

MINUTES
BERRYVILLE TOWN COUNCIL
Tuesday, October 11, 2011
Berryville-Clarke County Government Center
Regular Meeting
7:30 p.m.

Roll:

Town Council:

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

By consensus, the agenda was revised to add a closed session to the end of the regular meeting.

2. Approval of Minutes

September 13, 2011

Upon motion by Council member Tollett, seconded by Recorder Arnold, the minutes of the September 13, 2011 meeting were unanimously approved.

3. Citizen's Forum

Adam Zalewski and Debra Poole, 207 Rice Street, spoke about their concerns about the current Town Code section regarding dogs and proposed revisions to the section. Mr. Zalewski said that the current code is vague so it allows an individual to harass neighbors without any corroboration. He said that they have experienced this in their neighborhood. He said that specifically the definition of what constitutes excessive barking seems vague.

Mr. Zalewski said that they have two large dogs and that they now can't let them out much. Ms. Poole said that she understands that if dogs bark for a really long time late at night that it is a problem. She said that one person can harass neighbors with complaints under the current code. She said that Fairfax and Loudoun Counties both require a second individual from a different household to complain.

Bobbie Tilley, 204 Rice Street said she has two house dogs and that they barked for 10 minutes one day while she wasn't home. She said the dogs were inside and the windows were open. She said that she feels that it should take two complaints from two households. She said that she believes that dogs should not be allowed to bark for more than one hour between the hours of 8:00 a.m. to 7:00 p.m. but at night it should be no

more than 10 minutes. She asked that compliance notices should be null and void until this is resolved. She said that she truly feels harassed.

Stephanie Nelson, 112 Treadwell Street, said she also feels harassed by a neighbor who keeps complaining about her dogs. She said that Town Code Section 4-26 is vague and that it is unconstitutional for the Police Department to give a written warning about a violation of this section.

She said that she got a warning for her dog barking inside her home while a police car was parked in her driveway. She then spoke about other local codes regarding barking dogs that were overturned. She said that the warnings issued under the current code are not enforceable.

Ms. Nelson said that Fairfax County requires two complaints from two different households. She asked the Council to consider the harassment that is taking place on Rice Street. She said that the police walked up and down the street on October 7 at 2:30 in the afternoon waiting for dogs to bark. She said that a resident on Treadwell Street maced a dog and she wants to know why no charges were filed.

Cathy Cogswell, 205 Rice Street said that she has two dogs and that she perceives harassment of herself and her neighbors with dogs. She said that she wants to have peace of mind but wants her neighbors without dogs to have peace of mind too. She said that she has to go out with her dogs now and that another neighbor has had to erect a privacy fence. She noted that dogs also warn their owners about problems by barking. She recommended invalidating recent citations. She recommended that new code language requires two complaints and that the code continues to be modified until the harassment stops on Rice Street.

Kate Petranec, a volunteer for Berryville Main Street and the Fire House Gallery invited the Town Council to the opening reception for a photography exhibit at the Gallery on October 14th. She noted that Laura Patten, the Police Department's Administrative Assistant, will have a work in the exhibit.

Tim Hudson, 208 Rice Street, said he has a big dog and pays for tags and fees for the dog. He said that the dog protects his wife when he is not there and that he wants the dog to bark.

Mayor Kirby asked if the Police and Security Committee would like to report since there were citizens interested in what they are working on present at the meeting.

Council member Daniel said that the Police and Security Committee met on October 5.

Approval of Minutes

October 5, 2011

Upon motion by Council member Tollett, seconded by Council Member Daniel, the minutes of the October 5, 2011 Police and Security Committee meeting were unanimously approved.

Council member Daniel said that the intention of the committee was to review Section 4-26 and update it to make it clearer. She said that it is a pretty old ordinance. She noted that draft language for the amended section was distributed to the Council before the meeting.

She then spoke about the Committee's thoughts about refining the section. She said that in the Committee's opinion there is a significant difference between provoked and unprovoked barking. She said that the Committee believes that the words "continuous" and "timely" should be defined and that provisions should be enunciated about when police officers are involved. She said that the Committee thinks that there should be provisions for citizen enforcement because the Police Department should not be solely charged with enforcement.

