THIS CAUSE came upon the agreement and representation of the parties that all claims in this action have been resolved on mutually agreeable terms. The parties request that the Court dismiss this action, with prejudice, and that the Settlement Agreement and Release (filed with this Order) be incorporated into, and be made part of, this Order by reference.

UPON CONSIDERATION WHEREOF, and for good cause shown, the Court ORDERS, ADJUDGES, and DECREES that this action should be, and hereby is, DISMISSED, WITH PREJUDICE, with each party to be responsible for its own attorney's fees and costs, and that the terms of the Settlement Agreement and Release executed by the parties are hereby incorporated into, and made part of, this Order.

The Clerk is directed to place this matter among the ended causes.

ENTER this ____ day of _____ 2022

Judge

WE ASK FOR THIS:

Shane L. Smith (VSB No. 73426)
WILLIAMS MULLEN
A Professional Corporation
999 Waterside Drive, Suite 1700
Norfolk, VA 23510
Tel.: (757) 622-3366
Fax: (757) 629-0660
ssmith@williamsmullen.com
Counsel for Plaintiff

SEEN AND AGREED:

Robert T. Mitchell, Jr.
HALL, MONAHAN, ENGLE, MAHAN & MITCHELL
P.O. Box 848
Winchester, Virginia 22604
Tel.: (540) 662-3200
Fax: (540) 662-4304
rmitchell@hallmonahan.com
Counsel for Defendants

[End of Settlement Agreement and Release]

BERRYVILLE TOWN COUNCIL STREETS AND UTILITIES COMMITTEE
Berryville-Clarke County Government Center
MINUTES
April 13, 2022

A meeting of the Berryville Town Council Streets and Utilities Committee was held on Wednesday, April 13, 2022 at 10:00 a.m. in the Berryville-Clarke County Government Center, located at 101 Chalmers Court in Berryville, Virginia.

Members of the committee present: Diane Harrison, Chair; Kara Rodriguez

Staff present: Keith Dalton, Town Manager; Paul Culp, Town Clerk; Christy Dunkle, Community Development Director

Also present: Matt Youngblood of Pennoni Associates

Participating via Zoom: Michelle Harrod and John Fletcher of Duke's Root Control.

1. Call to Order

Ms. Harrison called the meeting to order at 10:00 a.m.

2. Approval of Agenda

The agenda was approved by consensus on a motion by Ms. Rodriguez.

3. Unfinished Business

American Rescue Plan Act of 2021 Projects

Mr. Dalton distributed a memorandum regarding a study, undertaken by Pennoni Associates, of sewer inflow and infiltration.

Mr. Youngblood directed the committee's attention to the multiple options elucidated in the memorandum: Plan A called for flow monitoring of the complete system at a proposed cost of \$124,400; Plan B for flow monitoring, manhole inspections, and acoustic pipeline inspections in the southern area at \$143,800; Plan C for flow monitoring, manhole inspections, and acoustic pipeline inspections in the northern area at \$168,300; and Plan D for the above services in both northern and southern areas at \$275,700, with Plan E providing for GPS coordinates to all manholes at \$16,300.

Ms. Harrod explained to the committee what could be achieved with velocity meters, and described micro-detection units for pinpointing inflow and infiltration. Mr. Dalton said the proposed plans would involve metering the County system but not performing micro-detection there.

There was a discussion of the expectations of the Department of Environmental Quality.

Ms. Harrod said delivery of data would begin as soon as it is collected rather than only at the conclusion of the project.

Ms. Harrod described acoustic inspection of pipes, and manhole inspections, which she said are an economical way to discover and address problems.

Mr. Fletcher said Duke's would identify problems, recommend corrective measures, set timetables, and help establish budgets.

There was a discussion of how long meters would be left in place, battery life, and cost.

Ms. Dunkle asked whether data discrepancies could occur if Plans B and C were implemented separately. Mr. Youngblood said yes and that Plan D was therefore recommended, with the two-way division being offered for fiscal reasons.

There was a discussion of the cost of hydraulic modeling.

There was a discussion of scheduling and timing, and of the funding of recommended corrective measures.

