

MINUTES
BERRYVILLE TOWN COUNCIL
Tuesday, March 10, 2015
Berryville-Clarke County Government Center
Regular Meeting
7:30 p.m.

Town Council:

Present: Wilson Kirby, Mayor; Harry Lee Arnold, Jr., Recorder; Allen Kitselman; Mary Daniel; Douglas Shaffer; David Tollett

Staff: Keith Dalton, Town Manager; Christy Dunkle, Assistant Town Manager/Planner; Desiree Moreland, Assistant Town Manager/Treasurer; Neal White, Chief of Police; Ann Phillips, Town Clerk

Press: Val Van Meter, Winchester Star

1. Call to Order

Mayor Kirby called the meeting to order at 7:30 p.m.

2. Pledge of Allegiance

3. Public Hearing - ***Application for a Community Development Block Grant to support the completion of housing quality, home accessibility/repairs, and infrastructure improvements in the Josephine City Neighborhood.***

At the Mayor's request the Town Clerk read the published public hearing notice. Ms. Dunkle briefly explained the CDBG process, and referenced a January 2014 letter from the Town asking the County to transfer the grant application process from the County's hands to the Town.

Stephanie Langton of the Northern Shenandoah Valley Regional Commission thanked the Council for having the Regional Commission representatives at the meeting. She reiterated that the Community Development Block Grant (CDBG) program is a federal program which has three national objectives: the first is to give maximum feasible priority to activities which benefit low and moderate income families, the second is to aid in the prevention or elimination of slums and blight and the third is to meet urgent needs. She said the proposed application aligns with the CDBG national objective to benefit low and moderate income households. Ms. Langton said within the program there are five primary types of Competitive Community Improvement Grants including Comprehensive Community Development, Economic Development, Housing, Community Facilities and Community Service Facilities. She said this grant application is a Comprehensive Community Development project which includes activities that target substandard housing and at least one other eligible CDBG activity. Ms. Langton said activities to address housing needs must be the most significant in budgetary terms element of a Comprehensive Community Development project, and this application conforms to the priority emphasis on housing.

Ms. Langton further explained that the application includes the following eligible activities: Owner Occupied Housing Rehabilitation and Street Improvements and Drainage Improvements, specifically Home repairs at 14 units along the street, sidewalk repair, vegetative screening for sound mitigation and safety along the railroad and improvements to private and public property to address drainage issues with rain water discharge. She added it is important to note that the application does not address the five vacant structures on Josephine Street. She said grant funds are not permitted to support home repair for properties that have been vacant for more than 12 months, so any improvements to these properties are not eligible under the program. Ms. Langton noted that property owners of these structures have granted permission to a volunteer team to assess their current conditions and offer recommendations.

Ms. Langton added that other activities that are not CDBG eligible may occur during the project. She said an application has been submitted and has made it through the first application review for AmeriCorps volunteers to assist with property maintenance and improvements to the Milton Valley Cemetery; exterior improvements to private property owners whose income makes them ineligible for CDBG funds; and other maintenance efforts on private properties in the neighborhood including yard work, tree pruning, and other similar activities. She concluded by saying there are portions of the application that require additional information. She said that after the assessment team meets on Saturday, March 14, 2015 they hope to have recommendations on four of the five structures. She added that if the respective families decide demolition is the best course of action, CDBG funds may be used for blight remediation.

The Mayor asked the Rev. James Page of the management team to speak. Mr. Page said that the main objective of the grant is to get houses up to standard. The team wanted to get the community involved to make their street look as nice as other town streets. Mr. Page added that it has been a joy to get all the entities to work together. He added that there are other things on the street that they wish could be done, but that the grant's parameters won't address all the issues.

Mayor Kirby stated that while typically the Town Council allows three minutes for each speaker at public hearings, because of the complexity of this application, each speaker would be permitted up to five minutes speaking time. Mayor Kirby opened the public comment period and recognized the speakers from the public hearing sign-up sheet.

The Mayor recognized Kenneth Liggins of 206 Josephine Street, Berryville. Mr. Liggins said that he was filing a criminal complaint and asked the Council not to move on the grant application until the complaint had been investigated. He provided the Clerk with a packet of documents.

Mayor Kirby recognized Pat Dickinson of 413 Montgomery Court, Berryville. Ms. Dickinson said she is in favor of the grant, and that it will help improve the street which will in turn improve the whole community.

