

MINUTES
BERRYVILLE TOWN COUNCIL
Tuesday, November 8, 2011
Berryville-Clarke County Government Center
Regular Meeting
7:30 p.m.

Roll:

Town Council:

Present: Wilson Kirby, Mayor; Harry Lee Arnold, Jr., Recorder; Allen Kitselman; David Tollett; Absent: Mary Daniel; Lawrence Russell, III

Staff: Keith Dalton, Town Manager; Neal White, Police Chief; Christy Dunkle, Assistant Town Manager/Planner; David Tyrrell, Director of Utilities; Celeste Heath, Town Clerk

Press: Val Van Meter, Winchester Star; Mike Dowling, ClarkeDailyNews.com

1. Call to Order: Wilson Kirby, Mayor

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

2. Approval of Minutes

October 11, 2011

Upon motion by Recorder Arnold, seconded by Council member Tollett, the minutes of the October 11, 2011 meeting were unanimously approved.

3. Citizen's Forum

Stephanie Nelson, 112 Treadwell Street, said that she appreciated that the proposed ordinance before the Council defines continuous barking and that it adds the term "unprovoked barking." She said that she found the item that requires two complaints that she spoke about at the last meeting and that she has given it to Chief White.

Ms. Nelson said that she is still concerned that she has one neighbor that has called 26 times since April with dog complaints. She said she believes that the Town Council is trying to solve this problem and the ordinance is a step in the right direction. She said that she would like the harassment in her neighborhood to stop.

Bobbie Tilley, 204 Rice Street said that this ordinance is great progress and that 30 minutes of barking is a reasonable amount of time. She said that she is still concerned that her neighbor will abuse the complaint process. She said she thinks someone needs to deal with the person who is doing the harassing.

Debra Poole, 207 Rice Street, agreed that there has been a lot of progress on the matter. She said that a single individual can still harass their neighbors without any corroboration, possibly causing financial hardship. She said that the code does not require proof and that she thinks the code should address this kind of harassment.

Irene Nasar, 10 Rice Street, said she was surprised that the problem was at the other end of Rice Street, because there is a similar problem on her end of the street. She said that she agrees with the way the code has been revised. She said that she has a concern about how to be sure there is a violation if it is just one person who is a loose cannon complaining. She said that a neighbor assaulted a mobile dog groomer that came to her house and that an officer responded and made an excuse for the guy. She asked how you can be sure that an officer is being appropriately called out.

Rebecca Rice Clay, 107 Treadwell Street, spoke about the problems she has had with a neighbor near her home who complains about barking dogs. She said that she is a landlord on Rice Street and that her tenant's dogs are now dead and the neighbor is still complaining. She said that having officers sitting on a street for hours waiting for a dog to bark is not a good use of tax dollars. She said that someone needs to tell this lady that it is time to cease and desist. She said this may not be the town's responsibility, but someone has to do it.

4. Report of the Mayor

Resolution Congratulating Edith Fox Brown on the occasion of her 100th Birthday
Mayor Kirby presented a resolution Congratulating Edith Fox Brown on her 100th Birthday.

Upon motion by Council member Kitselman, seconded by Recorder Arnold the Council of the Town of Berryville unanimously adopted the attached Resolution:

RESOLUTION OF THE COUNCIL OF
THE TOWN OF BERRYVILLE, VIRGINIA

Edith Fox Brown Centennial Birthday Congratulations

WHEREAS, Ms. Edith Fox Brown celebrated the occasion of her One Hundredth birthday on October 16, 2011; and

WHEREAS, Ms. Brown has demonstrated a lifelong devotion to serving her family and community;

WHEREAS, Ms. Brown has been a long time member of Mt. Pisgah Baptist Church and has served in many capacities for the church; and

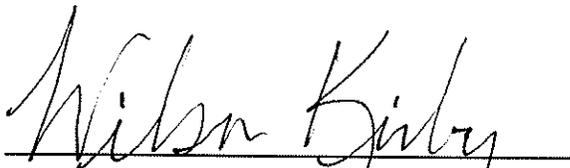
WHEREAS, Ms. Brown was employed by the Blue Ridge Farm and the Gordonsdale Farm in Upperville for many years; and

WHEREAS, Ms. Brown is now a resident of Berryville; and

WHEREAS, The Council of the Town of Berryville wishes to commend Ms. Brown and recognize the positive impact she has had on her community and congratulate her on her One Hundredth birthday;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Town of Berryville, Ms. Edith Fox Brown is congratulated on the occasion of her One Hundredth birthday.