Council member Daniel said that the question of requiring more than two complaints was not addressed at the Committee's last meeting. She said that the Council is not voting on the item tonight so there is time to consider citizen comment.

Mayor Kirby said that the Town Council needs to reconsider the code section and take citizen comment into consideration. Mr. Dalton said that although a public hearing is not required to change the code section, the Council may want to have a public comment period.

Council member Daniel asked if a public notice asking for public comment could be put on the web site. Mr. Dalton said that could be done.

Chief White said that when the Police Department started getting these complaints it drove them to look at the ordinance and found that it is vague. He said that responding to a lot of complaints obviously takes resources away from the Police Department.

Chief White reported that Walk to School Day was held on October 5 and was a success. He said that the September 25 child seat inspection event was also a success.

He said that the Police and Security Committee will meet on December 7 at 11:00 a.m.

4. Report of the Mayor

Mayor Kirby said that there has been a request from the Josephine Improvement Association that the Town Council hold a public hearing regarding public improvements to sidewalks on Josephine Street. He said that although a public hearing is not the usual protocol for such a matter the Town Council would be glad to allow public comment on the matter.

Mayor Kirby then recognized Kenneth Liggins, 206 Josephine Street, representing the Josephine Improvement Association.

Mr. Liggins said that he wrote a letter to the Town Council requesting that Josephine Street be improved. He said that the street is higher than the curb that controls water and that this makes the water go into people's yards. He said that the sidewalks on Josephine Street need to be repaired. He said that VDOT repaired only 100 feet of sidewalk on Josephine Street. He then spoke about how curb and gutter should be constructed.

Mr. Liggins said the water and sewer lines on Josephine Street are being backed up and the town is constantly coming up to check on it. He said that when the light [on the pump station] comes on it is causing problems and making the people's bills go up. He said that it was installed in 1969 and needs to be repaired and replaced. He then asked for a public hearing to resolve these issues.

Mayor Kirby said that he understood from Mr. Liggins' letter that he was concerned about sidewalk conditions. He said that it seems he is also concerned about water and sewer issue. Mr. Liggins said that he noticed a few years ago that they installed larger lines in all the neighborhoods except Josephine Street. He said to correct him if he was wrong.

Mayor Kirby recognized Mr. Dalton. Mr. Dalton said that Mr. Liggins was incorrect in his assertion about utility line installations in town. He asked Mr. Liggins about his misconception. Mr. Liggins responded that new lines were installed on Liberty Street. Mr. Dalton explained that Liberty Street was served by a 4-inch water line that broke several times per year and was replaced with a 12-inch water line. Mr. Liggins said that Josephine would like theirs replaced with a 12 inch.

Mayor Kirby said that he understood that the concern was about sidewalks, which is under VDOT's jurisdiction and until now the Council didn't know that there was a concern about water and sewer lines. He said that Council would need time to check on this issue before they respond to Mr. Liggins. Mr. Liggins said that he thought that the town was responsible for sidewalks after the population reached 3500. Mayor Kirby said that is true but there is a transition phase and they are still VDOT's responsibility until July 1, 2012.

Mr. Dalton said that the residency administrator from VDOT was supposed to be at this meeting but had not made it.

5. Planning and Zoning Matters: Christy Dunkle

Ms. Dunkle reported that the Planning Commission held a meeting on Tuesday, September 27, 2011 and discussed the blight abatement efforts at 109 Liberty Street and 12 First Street. She said that Mr. Dalton would cover this matter in his report.

She said that the ARB held a meeting on Wednesday, October 5 and heard several matters.

Update on Clarke County High School

Ms. Dunkle said that the school looks nice and that they will start back to work on the storm cut shortly.

Use of Bond Proceeds for Mosby Boulevard

Ms. Dunkle said that after the September Council meeting Mr. Dalton sent a letter to Mr. Echols concerning this matter. Mr. Dalton requested that Mr. Echols coordinate the paving with the project manager for the Clarke County High School to schedule a date in November.

