

**MINUTES**  
**BERRYVILLE TOWN COUNCIL**  
**Tuesday, October 8, 2013**  
**Berryville-Clarke County Government Center**  
**Regular Meeting**  
**7:30 p.m.**

**Town Council:**

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

Absent: David Tollett

**Staff:** Keith Dalton, Town Manager; Desiree Moreland, Assistant Town Manager for Finance and Administration; Christy Dunkle, Assistant Town Manager/Planner; Neal White, Chief of Police; Celeste Heath, Town Clerk

**Press:** Val Van Meter, Winchester Star

**1. Call to Order:** Wilson Kirby, Mayor

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

**2. Approval of Minutes**

September 10, 2013

Upon motion by Recorder Arnold, seconded by Council member Kitselman, the minutes of the September 10, 2013 meeting were approved.

**3. Citizens Forum**

There was no public comment.

**4. Report of the Mayor**

The Mayor reported that he attended the ribbon cutting for the Battletown Pharmacy and that there was great turnout for the event.

**5. Report of Town Manager**

Council member Daniel recused herself from this discussion.

Mr. Dalton said that Michelle Jones was present regarding a request for access across Town property to facilitate the use of parking spaces behind 19 West Main Street. Mr. Dalton explained that the Crow Street parking lot has both public metered parking and private parking. He said the private parking belongs to the owners of 11 West Main Street, John and Page Carter.

He explained that the parking lot consists of three parcels of which the Town owns two parcels and the Carters own one. He said that in the 1990's the two property owners agreed to configure the parking so that public spaces were on the west side and private spaces were on the east side of the parking lot. He said that while the arrangement has worked well, there is no formal agreement.

Mr. Dalton said that at some point the owner of 19 West Main Street established parking spaces behind the building which are accessed through the Crow Street parking lot and that there is no agreement that allows access to these spaces across Carter or Town property. Ms. Jones is the contract purchaser of 19 West Main Street and has inquired via a letter to Mr. Dalton regarding the status of that parking access.

Mr. Dalton said that he is asking Town Council if they have any problem with granting permission to access the parking spaces behind 19 West Main Street. He said that the Carters would also have to agree to access. He also asked if Council might consider finalizing an agreement with the Carters regarding the current parking arrangement. He said that he spoke to Page Carter and that she is agreeable to talking about the matter.

Mr. Dalton said that the Town would definitely like to retain the right to close the parking lot when needed for maintenance or events. Ms. Jones replied that she did not have a problem with that.

By consensus, the Town Council directed Mr. Dalton to work on an agreement with both parties in consultation with the Town's attorney. The Town Council agreed to set a public hearing on the matter for their next meeting if the Town's attorney deems it necessary.

#### Review of Rose Hill Park Rules

Mr. Dalton presented some proposed revisions to the Rose Hill Park rules that the Police and Security Committee discussed. They are as follows:

#### *Sec. 13-36. - Regulation of use and conduct in Rose Hill Park.*

*It shall be unlawful for any person or persons to violate the following regulations which shall be posted pertaining to the use and the behavioral conduct of any such person or persons in Rose Hill Park.*

- (a) No trespassing from dusk until dawn*
- (b) No alcoholic beverages or glass containers.*
- (c) No bare feet.*
- (d) Do not use playground equipment when wet.*
- (e) No, pushing, shoving or other dangerous play*
- (f) Do not use equipment improperly.*
- (g) No camping.*
- (h) No building of fires except in park grills designed for food preparation, or for the purposes of special ceremonies with permission from the Town Manager.*
- (i) No relic hunting or use of metal detectors or similar devices.*
- (j) No littering.*
- (k) Waste from domestic animals must be immediately collected and disposed of properly.*
- (l) No skateboarding.*
- (m) No hunting or discharge of firearms, fireworks, explosives, bow and arrows, slingshots, or similar weapons and devices. This section does not preclude the firing of military salutes as a part of an event authorized by the Town.*

*(n) The Town of Berryville is not responsible for injuries. This area to be used with adult supervision only.*

*Any person violating any provision of this section shall be guilty of a Class 4 misdemeanor.*

He said that staff has also discussed adding a maximum age for use of playground equipment. There was a general discussion of such a restriction. Council member Kitselman asked if this would preclude an adult using the swings with a child. Chief White said that this gives the police discretion to keep the area safe but it is not the intent to be heavy handed. Mr. Dalton said that staff can continue to work on the language to make this clear.