The Mayor recognized Michael Hobert of 126 South Church Street. Mr. Hobert noted that he was a member of the Board of Supervisors representing most of the Town of Berryville. He thanked the Town, especially Council Member Kitselman and Ms. Dunkle for all the time and effort spent on the grant application. He added that Ms. Shickle and Ms. Langton of the Regional Commission helped the understanding of the process. Mr. Hobert said the team had walked Josephine Street and also did a visioning exercise to determine what the residents wanted. He added that a plan was developed and preliminary costs were determined by the engineers. Mr. Hobert said that it was inspiring to see the participation of the residents and, while there was not always agreement during discussions, the process was fair, open, and productive. He said that he gave total support to the grant application.

There being no others wishing to speak, the Mayor closed the public hearing.

4. Approval of Minutes

Upon motion by Council member Kitselman, and seconded by Council member Daniel, the minutes of the January 13, 2015, meeting were approved by the following vote:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Abstain
David Tollett	- Aye

5. Citizens' Forum

Mayor Kirby recognized Kimber Herron of 1146 John Mosby Highway. Mr. Herron said that he was representing the Farmers' Market and was requesting use of the municipal parking lot for the market on Saturdays from May 2 through October 31, from 8:00 a.m. until noon. He added that there are usually about 20 to 25 vendors. Mr. Herron thanked the Berryville Police Department for helping on Friday evenings by taping the lot closed, and also thanked the Barns of Rose Hill for providing storage for a few items such as tables used at the market.

The Mayor recognized Kate Petranec, 2208 Castleman Road, who stated that she was a volunteer director, filling in for Christina Kraybill and Luanne Carey, of Berryville Main Street. She said that she was asking the Town to apply for the Virginia Commission for the Arts' Local Government Challenge Grant for the fifth time. Ms. Petranec added that the grant helps fund the Fire House Gallery, allows Berryville Main Street to provide arts-related programs bringing people downtown, and also allows programs honoring specific artists.

Mayor Kirby recognized Dan Garrett of 303 Archer Court. Mr. Garrett referenced the senior housing proposal by Marlyn Development. He said that the issue of emergency services was raised at the recent BADA meeting. In his meeting with emergency services representatives, he said he was reminded of discussions in 2006 regarding additional services necessary for senior housing units. At that time, he said, staffing issues were a concern, and fee for service was a distant thought. Mr. Garrett noted that now the same issues are being discussed, but that

what is new is the hiring of a County Emergency Services Director to oversee the situation, and that fee for service is here. He added that the Marlyn Development proposal is a good value for the community. He said he was weary of discussions and half-truths at public meetings.

The Mayor recognized Alton Echols of 400 Custer Court. Mr. Echols said he has been interested in senior housing for 25 years. He noted that he pioneered small, medium, and large houses where someone can stay even in a wheelchair, and now he wants to do similar units in apartments. He said that many seniors, ages 75 to 95, currently live in homes with steps. Mr. Echols said the growth of the senior population will have a positive fiscal impact for the County and Town since even nursing homes pay their own way and provide jobs.

6. Report of the Mayor

Mayor Kirby called on Josh Roller of Robinson, Farmer, Cox Associates. Mr. Roller presented the Town's Comprehensive Annual Financial Report.

7. Planning and Zoning

a) Ms. Dunkle referenced the draft CDBG application and Draper Aden preliminary engineering report. Mr. Dalton asked Ms. Dunkle to review the part of the application that is not complete. Ms. Dunkle said final information will be gathered at a meeting this coming Saturday organized by Council member Kitselman. She said that any remaining needs will be addressed. Specifically, she noted the several blighted properties, five of which have been vacant more than 12 months, are ineligible to receive CDBG grant funding. Council member Kitselman thanked the professionals who have agreed to do this work pro bono.

At the Mayor's request the Clerk read to draft resolution.