6. Report of Town Manager

Spot Blight Abatement

Mr. Dalton said that at its September meeting the Planning Commission set a public hearing regarding 109 Liberty Street for their October meeting. He reported that since that time the property owner has torn the house in question down and has gone a long way to abating the blight. He said that because of this the Planning Commission is not holding the public hearing.

Mr. Dalton said that the Town has not been contacted by the owner of 23 Josephine Street concerning the blight abatement plan requested by the Planning Commission at their August Meeting. He said that the Planning Commission will take the matter up again at its November meeting.

Mr. Dalton said that he did receive a letter from the owner of 12 First Street. In that letter the owner stated that they intend to have the building demolished by October 24, 2011. He said that if the blight is not abated by that time staff will recommend that the Planning Commission set a public hearing on this matter for their November meeting.

7. Standing Committee Reports

a) BADA Liaison – Allen Kitselman

Council member Kitselman reported that the BADA reviewed a site plan amendment for a social hall at St. Bridget's church that was given conditional approval. He said that the BADA also discussed the request from the Darbybrook Homeowner's Association and decided the BADA did not have any jurisdiction in the matter.

b) Budget Finance / CIP – Jay Arnold

Nothing to add to the Treasurer's report.

c) Community Improvements – Allen Kitselman

Mr. Kitselman said that Frazier Associates in conjunction with Virginia Main Street is developing two concept designs for way-finding signage that may be ready for the Town Council to look at by next month.

Approval of Minutes

September 15, 2011

Upon motion by Council member Russell, seconded by Council Member Kitselman, the minutes of the September 15, 2011 Community Improvements Committee meeting were unanimously approved.

- d) Planning Commission – Lawrence Russell - Nothing to add to Planner’s report.
- e) Police and Security – Council member Daniel congratulated the Police Department on their second place showing in the Virginia Law Enforcement Challenge.
- f) Streets and Utilities – Wilson Kirby
Mr. Tyrell gave an update on the waste water treatment plant project.
- g) Personnel / Appointments – Jay Arnold
Nothing to add.

8. Other

Mr. Dalton explained that there is a potential change order for the waste water treatment plant. He said that because staff wants to be cautious where it relates to cost, this item should be discussed in closed session. He explained that we were trying to continue to use the existing effluent pump station and wet well but it has been discovered that the wet well is leaking and that the slab under the pump station is off kilter.

Mr. Tyrrell then explained the problem in more detail and how the engineer has proposed to deal with it. He noted that there are also issues with contractor responsibility that need to be addressed. Mr. Tyrrell said that the problem is that some of the other work on the plant has to be delayed until this redesign is effected.

Council member Kitselman asked if it is possible that the damage is the result of the earthquake. Mr. Dalton said the damage was discovered before the earthquake.

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 member Daniel, seconded by Council member Kitselman 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
Mary Daniel
Allen Kitselman
Lawrence Russell, III
David Tollett

Nays: None

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 8:58 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

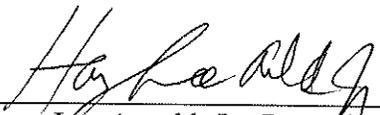
WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such closed meeting was conducted in conformity with Virginia law,

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
Mary Daniel
Allen Kitselman
Lawrence Russell, III
David Tollett
Nays: None
Abstain: None
Absent During Vote: None



Harry Lee Arnold, Jr., Recorder

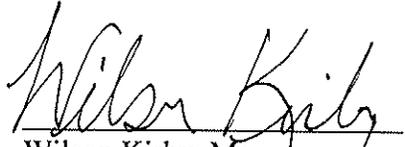
It was moved by Mayor Kirby, seconded by Council member Russell that the Council of the Town of Berryville refer the issue of the change order to the contract for construction of the wastewater treatment plant to replace the existing effluent pumping station to the Streets and Utilities Committee of the Town Council and to authorize the Committee to approve such change order if it deemed necessary.

VOTE:

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

10. Adjourn

Upon motion by Council member Daniel, seconded by Council member Kitselman and passed, the Council meeting was adjourned at 9:00 p.m.