Recorder Arnold asked about restrictions on vehicle traffic and parking. Mr. Dalton said that there have been problems with people driving across walkways and that this might be appropriately covered in the rules.

Council member Shaffer suggested leaving “except by special permission from the town” in section (a) to allow for special events that are outside of the prescribed hours.

Town Council directed staff to bring back a revised version of the Rose Hill Park rules to the next meeting.

## **6. Planning and Zoning Matters**

Ms. Dunkle reported that the Planning Commission did not hold a meeting in September. She said that the BADA held a public hearing on the Virginia United Methodist Housing Project and that the hearing was continued to their October meeting. She reported that the Architectural Review Board has been busy reviewing signs and will judge the parking meter decorating contest this year.

Ms. Dunkle reported that the consultant that was hired with the USDA Rural Enterprise Grant was in town last week doing preliminary work on the hotel study.

## **7. Standing Committee Reports**

a) BADA Liaison – Allen Kitselman

Nothing to add to the report.

b) Budget Finance / CIP – Jay Arnold

Ms. Moreland said that, as discussed at the last Town Council meeting, the Town Council will need to take action in the form of a resolution if they wish to opt out of the Virginia Local Disability Plan (VDLP) by the November 1 opt out deadline. She said that if the Town Council opts out of the plan they will have to choose an alternative plan.

Ms. Moreland then discussed alternate plans. She said that staff is leaning toward the Virginia Municipal League Insurance Programs plan (VMLIP). Recorder Arnold asked if the Town Council chooses the VMLIP plan can the Town ever switch to another plan. Ms. Moreland said yes, plans can be changed. Mr. Dalton said that the Town Council

could choose to switch to the VACO plan or another provider but could not go back and choose VDLP if they choose to opt out now.

Upon motion by Recorder Arnold, seconded by Council member Daniel the Council of the Town of Berryville adopted the attached Resolution to make Irrevocable Election not to participate in the Virginia Local Disability Program.

VOTE:

Recorded Vote:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Mary Daniel Allen Kitselman Douglas Shaffer
Nays:	None
Absent:	David Tollett
Abstain:	None



## RESOLUTION

### Irrevocable Election Not to Participate in Virginia Local Disability Program

WHEREAS, by enacting Chapter 11.1 of Title 51.1 of the *Code of Virginia*, the Virginia General Assembly has established the Virginia Local Disability Program ("VLDP") for the payment of short-term and long-term disability benefits for certain participants in the hybrid retirement program described in Virginia Code § 51.1-169; and

WHEREAS, for purposes of VLDP administration, an employer with VLDP-eligible employees may make an irrevocable election on or before November 1, 2013, requesting that its eligible employees not participate in VLDP as of the VLDP effective date of January 1, 2014, because it has or will establish, and continue to maintain, comparable employer-paid disability coverage for such employees that meets or exceeds the coverage set out in Chapter 11.1 of Title 51.1 of the *Code of Virginia*, with the exception of long term care coverage, by January 1, 2014; and

WHEREAS, it is the intent of the Town of Berryville (55368), to make this irrevocable election to request that its eligible employees not participate in VLDP;

NOW THEREFORE, IT IS HEREBY RESOLVED that the Town of Berryville irrevocably elects not to participate in VLDP because it has or will establish, and continue to maintain, comparable employer-paid disability coverage for such employees: and it is further

RESOLVED that, as an integral part of making this irrevocable election, the Town of Berryville certifies that it has or will establish, and continue to maintain, comparable employer-paid disability coverage for such employees.

Adopted in Berryville, Virginia this eighth day of October, 2013.

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Wilson L. Kirby, Mayor

Mr. Dalton said that staff will make a final recommendation about a benefit provider for consideration at the next Town Council meeting. He said that staff is still working on how to address leave issues since this new benefit will essentially replace sick time. There was a general discussion about how to deal with leave issues. Mr. Dalton said that staff would like to meet with the Personnel Committee before the next Council meeting. A Personnel Committee meeting was set for October 21 at 9:30 a.m.

c) Community Improvements – Allen Kitselman

Council member Kitselman said that the Harvest Dinner sponsored by the Farmers Market and the Barns of Rose Hill is Saturday at the Barns. He reported that he spoke to Bob Steig about the Rural Business Enterprise grant and that Mr. Steig has a contact in the hotel industry that staff may want to contact.

d) Planning Commission – Doug Shaffer

Nothing to add to report.

e) Police and Security – Mary Daniel

Council member Daniel reported that the Committee met on September 18.

She then presented two revisions to the Town Code.