By order of the Town Council this eighth day of November, 2011.



Wilson Kirby, Mayor



Harry Lee Arnold, Jr., Recorder

Amendments to § 4-26, Barking dogs to be controlled; citizen cooperation; direction by a law enforcement officer, of the Berryville Code

Mayor Kirby presented a draft of Section 4-26. He noted that there were several comments on the matter this evening.

Council member Tollett said that he likes the idea of adding a requirement that no less than two persons must make a complaint. Chief White said that there are no other town ordinances that require two-party reporting. He said that thinking about it from the other party's side, what if the one person reporting the violation is the only neighbor? Chief White, addressing concerns about false reporting, said that a person can be charged with perjury for lying about a violation.

Council member Kitselman said that one of his constituents asked why the hours between which the barking is in an untimely manner are defined if you have defined 30 minutes as continuous barking. The constituent asked why it matters what time of day it is. Chief White said that by community norms, barking at 2:00 a.m. is more egregious than at 10:00 a.m., and that this allows officers to take care of the middle of the night situations that may be more bothersome.

Mayor Kirby said that there were a lot of comments about how a person can make a nuisance of themselves by complaining about barking dogs. He asked Chief White if this ordinance gives officers the ability to make a determination about whether a complaint is harassment or not. Chief White said that officers use their judgment in the field all the time when they get complaints and that they would do the same when enforcing this ordinance.

Mr. Dalton said that the ordinance reads that a continuous manner is defined as 30 minutes and that would be a violation during the day. He asked Chief White what duration of barking would be considered a violation at night. Chief White said that it would be up to officer discretion and that the officer would determine if the barking is a nuisance using community norms.

Mr. Dalton asked Chief White how he felt about requiring two complaints. Chief White said that he does have a concern that one person would not be able to make a reasonable complaint if two complaints were required. He said that the ordinance is drafted to encourage neighbors to talk to neighbors before calling the police. He said the ordinance then gives citizens the tools to address the issue if neighbors can't find a solution. He said that ultimately, if a neighbor decides to harass another neighbor, the solution will be found in the courts.

Mr. Dalton said that he does understand the concerns expressed about harassment but also has a concern that one person can't make a reasonable complaint under a concise ordinance. That said, he said that if the Council wished to add a section requiring two complaints it could read: No action would be brought under this section unless complaints are made by two persons from separate households.

Recorder Arnold asked several clarifying questions regarding the definitions of continuous and untimely manners. Recorder Arnold said that he understands the harassment issue but is concerned about requiring two complaints. He said that he thinks that this could impact other ordinances, for example, what if someone is playing loud music. He recommended adoption of the ordinance as presented. There was a general discussion about the definitions of untimely and continuous manners.

Mr. Dalton asked Chief White if the draft ordinance was consistent with other locality's ordinances. Chief White said that it is consistent.

Mr. Dalton said that there was a citizen comment about officers hanging around waiting for dogs to bark. He asked Chief White to address the issue. Chief White said that typically officers will not expend that much energy on a barking complaint but that he can certainly check with his supervisors to see what is going on. He noted that calls about barking dogs have decreased in the last month. He noted that he met with some people on Rice Street last week who are trying to be responsible dog owners and work with their neighbors.

Mayor Kirby asked for a motion on the matter. Recorder Arnold asked if the Police and Security Committee recommended adoption of this ordinance. Council member Tollett said that the committee does recommend adoption. He said that he will rescind his recommendation about two complaints after hearing discussion on the matter.

Upon motion by Council member Tollett, seconded by Recorder Arnold the Council of the Town of Berryville adopted the attached Ordinance Amending Chapter 4, Animals and Fowl; Article II, Dogs; Section 4-26 Barking dogs to be controlled; citizen cooperation; direction by a law enforcement officer, of the Code of the Town of Berryville, as attached.