Draft Resolution
Town of Berryville, Virginia
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BERRYVILLE, VIRGINIA
VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CDBG GRANT ENDORSEMENT RESOLUTION

WHEREAS, the Virginia Department of Housing and Community Development (DHCD) is currently soliciting for applications for funding through the Virginia Community Development Block Grant (CDBG) Program, and

WHEREAS, the CDBG Program offers the opportunity to eligible units of local government to seek funding through the Community Improvement Grant (CIG) category, and

WHEREAS Town of Berryville, Virginia wishes to submit a "Comprehensive Community Development" Application under the CIG application in an amount not to exceed \$1,000,000 in support of the Josephine City Neighborhood Improvement Project, which is due March 25, 2015; and

WHEREAS the application will include pending allocation of \$40,000 through the HOME Consortium, NSV for home repair activities and assignment of AmeriCorps VISTA volunteers to aid in CDBG-ineligible home repair and neighborhood improvement activities as additional leveraged funding and resources in support of the project; and

WHEREAS, the Town hosted two Public Hearings regarding the proposed CDBG application pursuant to DHCD requirements on January 29, 2015 and March 10, 2015, advertising both as appropriate, and

WHEREAS, the project application includes activities that are CDBG eligible and fall within the CDBG National Objectives pursuant to Section 104(b)(3) of the Housing and Community Development Act of 1974 and the DHCD priorities for allocation of CDBG, and

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Berryville, Virginia, does hereby support a grant application to VDHCD for CDBG funding not to exceed \$1,000,000 to help complete the comprehensive community development project in Josephine City Neighborhood; and

BE IT FURTHER RESOLVED, that the Town Council of the Town of Berryville, Virginia does hereby authorize the Town Manager to sign all necessary documents to execute the application, grant reports and grant contract.

Council member Daniel said she appreciated the management team participation and thanked them for attending the public hearing. **Council member Kitselman moved the Council of the Town of Berryville approve the aforementioned resolution authorizing the Town Manager to sign the necessary documents to execute the application (as amended), grant reports and grant contract. Recorder Arnold seconded the motion which carried on the following vote:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Aye

b) **Recorder Arnold moved that the Council of the Town of Berryville authorize the Town Manager to sign and submit the application for the Virginia Commission for the Arts' Local Government Challenge Grant identifying Berryville Main Street as the recipient of the grant, requiring that all marketing material include both Virginia Commission for the Arts (VCA) and National Endowment for the Arts (NEA) logos for projects funded with this grant, per the terms of the VCA, and that matching grant funds shall be appropriated from the Town's annual contribution to Berryville Main Street. Council member Daniel seconded the motion which carried by the following vote:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye

Douglas Shaffer - Aye
David Tollett - Aye

8. Report of the Town Manager

Mr. Dalton introduced the Water and Sewer Billing Adjustment policy. He said the current water and sewer billing adjustment policy was adopted on March 8, 1994 and, if adopted, the proposed policy would replace the existing one. He further explained that the proposed policy differs from the existing policy in the following ways:

- The purpose of the policy is provided.
- Customer responsibility for water and sewer laterals and the like is identified.
- The adjustment request review procedure is clarified.
- The adjustment review criteria is clarified.
- The review criteria for usage attributable to use by interior plumbing has been amended to permit adjustment of sewer bills for leaks where it can be proven that the water in question did not enter the Town's sewer system.
- The Town's meter testing policy has been added to the document.
- The appeals process has been clarified and establishes two specific instances in which a determination can be appealed. These instances are where the customer feels the Town has erred in the review of the adjustment request or where the Town has failed to review an adjustment request in a timely manner.
- The customer's responsibility for the payment of their bill during the review period is established.

He said these changes are proposed to make the policy clearer and to provide for relief when property owners are faced with an interior leak in which it can be proven the water did not enter the Town's sewer system. In addition, he said the Water and Sewer Billing Adjustment Request Form has been cleaned up and an acknowledgement has been added.

Mr. Dalton said the proposed policy was reviewed by the Streets and Utilities Committee at their meeting on February 27 and at that time the Committee directed staff to complete the draft, including the amendment to the criteria for adjustment of sewer bills for usage associated with interior plumbing, and submit it to the full Council at the March 10 meeting. The committee also expressed concern that the meter testing fee (\$40) is too low and does not come close to covering Town Costs. Mr. Dalton said discussions with Public Works staff have revealed that the cost for a test (staff time/equipment costs to: pull meter and install a temporary meter, drive to Winchester to drop off meter, return to Winchester to collect the meter and results, and to remove the temporary meter and reinstall the original meter) is closer to \$100.

Proposed Policy
TOWN OF BERRYVILLE
Water and Sewer Billing Adjustment Policy

Purpose:

This policy applies to the adjustment of unusually high water and sewer bills resulting from water leaks or other circumstances resulting in abnormally high water usage. This policy enumerates the authority of the Town Manager, or designee, to grant adjustment of unusually high water and sewer bills upon request of the person or entity responsible for a water account.