Repeal and Reenact Chapter 18 - Weapons

Council member Daniel said that it was brought to the Committee's attention that Chapter 18 – Weapons had not been revised since 1995. She said that there have been several changes to the Virginia Code since then. The Committee recommended that Chapter 18 be repealed as presented and re-enacted to address changes to the State Code as well as to address the discharge of pneumatic weapons and shooting of bows and arrows. Chief White said that the revised Chapter 18 presented to Town Council has been reviewed by the Town's attorney.

Upon motion by Council Member Daniel, seconded by Council member Kitselman the Council of the Town of Berryville adopted the attached ordinance amending the Code of the Town of Berryville to repeal and reenact Chapter 18, Weapons as attached.

VOTE:

Recorded Vote:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Mary Daniel Allen Kitselman Douglas Shaffer
Nays:	None
Absent:	David Tollett
Abstain:	None

AN ORDINANCE DATED OCTOBER 8, 2013  
REPEALING AND REENACTING CHAPTER 18 WEAPONS,  
OF THE CODE OF TOWN OF BERRYVILLE

BE IT ORDAINED, by the Council of the Town Of Berryville, that the Code of the Town of Berryville, is amended to repeal and reenact Chapter 18, Weapons, as attached.

VOTE:

Recorded Vote:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Allen Kitselman Mary Daniel Douglas Shaffer
Nays:	None
Absent:	David Tollett
Abstain:	None
Absent During Vote:	None

SIGNED: \_\_\_\_\_  
Wilson L. Kirby, Mayor

Attest: \_\_\_\_\_ Date: October 8, 2013  
Harry L. Arnold, Jr., Recorder

## CHAPTER 18 - WEAPONS

### Sec. 18-1. - Discharge of firearms.

- (a) It shall be unlawful and a Class 1 misdemeanor for any person to willfully fire or discharge a gun, rifle, pistol or other firearm in the town.
- (b) This section shall not apply to any law-enforcement officer in the performance of his official duties nor to any other person whose discharge of a firearm is justifiable or excusable at law in the protection of his life or property or is otherwise specifically authorized by law.
- (c) This section shall not apply to the discharge of a firearm at a military parade, by order of the officer in command, or to the discharge of a firearm at a public exhibition held in accord with a permit issued by the town manager.

(Code 1971, § 18-2)

Cross reference— Penalty for Class 1 misdemeanor, § 1-11.

State law reference— Authority of town to regulate or prohibit the discharge of firearms, Code of Virginia, § 15.2-915.4; discharging firearms in town street or other public place, Code of Virginia, §§ 18.2-280, 18.2- 286

### Sec. 18-2. - Discharge of Air Gun/Bow and Arrow

It shall be unlawful and a Class 3 misdemeanor for any person to discharge or shoot any pneumatic gun or bow and arrow within the Town, except as provided within this section.

Exceptions:

- a) Pneumatic guns and bows and arrows may be used on private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property.
- (b) Pneumatic guns may be used at facilities approved for shooting ranges and on other property where firearms may be discharged.
- (c) Any such use of a pneumatic gun by a minor below the age of 16 shall require the consent of the minor's parent or guardian. Any minor, whether permitted by a parent or guardian or not, shall be responsible for obeying all laws, regulations, and restrictions regarding the use of a pneumatic gun.
- (d) Commercial or private areas designated for the use of pneumatic paintball guns may be established and operated for recreational use through a permit process reviewed by the Town Planning Department in consultation with the Chief of Police.

For the purposes of this section a “pneumatic gun” means any implement, designed as a gun, which will expel a BB or pellet by action of pneumatic pressure. This shall also include a paintball gun that expels by action of pneumatic pressure plastic balls filled with paint for the purpose of marking the point of impact.

For the purposes of this section a “bow” includes all compound bows, crossbows, longbows, and recurve bows having a peak draw weight of less than ten pounds or which are designed or intended to be principally used as toys.

For the purposes of this section the term “arrow” means a shaft-like projectile intended to be shot from a bow.

Cross reference— Penalty for Class 3 misdemeanor, § 1-11.

State Law Reference- § 15.2-915.4 of the Code of Virginia; § 15.2-916 Code of Virginia

Repeal and Reenact Chapter 11 - Noise

Council member Daniel reported that it took the Police and Security Committee about three months to revamp this section of the Town Code. She said that there were Constitutional issues to consider with this section and that the final recommended language was reviewed by the town's attorney. Chief White said that he believes that this revision to Chapter 11 will help officers in the field because the intent and language of the section is much clearer.