VOTE:

Recorded Vote:

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

AN ORDINANCE TO AMEND
CHAPTER 4, ANIMALS AND FOWL; ARTICLE II, DOGS
SECTION 4-26 BARKING DOGS TO BE CONTROLLED; CITIZEN
COOPERATION; DIRECTION BY A LAW ENFORCEMENT OFFICER.
OF THE CODE OF THE TOWN OF BERRYVILLE

BE IT ORDAINED, by the Council of Town of Berryville, that Chapter 4, Animals and Fowl; Article II, Dogs; Section 4-26 Barking dogs to be controlled; citizen cooperation; direction by a law enforcement officer, of the Code of the Town of Berryville, is amended as attached.

VOTE:

Recorded Vote:

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

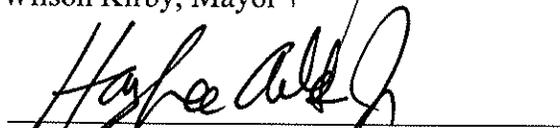
SIGNED



Wilson Kirby, Mayor

Date: November 8, 2011

ATTEST:



Harry Lee Arnold, Jr., Recorder

Date: November 8, 2011

Sec. 4-26. Barking dogs to be controlled; citizen cooperation; direction by a law enforcement officer.

(a) It shall be unlawful for any owner of a dog to keep a dog without exercising proper care and control of such dog to prevent it from disturbing the peace of others by unprovoked barking in a continuous or untimely manner, after the owner has been notified of such disturbance. Owners of dogs shall be responsible for exercising control of such dog under this section.

(b) For the purpose of this section, a continuous manner shall be deemed a dog barking for an uninterrupted period of thirty (30) minutes.

(c) For the purpose of this section, an untimely manner shall be deemed between the hours of 11:00 pm and 7:00 am.

(d) Citizens affected by a barking dog are requested to contact the dog's owner, prior to contacting the town to attempt to resolve differences and objections with the owner of the barking dog.

(e) A law enforcement officer may direct the owner of a dog found barking in a loud, continuous or untimely manner to exercise proper control and care of such dog to prevent it from barking in such manner. A law enforcement officer assigned to investigate a violation of this section shall record all initial violations through the use of a compliance notice. Any subsequent violations that occur twenty-four (24) hours after a compliance notice is issued will cause a law enforcement officer on behalf of the town to institute a criminal or civil proceeding against any person he finds in violation of this section.

(f) Citizens may institute their own criminal or civil proceeding to resolve a barking dog problem.

(Ord. of 6-18-92; Ord. of 9-8-92)

5. Planning and Zoning Matters: Christy Dunkle

Ms. Dunkle reported that the Planning Commission held a meeting on Tuesday, October 25, 2011 and recommended that the Town Council set public hearings on two matters as follows.

Callicorp, LLC (Jay Hillerson, Agent) is requesting a Text Amendment in order to allow wood product manufacturing (NAICS 321) (except 3211 sawmills and wood preservation) as a Special Permit Use under Section 607.3 Commercial (C-1) zoning district of the Town of Berryville Zoning Ordinance.

The Town Council set a Public Hearing on the matter for their December 13, 2011 meeting.

Callicorp, LLC (Jay Hillerson, Agent) is requesting a Special Use Permit in order to operate a cabinetmaking business at the property located at 612 East Main Street, identified as Tax Map Parcel number 14A3-((A))-28 zoned C-1 Commercial.

The Town Council set a Public Hearing on the matter for their December 13, 2011 meeting.

Yard Sale Code Language

Ms. Dunkle said that the Planning Commission has expressed concern about perpetual yard sales being held in the Town. She said that there is also concern about signs and unsold items remaining on the property for extended periods of time after the sale. She said that the Planning Commission asked her to research code language from other municipalities. She presented the research to the Planning Commission at their October meeting. Ms. Dunkle reported that The Planning Commission requested that Town Council consider modifying the existing code language by limiting property owners to four yard sales per year and requiring that signs and sale items must be removed from the property within 24 hours of the sale ending.

There was a general discussion about yard sale regulations. The Town Council requested that the Police and Security Committee discuss the issue at their next meeting.

Ms. Dunkle said that the Planning Commission has been working on blight abatement and that Mr. Dalton will cover it in his report.