Ms. Harrison and Ms. Harrod discussed where and how the areas of greatest impact are discovered.

Mr. Dalton noted that the core of the system is eighty-six years old.

Ms. Rodriguez and Mr. Dalton discussed the fact that Plan D would exceed the budget. Mr. Dalton said funds earmarked under the American Rescue Plan of 2021 were insufficient, and suggested use of sewer fund reserves if the Council decides on options B, C, or D, but he said he favored Plan A. He said Plan D is excellent for asset management, but Plan A would greatly assist with inflow and infiltration discovery, after which the Public Works Department could address problems.

Mr. Dalton said it might be possible to use ARPA funds for Plan A, but that he was not sure and that he would like to consider the matter and then make a recommendation for the committee and report to the full Council after committee members respond individually. He said options other than Plan A would require full Council discussion.

4. New Business

None.

5. Other

No other business came before the committee.

6. Closed Session

None.

7. Adjournment

The meeting adjourned by consensus at 11:18 a.m.

BERRYVILLE TOWN COUNCIL PUBLIC SAFETY COMMITTEE
Berryville-Clarke County Government Center
MINUTES
April 25, 2022

A meeting of the Berryville Town Council Public Safety Committee was held on Monday, April 25, 2022 at 3:00 p.m. in the Berryville-Clarke County Government Center, located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the Committee: Chair Donna McDonald; Grant Mazzarino

Staff: Chief Neal White, Berryville Police Department; Paul Culp, Town Clerk

Media: none

1. Call to Order

Ms. McDonald called the meeting to order at 3:00 p.m.

2. Approval of Agenda

The agenda was approved by consensus on a motion by Mr. Mazzarino.

3. Unfinished Business

Police Department Update

Police Involvement in Mental Health Crises

Chief White said that so far this year the number of persons needing police assistance with mental health crises, as discussed in previous meetings, had declined from 2021 but that the system was still badly overburdened, resulting in large expenditures of officers' time on escorting and monitoring those needing treatment. He said the new administration in Richmond appeared inclined to take positive steps that would increase opportunities for local treatment without police involvement.

Ms. McDonald and Chief White briefly discussed local facilities for clients already involved in the local system.

Mr. Mazzarino said new developments are cause for optimism, but that improvement might take time. He recommended that the Town continue its advocacy of improvement, as in letters sent by the Council to state officials in recent months.

Police Department Staffing

Chief White said the two newly hired officers were doing well at the academy and were expected to graduate in late May, after which they would receive twelve weeks of field training with the department. He said the department might also have the opportunity to promote an officer to sergeant in July. He and Mrs. McDonald discussed that process.

Encouragement of Playground Use

Ms. McDonald said that recent discussions of the safety hazard of children playing the street had prompted her and Mr. Mazzarino to consider what might be done to encourage use of playgrounds. She suggested that the Town might use an insert in water/sewer bills. Chief White said the Town website might be useful to promote the idea, but cautioned against promoting safety in a manner that might increase liability in the event of a playground accident.

Mr. Mazzarino suggested brainstorming by various Council committees, and perhaps an event at Rose Hill Park in association with the 225th anniversary of the Town's founding, to be celebrated in 2023. There was a brief discussion of possible events.

Patrol Vehicles

Ms. McDonald and Chief White discussed the process and timetable for acquisition of vehicles. Chief White said the ordering process is currently subject to serious delays, but noted that the Town has been able to optimize the performance of police vehicles by judicious timing of removal and replacement.

Time Expenditure at Particular Intersections

There was a brief discussion of accident rates at particular intersections and whether patrol patterns should be adjusted accordingly. Chief White noted areas where the police presence is increased at particular times of day.

Chief White concluded the discussion by saying that the department is functioning well as the community emerges from the Covid pandemic, and that speaking engagements are increasing.

4. New Business

None.

5. Other

Ms. McDonald prompted a discussion of recent train stoppages in town, which Chief White described as a result of sidings being too short for some of the trains now running.

6. Closed Session

None.

7. Adjourn

The meeting adjourned by consensus at 3:38 p.m. on a motion by Mr. Mazzarino.