Upon motion by Council Member Daniel, seconded by Council member Kitselman the Council of the Town of Berryville adopted the attached ordinance amending the Code of the Town of Berryville to repeal and reenact Chapter 11, Noise as attached.

VOTE:

Recorded Vote:

Ayes:

Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Mary Daniel  
Allen Kitselman  
Douglas Shaffer

Nays:

None

Absent:

David Tollett

Abstain:

None

AN ORDINANCE DATED OCTOBER 8, 2013  
REPEALING AND REENACTING CHAPTER 11 NOISE,  
OF THE CODE OF TOWN OF BERRYVILLE

BE IT ORDAINED, by the Council of the Town Of Berryville, that the Code of the Town of Berryville, is amended to repeal and reenact Chapter 11, Noise, as attached.

Recorded Vote:

Ayes: Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Allen Kitselman  
Mary Daniel  
Douglas Shaffer  
Nays: None  
Absent: David Tollett  
Abstain: None  
Absent During Vote: None

SIGNED: \_\_\_\_\_  
Wilson L. Kirby, Mayor

Attest: \_\_\_\_\_ Date: October 8, 2013  
Harry L. Arnold, Jr., Recorder

## CHAPTER 11 NOISE

### Sec. 11-1. DECLARATION OF POLICY

At certain levels, excessive noise can be detrimental to the health, welfare, peace, safety and quality of life of inhabitants of the town, and in the public interest excessive noise should be restricted. It is, therefore, the policy of the town to reduce, and eliminate where possible, excessive noise and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful and annoying noises from all sources subject to its police power.

### Sec. 11-2. DEFINITIONS

The following words, when used in this chapter, shall have the following respective meanings, unless the context clearly indicates a different meaning:

- (a) Excessive noise means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. Specific examples of prohibited excessive noise are set forth in section 11-4 of this chapter.
- (b) Motor vehicle means a vehicle defined as a motor vehicle by Code of Virginia (1950), §46.2-100, as amended.
- (c) Owner means the person owning, controlling, or possessing land, premises, or personality.
- (d) Person means any individual, partnership, corporation, association, society, club, group of people acting in concert, or organization. This term shall not include the federal, state, county, town, city, or local government, or any agency or institution thereof.
- (e) Plainly audible means any sound that can be heard clearly by a person using his or her unaided hearing faculties. When music is involved, the detection of rhythmic bass tones shall be sufficient to be considered plainly audible sound.
- (f) Public property means any real property owned or controlled by the town or any other governmental entity or institution.
- (g) Public right-of-way means any street, avenue, boulevard, court, lane, highway, sidewalk or alley.
- (h) Real property boundary means the property line along the ground surface, and its imaginary vertical extension, which separates the real property owned by one person from that owned by another person.
- (i) Residential refers to single-unit, two-unit, and multi-unit dwellings, and residential areas of planned residential zoning district classifications, as set out in the zoning ordinance.
- (j) Sound means an oscillation in pressure, particle displacement, particle velocity, or other physical parameter, in a medium with internal forces that cause compression and refraction of that medium, and which propagates at a finite speed. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

- (k) Sound amplifying equipment means any machine or device for the amplification of the human voice, music or any other sound. This term shall not include warning devices on authorized emergency vehicles or structures, or horns or other warning devices on other vehicles used only for traffic safety purposes.
- (l) Sound truck means any motor vehicle or animal-drawn vehicle having mounted therein, or attached thereto, any sound-amplifying equipment.
- (m) Town manager means the town manager or the chief of police, or their respective designees.

Sec. 11-3. VIOLATIONS OF CHAPTER

A violation of any provisions of this chapter shall constitute a Class 4 misdemeanor, unless otherwise specifically provided.

Sec. 11-4. SPECIFIC PROHIBITIONS

Subject to the exceptions provided in section 11-5, any of the following acts, or the causing or permitting thereof is declared to be excessive noise, constituting a class 4 misdemeanor and a public nuisance:

- (a) Radios, television sets, musical instruments and similar devices. Operating, playing or permitting the operation or playing of any radio, television, record, tape or compact disc player, drum, musical instrument, or similar device:
  1. In such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two dwelling units within a building; or
  2. In such a manner as to be plainly audible at a distance of 50 feet or more from the structure in which it is located; or
  3. When the sound is plainly audible at a distance of 50 feet or more from its source.
- (b) Yelling, shouting, etc. Yelling, shouting, whistling or singing between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to permit sound to be heard across a residential real property boundary or through partitions common to two dwelling units within a building.
- (c) Horns, whistles, etc. The sounding of any vehicular horn or other sound signaling device on any motor vehicle on any public street or public place except as an emergency warning signal so as to create any unreasonably loud or harsh sound for any unnecessary and unreasonable period of time. Sounding of such horn or other device more than once every two minutes in any one town block and with a duration of more than five (5) seconds for any single emission shall be prima face evidence of violation of this section.