Update on Clarke County High School

Ms. Dunkle said that the stormwater cut out work should be completed in the right-of-way by October 12.

6. Report of Town Manager

Spot Blight Abatement

Mr. Dalton said that the Planning Commission continues to work on blight abatement and that they heard from the owner of 12 First Street at their October meeting. Mr. Dalton said that the owner expressed his interest in razing the building and assured the Commission that he was working to complete the project. The Planning Commission determined that it would reconsider the matter at its November meeting. He reported that

the Liberty Street property owner has demolished the building and is working to get debris off the site.

7. Standing Committee Reports

a) BADA Liaison – Allen Kitselman

Council member Kitselman reported that the BADA did not have a meeting.

b) Budget Finance / CIP – Jay Arnold

Nothing to add to the Treasurer's report.

c) Community Improvements – Allen Kitselman

Nothing to add.

d) Planning Commission – Nothing report.

e) Police and Security – Council member Tollett said that the Committee will meet on December 7 at 11 a.m.

f) Streets and Utilities – Wilson Kirby

Mayor Kirby said that the Committee met on October 27 and discussed sidewalk conditions on South Church Street and got an update on the wastewater treatment plant.

Approval of Minutes

October 27, 2011

Upon motion by Council member Tollett, seconded by Mayor Kirby, the minutes of the October 27, 2011 Streets and Utilities Committee meeting were unanimously approved.

Council member Kitselman said that a constituent asked him about the repair of a section of sidewalk on Swan Avenue. Mr. Dalton said that staff is trying to work with the schools on the section near the Middle School. He said that Ms. Dunkle is looking into Safe Routes to Schools grant funding. Ms. Dunkle said that the next round of those grants is in March of 2012.

Mr. Dalton said that although VDOT has done a substantial amount of sidewalk work on Josephine Street that staff has noted several sections that need attention and that they will be reported to VDOT. He said that there has been a question about the condition of the brick section of sidewalk on South Church Street. He said that the first step in addressing that issue is determining who owns the sidewalks. He said that VDOT's right-of-way personnel will be coming out to look at that issue.

g) Personnel / Appointments – Jay Arnold

Nothing to add.

8. Other

Mayor Kirby said that he hopes every Council member can participate in the Christmas Parade on Saturday, December 3.

9. Closed Session –Pursuant to Va. Code Section 2.2-3711-A-29 of the Code of Virginia, 1950, As Amended, for the purpose of discussion of the award of a public contract, involving the expenditure of public funds, including discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body. Specifically the Town Council will discuss a proposed change order to the contract for construction of the wastewater treatment plant to replace the existing effluent pumping station.

a. Motion to enter Closed Session

It was moved by Council Recorder Arnold, seconded by Council member Tollett that the Council of the Town of Berryville enter Closed Session pursuant to Section 2.2-3711-A-29 of the Code of Virginia, 1950, As Amended, for the purpose of discussion of the award of a public contract, involving the expenditure of public funds, including discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body. Specifically the Town Council will discuss a proposed change order to the contract for construction of the wastewater treatment plant to replace the existing effluent pumping station.

VOTE:

Recorded Vote:

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

b. Enter Closed Session

The Town Council entered closed session at 8:25 p.m.

c. Reconvene Open Session

The Town Council reconvened in open session at 8:45 p.m.

d. Certification of Closed Session

**Town of Berryville
RESOLUTION**

MEETING DATE: October 11, 2011

MOTION BY: Harry Lee Arnold, Jr., Recorder

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:

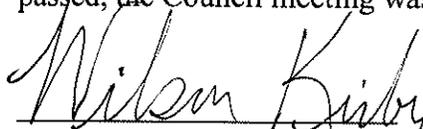
Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Allen Kitselman David Tollett
Nays:	None
Absent:	Mary Daniel Lawrence Russell, III
Abstain:	None
Absent During Vote:	None



Harry Lee Arnold, Jr., Recorder

10. Adjourn

Upon motion by Council member Kitselman, seconded by Council member Tollett and passed, the Council meeting was adjourned at 8:46 p.m.



Wilson Kirby, Mayor



Harry Lee Arnold, Jr., Recorder