Background:

Where properties are connected to the Town of Berryville's water and sewer systems, the customer is responsible for: 1) the proper provision, monitoring, operation, maintenance, repair, and replacement of all water lines and components of the system from the customer's side of the water meter and 2) the proper provision, monitoring, operation, maintenance, repair, and replacement of all sewer lines and components of the system from where it intersects the Town's main.

Procedure:

All requests for bill adjustment must be made within ten days of the billing date utilizing the Town of Berryville Water and Sewer Billing Adjustment Request Form. The customer must also provide a plumber's certification and, when the abnormal usage is greater than three-times the account's average usage, a letter from the property owner's insurance company verifying that a claim has been made in this matter and providing what portion of the water/sewer bill will be paid by the insurance company.

The Town Manager, or designee, will review the request and provide written notice of his/her decision. Most decisions will be rendered within ten days of receipt of the adjustment request.

Only one bill adjustment may be made for any account in any given twelve month period.

Review Criteria:

The Town Manager, or designee, will review adjustment requests in accordance with the following criteria:

- For leaks occurring in the service line between the water meter and the building the meter serves, the Town may approve adjustment to the sewer usage if it is found that the leaking water did not enter the sewer system. Such adjustment may not exceed the difference between the account's average usage over the past twelve months and the high usage resulting from the leak. The Town may approve adjustment to the water usage if it finds that the leak was repaired in a timely fashion after discovery. Such adjustment may not exceed one-half of the difference between the account's average usage over the past twelve months and the high usage resulting from the leak.
- For leaks or unintended usage from exterior hose connections, the Town may approve adjustment to the sewer usage if it finds that the leaking water did not enter the sewer system. Such adjustment may not exceed the difference between the account's average usage over the past twelve months and the high usage resulting from the leak.

- For abnormal water usage attributable to usage in or by faucets, pipes, water heaters, furnaces or other interior plumbing facilities within the building the water meter serves, the Town may adjust the sewer usage if it finds that the leaking water did not enter the sewer system. Such adjustment may not exceed the difference between the account's average usage over the past twelve months and the high usage resulting from the leak.
- The Town will not approve adjustments for abnormal water usage attributable to filling of pools or watering of lawns or landscaping.
- The Town will not approve adjustments for abnormal water usage which has not or cannot be sufficiently explained.

When reviewing adjustment requests the Town will take into account, among other factors, whether any of the usage resulted from another party's negligence. Where negligence is found the Town may determine that no adjustment is warranted. As a part of request reviews the Town will also consider the insurance claim determination as a part of establishing an adjustment amount.

Meter Testing:

Customers may at any time request that their water meter be tested for accuracy. If a customer wants to have the water meter that serves their account to be tested, then they must contact the Town Business Office and request the test. At the time of the request the customer must pay a meter testing fee as established by the Town Council. The fee in question will be refunded if it is found that the meter in question does not meet American Water Works Association standards for accuracy. Further, if it is found that the meter does not meet American Water Works Association standards for accuracy then the Town will review the account for possible adjustment.

Appeals:

If the customer requesting the bill adjustment believes that the Town has erred in making the adjustment decision or has not made a determination on an adjustment request in a timely manner, then he/she may appeal the matter to the Town Council. This appeal must be made in writing within ten days of the date of the decision on the adjustment or within thirty days of the original request if the appeal is based on the Town's failure to render a decision on the review request. If the appeal is based on the belief that the Town erred in making its decision on the bill adjustment request, then the appeal request must specify the finding of fact or policy application the requester believes was made in error.

Adjustment determinations made because a meter has been found to be inaccurate (after testing) may be appealed to the Town Council if the customer believes that the adjustment is not sufficient.

The Town Council will review all adjustment appeals and will provide written notice of their decision to the customer.

Customer Responsible for Payment during Review:

While an adjustment request and/or appeal is being processed, the customer is responsible for payment of the entire amount due within the normal payment period or the customer may enter into a payment agreement with the Town. If the customer neither makes full

payment during the normal payment period nor enters into a payment plan with the Town, then the customer is subject to all applicable collection activities and termination of service.

Burden of Proof:

The implicit burden of proof in the adjustment request pursuant to these policies rests with the customer, not the Town of Berryville. Failure to comply with the requirements of this policy will result in the denial of the adjustment request.