The acts prohibited by this subsection shall not apply to the sounding or activation of a siren or air horn during any parade or demonstration provided the sponsor of such parade or demonstration has received a permit from the town as required by section 20- 3 of the Town Code, and provided further that such siren or air horn shall not be sounded or

activated during such parade or demonstration on Main Street between the eastern boundary of the intersection of Chalmers Court and East Main Street to the western boundary of the intersection of Rice Street and West Main Street, and on Buckmarsh Street between the northern boundary of the intersection of Academy Street and North Buckmarsh Street and the southern boundary of the intersection of Crow Street and South Buckmarsh Street.

- (d) Vehicles. Operation of a motor vehicle or motorcycle within the town that creates mechanical or exhaust noise that is plainly audible at a distance of 200 feet or more from the vehicle. The operation or permitting the operation of any radio, tape player, compact disc player, or any other device which produces, reproduces, or amplifies sound in a motor vehicle, in such a manner that the sound can be heard more than 50 feet from the motor vehicle.
- (e) Construction. The erection, including excavation, demolition, alteration, or repair of any building, street, public facility, or improvement between the hours of 8:00 p.m. and 7:00 a.m., except in the case of that it is in the best interests of the public, for public improvements and to provide for public safety, to perform the construction between said hours. The town manager shall have the authority to approve the operation of the construction equipment that may generate said noise. In considering the granting, conditioning, or denial of permit, the town manager shall be guided by the following standards: (i) significant impact to businesses; (ii) pedestrian safety; (iii) traffic volume and traffic control safety; (iv) staff to endeavor to avoid night construction if possible; and (v) staff will notify affected businesses and residents in advance prior to construction when possible.
- (f) Pneumatic hammer, chain saw, etc. The operation between the hours of 8:00 p.m. and 7:00 a.m. of any chain saw, pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance. The town manager shall have the authority to approve the operation of the equipment that may generate said noise. In considering the granting, conditioning, or denial of permit, the town manager shall be guided by the following standards: (i) significant impact to businesses; (ii) pedestrian safety; (iii) traffic volume and traffic control safety; (iv) staff to endeavor to avoid night activity associated with said machinery if possible; and (v) staff will notify affected businesses and residents in advance prior to operation of said machinery when possible.
- (g) Schools, courts, public buildings, places of worship, and hospitals. The creation of noise on the grounds of any school, court, public building, place of worship, hospital, or nursing home, in a manner that is plainly audible within such school, court, public building, place of worship, hospital, or nursing home and interferes with the operation of the institution.
- (h) Blowers or power fans. The operation of blower or power fans, unless the noise from the blower or fan is muffled.
- (i) Animals and fowl. In addition to the prohibitions set forth in Ch. 4, art. I, section 4-1 and Ch. 4, art. II, section 4-26, the owning, keeping, or possessing of any animals or animals that make or cause frequent or long continued unreasonable noise that could be heard across a residential real property boundary or through partitions common to two dwelling units within a building. Upon complaint being

made to the chief of police or designee that the provision of this subsection are being violated, such officer may, after investigation, give notice of such complaint to the owner or person in charge of such offending animal or fowl and order the discontinuance of the disturbance. It shall be unlawful for any person to fail to comply with such order,

- (j) Use of loudspeakers for advertising purposes. The operation for commercial advertising purposes any loudspeaker or other like device or mechanism used to emit sound of any kind, which loudspeaker or other like device or mechanism is attached to or installed in any vehicle, when the vehicle is being driven, drawn, or parked along or upon the streets of the town. It shall also be unlawful for any person to use any machine or device for the production or reproduction of sound which is cast upon public streets or lands for the purpose of commercial advertising or of attracting attention of the public to any building, structure, or activity during the nighttime.