Wilson Kirby, Mayor



Harry Lee Arnold, Jr., Recorder

**BERRYVILLE TOWN COUNCIL
POLICE AND SECURITY COMMITTEE
Wednesday, October 5, 2011
Berryville-Clarke County Government Center
Town Council Conference Room
Called Meeting
11:00 a.m.**

MINUTES

Roll:

Town Council:

Present: Mary Daniel, Chair; David Tollett

Staff: Keith Dalton, Town Manager; Neal White, Chief of Police

1. **Call to Order** – Mary Daniel, Chairman
Chairman Daniel called the meeting to order at 11:00 a.m.
2. **Update on Department Status** – Chief White update the Committee on the Walk to School Day and various awards made to citizenry and police staff.
3. **Barking Dog Ordinance Review** –The Committee reviewed the Barking Dog Ordinance. The Committee recommended that the Town Council review the item at their next regular meeting.
4. **Commercial Vehicle Ordinance Discussion** – The Committee reviewed the Commercial Motor Vehicle Ordinance and discussed typical commercial vehicles.
5. **Adjourn**
The committee meeting was adjourned at 11:45 A.M.



Keith Dalton, Town Manager

**BERRYVILLE TOWN COUNCIL
STREETS AND UTILITIES COMMITTEE
Wednesday, October 27, 2011
Berryville-Clarke County Government Center
Town Council Conference Room
Called Meeting
11:00 a.m.**

MINUTES

Roll:

Town Council:

Present: Mayor Wilson Kirby, Chair; David Tollett

Staff: Keith Dalton, Town Manager; Rick Boor, Director of Public Works; Dave Tyrrell, Director of Public Utilities

Press: None

Public: Kenneth Liggins

1. Call to Order – Mayor Wilson Kirby, Chair
Mayor Kirby called the meeting to order at 11:00 a.m.

2. Discussion – South Church Street sidewalks

Mr. Dalton said he had been contacted by Council member Kitselman regarding the condition of sidewalks on South Church Street. Mr. Dalton reported that he and VDOT staff had examined the 400 foot section of brick sidewalk south of the intersection of South Church and Taylor Streets. Mr. Dalton stated that VDOT's Right of Way Division would be visiting the site in the next few days to determine ownership of the sidewalk in question.

Mr. Dalton also discussed a section of sidewalk in front of the news stand on Main Street that needed to be patched. He informed the committee that Public Works would be repairing that section. He said that staff is examining a long term solution for the problem.

3. Discussion – Josephine Street sidewalks and drainage

Mr. Dalton said that there are three curb cutouts where stormwater flows off Josephine Street but no erosion was observed at those locations. He said that there is a 60 foot sidewalk section in front of 19 Josephine Street and the fellowship hall that needs work. One concern in that area is an existing entrance that may need to be eliminated. There were four or five other 5 foot sections that needed work.

Mr. Dalton also informed the committee that he expressed his concern to VDOT that there were no barriers where sidewalks terminated at the railroad. VDOT indicated they would be able to erect barriers within short order.

Mr. Dalton asked Mr. Liggins about his specific concerns about drainage from the street. Mr. Liggins stated that the pavement on the street was too high and this was causing water to flood on to properties. Mr. Dalton asked Mr. Liggins how many properties were affected. Mr. Liggins stated "one". Mr. Dalton asked Mr. Liggins what property was affected. Mr. Liggins replied 206 Josephine Street, where he lives with his mother Doris Liggins. Mr. Dalton said he would contact VDOT to take a look at his mother's entrance.

4. Update – WWTP Effluent Pump Station

The cost proposal from the contractor has been received and staff will discuss it with council in closed session at the next Town Council meeting.

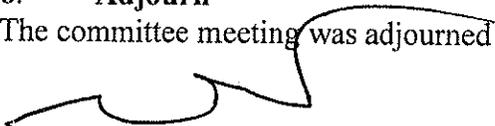
5. Other

Mr. Boor explained that the bids for the sewer line project on Byrd Avenue came in higher than expected. Staff is in the process of determining how to approach the project again in the spring.

Chairman Kirby asked how the stormwater connection across Main Street to the high school was proceeding. Mr. Boor explained that the project was delayed because of utility conflicts and that work was schedule to resume this week.

6. Adjourn

The committee meeting was adjourned at 12:09 P.M.



Keith R. Dalton, Town Manager