Effective Date:

March 12, 2015

Council member Daniel asked if adopting the new policy would affect any pending requests. Ms. Moreland said there were no requests pending, and if adopted, the policy would be in effect immediately. **Council Member Shaffer moved that the Council of the Town of Berryville repeal the existing water and sewer billing adjustment policy and adopt the aforementioned water and sewer billing adjustment policy, and increase the water meter test fee from \$40.00 to \$100.00. Council member Kitselman seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Aye

Mr. Dalton said he attended a meeting on House Bill 2 regarding transportation funding, and provided a copy of the PowerPoint presentation to Council members. He said many local people fear the Tidewater and Northern Virginia regions are taking most of the transportation dollars leaving little for the outlying areas. Mr. Dalton noted that if the Town Council wanted to provide comment on the matter then it should be addressed at the April Town Council meeting.

Mr. Dalton announced that the new web site is nearing completion, and will be live within a few weeks.

Mr. Dalton said Council has been asked to reappoint Chief Neal White to the Old Dominion Alcohol Safety Action Program Board and the Old Dominion Community Criminal Justice Board. **Council member Daniel moved to reappoint Chief White to the Old Dominion Alcohol Safety Action Program Board and the Old Dominion Community Criminal Justice Board for three year terms. Council member Tollett seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Aye

9. Standing Committee Reports

a) BADA Liaison

Council member Kitselman said there will be a Berryville Area Development Authority work session on March 30, 2015, at 2:00 p.m., to discuss the Berryville Area Plan update.

b) Budget and Finance

Recorder Arnold said the Committee met last week and will meet again on March 11, 2015. He added it appears that a tax increase may be necessary. **Recorder Arnold moved that the Council of the Town of Berryville set a Public Hearing for April 14, 2015 regarding water service charges pursuant to Chapter 17, Article IV, Section 17-49 of the Code of the Town of Berryville. Council member Daniel seconded the motion which carried as follows:**

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Aye

Recorder Arnold moved that the Council of the Town of Berryville set a Public Hearing for April 14, 2015 to set the tax levies for tax year 2015 amending the Code of the Town of Berryville, Chapter 16- Taxation, Article I – In General, Section 16-1 Annual Tax Assessments; valuation of property. Council member Daniel seconded the motion which carried as follows:

Wilson Kirby	- Aye
Harry Lee Arnold, Jr.	- Aye
Mary Daniel	- Aye
Allen Kitselman	- Aye
Douglas Shaffer	- Aye
David Tollett	- Aye

c) Community Improvements

Council member Kitselman had nothing to report.

d) Planning Commission Liaison

Council member Shaffer had nothing to report.

e) Police and Security

Council member Daniel announced that a new patrolman, Joseph Shoremount, has been hired. She added that Patrolman Joey Adams has celebrated 25 years of service with the Berryville Police Department.

f) Streets and Utilities

Council member Shaffer moved for approval of the Streets and Utilities Committee meeting minutes of February 27, 2015. Mayor Kirby seconded the motion which carried unanimously.

Mr. Dalton noted the Public Utilities and Public Works monthly reports are included in the agenda packet. He added he wanted to mention specifically the efforts of the utilities crews during the recent extreme winter weather. Mr. Dalton said there had been some problems this winter that have not been seen in previous years including the freezing of two laterals. He said the crews had done an excellent job under difficult conditions.

g) Personnel / Appointments

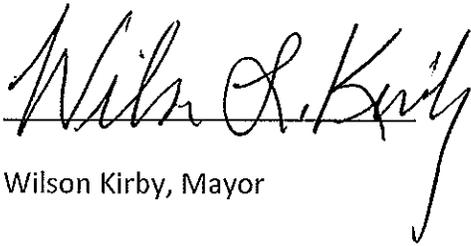
Recorder Arnold had nothing to report.

10. Other

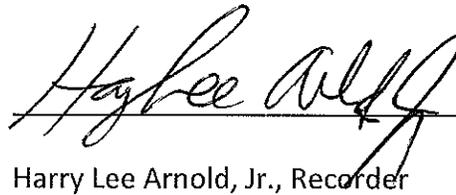
Mayor Kirby said he had an email on two issues which he wished to have placed on the April agenda: the Barns of Rose Hill has asked that the rent on the Smithy House be waived, and the Barns has asked for approval for placing a directional sign on Main Street prior to an event.

9. Adjourn

There being no further business, upon motion by Council member Daniel, seconded by Council member Kitselman and passed, the Council meeting was adjourned at 8:48 p.m.



Wilson Kirby, Mayor



Harry Lee Arnold, Jr., Recorder