#### Sec. 11-5. EXCEPTIONS

Subsections (a) – (j) of section 11-4 above shall have no application to any of the sound generated by any of the following:

- (a) Sound which is necessary for the protection or preservation of property or the health, safety, life or limb of any person.
- (b) Public speaking and public assembly activities conducted on any public right-of-way or public property.
- (c) Radios, horns, sirens, and bells on police, fire, or other emergency response vehicles.
- (d) Parades, fireworks displays, school-related activities, and other such public special events or public activities.
- (e) Activities on or in municipal, county, United States, or school athletic facilities, or on publicly owned property and facilities.
- (f) Fire alarms, burglar alarms, and vehicle alarms, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off alarm, and if turned off within a reasonable period of time.
- (g) Religious services, religious events, or religious activities or expressions, including, but not limited to music, singing, bells, chimes, and organs which are part of such service, event, activity, or expression.
- (h) Locomotives and other railroad equipment, and aircraft.
- (i) The striking of clocks.
- (j) Military activities of the Commonwealth of Virginia or of the United States of America.
- (k) Household tools, lawnmowers, and other lawn care equipment with manufacturer's recommended mufflers installed, between 7:00 a.m. and 9:00 p.m.
- (l) Agricultural activities.
- (m) Lawful discharge of firearms

- (n) Musical sounds from a commercial ice cream vehicle, used for the retail sale of ice cream products, to signify the location of the vehicle and the possible presence of children, between the hours of noon and 9:00 p.m.; provided, however, the sounds shall not be plainly audible at a distance of more than 500 feet from its source.

#### Sec. 11-6. SOUND AMPLIFYING EQUIPMENT

No person shall use, or cause to be used, a sound truck, with its sound amplifying equipment in operation, for any purpose in the town except in accordance with, and subject to, the provisions of this section. The operation of a sound truck in violation of this section shall constitute a public nuisance and may be summarily abated.

- (a) Aircraft. The provisions of this section shall be construed to apply to aircraft carrying sound amplifying equipment, except those provisions which, by their very nature, could have no such application.
- (b) Permit. It shall be unlawful for any person to operate a sound truck, with its sound amplifying equipment in operation, in town, unless s/he shall first have secured a permit so to do from the town manager. Such permit shall be valid only for the time specified therein. No such permit shall be construed as authorizing the operation of a sound truck contrary to any provisions of this section. The application for such permit shall be in writing to the town manager and shall contain the following:
  - a. The name and address of the applicant.
  - b. The address of the organization of the applicant.
  - c. The license number of any sound truck, or federal registration number of any aircraft, to be used by the applicant.
  - d. The name and address of the person who owns the sound amplifying equipment.
  - e. The name and address of the person having direct charge of the sound amplifying equipment.
  - f. The names and addresses of all persons who will use the sound amplifying equipment.
  - g. The location in town in which the sound amplifying equipment will be employed.
  - h. The proposed hours of operation.
  - i. The proposed dates of operation.
  - j. A general description of sound amplifying equipment to be used.
- (c) Hours of operation. When a permit is issued for the use of sound amplifying equipment on a sound truck, no such equipment shall be operated for more than four (4) hours in any one day, nor shall such equipment be operated at any time on a Sunday.
- (d) Permitted sounds. The only sounds permitted from sound trucks are human speech and it shall be unlawful for any person to permit any other sounds to emanate from such truck.
- (e) Volume. The volume of sound from a sound truck shall be controlled so that it would not be audible for a distance in excess of two hundred (200) feet from the sound truck and so that such volume is not unreasonably loud. In no case shall the

sound amplifying equipment of a sound truck be operated in excess of fifteen (15) watts of power in the last stage of amplification.

- (f) Schools, hospitals, etc. Sound from sound trucks shall not be emitted within one hundred (100) yards of schools, hospitals, nursing homes, churches, and courthouses.
- (g) Minimum speed. The sound amplifying equipment of a sound truck shall not be operated unless the truck is operated at a speed of at least ten (10) miles per hour, except when such truck is stopped or impeded by traffic. Where stopped by traffic, the sound amplifying equipment shall not be operated for longer than one minute at each stop.
- (h) Inspection. Sound amplifying equipment in operation on a sound truck shall be subject to inspection, by a person designated by the town manager, at reasonable times.

#### Sec. 11-7. OTHER ENFORCEMENT

Instead of criminal enforcement of this chapter, the town may bring a suit for injunction, abatement, or other appropriate civil relief to remedy, correct, or abate excessive noise.

Citizens of the town believing that excessive noise constituting a public nuisance exists may utilize the procedure set forth in Code of Virginia (1950), §48-1 et seq., as amended, or any other legal civil or criminal remedies that may be available to them.

f) Streets and Utilities – Wilson Kirby

Mayor Kirby reported that the committee met on October 1 and recommended that the Town Council adopt the attached street work priorities. Mr. Dalton discussed the street priorities and reported that the funds available for the work are about \$216,000.

Upon motion by Council Member Shaffer, seconded by Council member Kitselman the Council of the Town of Berryville adopted the attached Street Work Priorities 2014.

VOTE:

Recorded Vote:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Mary Daniel Allen Kitselman Douglas Shaffer
Nays:	None
Absent:	David Tollett
Abstain:	None

Street Work Priorities FY14

<b>VDOT Reimbursement Limit</b>	<b>\$ 431,000.00</b>
Patch/repair trouble areas in streets and sidewalks	\$ 40,000.00
Engineering	\$ 10,000.00
Public Works Site Improvements – Storage Bins	\$ 30,000.00
Perform routine maintenance (snow removal, tree trimming, drainage ditch cleaning, street cleaning etc.)	\$ 110,000.00
Equipment Purchase/Maintenance/Repair	\$ 25,000.00
 <b>Subtotal</b>	 <b>\$ 215,000.00</b>

**Available within Reimbursement** **\$ 216,000.00**

**Specific Street Work Priorities:**

Bundy Street	\$ 21,000.00
Willow Lane	\$ 18,000.00
Page Street from Main to Liberty (also replace curb and gutter on west side of street)	\$ 50,000.00
Mosby Blvd (seal cracks, fix problem area, and seal one section)	\$ 15,000.00
Jack Enders Blvd from Springsbury Road to end of Town Maintenance	\$ 118,000.00

-----**Funding likely expended at this point**-----

Dorsey Street from Walnut Street to Treadwell Street	\$ 15,000.00
Smith Street from West Main to Academy	\$ 14,000.00
Battletown Drive	\$ 72,000.00

Please note that if cost estimates are good and if snow removal costs are not higher than expected, the Bundy Street, Willow Lane, Page Street, Mosby Blvd., and Jack Enders Blvd. projects should be able to be completed in this fiscal year. Please also note that staff recommends the completion of utility work in Dorsey and Battletown Drive before pavement maintenance occurs.

**Approval of Minutes- Streets and Utilities Committee**

October 1, 2013

Upon motion by Council member Shaffer, seconded by Mayor Kirby, the minutes of the October 1, 2013 Streets and Utilities Committee meeting were approved

g) Personnel / Appointments – Jay Arnold  
Nothing to report.

**8. Closed Session** – The Berryville Town Council entered closed session in accordance with §2.2-3711-A-7, Code of Virginia, in order to consult with staff regarding the settlement of Caldwell and Santmyer, Inc. v. Town of Berryville and probable litigation related to the construction of the Wastewater Treatment Plant.

a. Motion to enter Closed Session

It was moved by Council Member Daniel, seconded by Council member Shaffer that the Council of the Town of Berryville enter Closed Session in accordance with §2.2-3711-A-7, Code of Virginia, in order to consult with staff regarding the settlement of Caldwell and Santmyer, Inc. v. Town of Berryville and probable litigation related to the construction of the Wastewater Treatment Plant.

VOTE:

Recorded Vote:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Mary Daniel Allen Kitselman Doug Shaffer
Nays:	None
Absent:	David Tollett
Abstain:	None
Absent During Vote:	None

b. Enter Closed Session

The Town Council entered closed session at 8:20 p.m.

c. Reconvene Open Session

The Town Council reconvened in open session at 8:39 p.m.

d. Certification of Closed Session

**Town of Berryville  
RESOLUTION**

MEETING DATE:     October 8, 2013

MOTION BY:         Harry Lee Arnold, Jr.

SECOND BY:         Allen Kitselman

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Council of the Town of Berryville, Virginia (Council), has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such closed meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

VOTE:

Recorded Vote:

Ayes:                     Wilson Kirby, Mayor  
                              Harry Lee Arnold, Jr., Recorder  
                              Mary Daniel  
                              Allen Kitselman  
                              Doug Shaffer

Nays:                     None

Absent:                  David Tollett

Abstain:                 None

Absent During Vote:     None

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Harry Lee Arnold, Jr., Recorder

Upon motion by Recorder Arnold, seconded by Council member Kitselman the Council of the Town of Berryville adopted the attached Settlement Agreement between Caldwell & Santmyer, Inc. and the Town of Berryville and authorized the Town Manager to sign the Settlement Agreement on behalf of the Town of Berryville.

VOTE:

Recorded Vote:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Mary Daniel Allen Kitselman Douglas Shaffer
Nays:	None
Absent:	David Tollett
Abstain:	None

RTM/ks  
09/27/13

**LAWSUIT SETTLEMENT AGREEMENT**

This Lawsuit Settlement Agreement (“Agreement”), dated the 30 day of September, 2013, is by and between Caldwell and Santmyer, Inc. (“C&S”) and the Town of Berryville, Virginia, (“Town”) (collectively, “the Parties”).

**RECITALS**

A. On or about March 10, 2010, C&S entered into a construction contract (“Contract”) with the Town for C&S to provide construction services for the construction project known as the “Berryville Wastewater Treatment Plant and Upgrade”.

B. Certain disputes arose between the Parties, and the disputes were settled by a Settlement Agreement and Mutual Release, dated December 31, 2012 (“Settlement Agreement”), which Settlement Agreement included provisions for the withholding and release of retainage held by the Town as of December 31, 2012.

C. C & S filed a Complaint in the Clarke County Circuit Court in April, 2013 regarding the withholding and release of retainage by the Town pursuant to the Settlement Agreement (“Pending Lawsuit”).

D. The Parties each have potential claims for attorney's fees against the other in the Pending Lawsuit, pursuant to the terms of the Settlement Agreement.

E.. The Parties have agreed on the dismissal of the Pending Lawsuit pursuant to the terms of the Agreement.

**AGREEMENT**

1. Incorporation of Recitals. The Recitals A through E are incorporated by reference and made part of this Agreement.

2. Waiver of Attorney's Fees Claims. The Parties hereby each waive, and release the other from, all claims for attorney's fees under the Settlement Agreement related to the release of the retainage held by the Town on December 31, 2012.

3. Payment to C&S. The Town, without admitting any legal responsibility therefor and without prejudice in any subsequent disputes between the Parties, shall pay to C&S interest in the sum of One Thousand Eight Hundred Twenty Seven Dollars and Forty Three Cents (\$1,827.43) related to the timing of retainage release payments under Pay Application 29, and upon receipt thereof C&S waives, and releases the Town from, all claims for interest related to payment of Pay Application 29.

4. Dismissal of Pending Lawsuit. Upon payment by the Town to C&S of the sum of One Thousand Eight Hundred Twenty Seven Dollars and Forty Three Cents (\$1,827.43) under this Agreement, counsel for C&S shall endorse and forward for entry by the Court the attached Dismissal Order.

5. Writing Required. This Agreement may be modified only by a written agreement signed by each Party.

6. Enforcement. This Agreement, once effective, may be enforced per the terms of the parties' Contract.

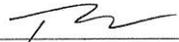
7. Counterparts. This Agreement may be executed in a number of counterparts, each of which shall be deemed an original but together shall constitute only one agreement. This Agreement shall be binding on a party with a duly executed copy is transmitted to the other Party by e-mail, fax or letter.

8. Acknowledgement. The Parties' duly authorized representatives acknowledge that they have carefully read this Agreement and that they enter this Agreement knowingly, voluntarily and after consulting legal counsel. Each person executing this Agreement represents that he/she is duly authorized to execute the Agreement on behalf of the respective Party.

9. Contract. Except as otherwise specifically provided herein,  
the provisions of the Contract remain in full force and effect.

Caldwell and Santmyer, Inc.

Date: 10.2.13

By:   
Name: Thomas R. Conaboy  
Title: President

Town of Berryville, Virginia

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Keith Dalton  
Title: Town Manager

RTM/ks  
09/19/13

VIRGINIA :

IN THE CIRCUIT COURT OF CLARKE COUNTY

CALDWELL & SANTMYER INC.,

Plaintiff,

v.

CASE NO. CL13002390-00

TOWN OF BERRYVILLE,

Defendant.

**DISMISSAL ORDER**

This day came the parties, by counsel, and submitted this Dismissal Order for entry by the Court.

It is ADJUDGED and ORDERED that this case be, and is hereby, dismissed, with prejudice.

This Order is FINAL.

Enter this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Judge

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SEEN AND AGREED:

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Amy E. Garber, Esquire  
Counsel for Plaintiff

SEEN AND AGREED:

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Robert T. Mitchell, Jr., Esquire  
Counsel for Defendant

**9. Adjourn**

Upon motion by Council member Kitselman, seconded by Council member Daniel and passed, the Council meeting was adjourned at 8:41 p.m.

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Wilson Kirby, Mayor

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Harry Lee Arnold, Jr., Recorder