

BERRYVILLE TOWN COUNCIL
Tuesday, December 14, 2010
Berryville-Clarke County Government Center
Regular Meeting
6:45 p.m.

MINUTES

Roll:

Town Council:

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

Staff: Keith Dalton, Town Manager; Christy Dunkle, Town Planner/Assistant Town Manager; Neal White, Chief of Police; Celeste Heath, Town Clerk
Robert Mitchell, Town Attorney

Press: Mike Dowling, ClarkeDailyNews.com; Becky Lane, Winchester Star

1. Call to Order – Wilson Kirby, Mayor

Mayor Kirby called the meeting to order at 6:45 p.m.

2. Closed Session –Pursuant to Va. Code §2.2- 3711(A)(7) for consultation with legal counsel regarding probable litigation concerning the Joint Government Center HVAC system.

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 Va. Code §2.2-3711(A)(7) for consultation with legal counsel regarding probable litigation concerning the Joint Government Center HVAC system

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 6:46 p.m.

c. Reconvene Open Session

The Town Council reconvened in open session at 7:19 p.m.

d. Certification of Closed Session

**Town of Berryville
RESOLUTION**

MEETING DATE: December 14, 2010

MOTION BY: Mary Daniel

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.

CALLED 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

3. Regular Session – Mayor Kirby opened the Regular Session at 7:30 p.m.

4. Approval of Minutes

November 9, 2010

Upon motion by Council member Russell, seconded by Council member Daniel, the minutes of the November 9, 2010 meeting were unanimously approved.

5. Citizen's Forum:

There were no citizen comments.

6. Report of the Mayor

Mayor Kirby thanked Donna Peake for organizing the annual Christmas Parade. He also thanked the Architectural Review Board for judging the annual parking meter decorating contest.

7. Planning and Zoning Matters Christy Dunkle

Ms. Dunkle asked the Town Council to set a Public Hearing on two modifications to the Planning and Zoning Fee Schedule. She said that the first modification is to establish a Zoning Permit Fee for Temporary Family Health Care Structures noting that the addition of regulations concerning temporary family health care structures to the Zoning Ordinance requires this change to the fee schedule.

She said that the second modification is to modify the Department of Public Works Utility Inspection Fee by increasing it from \$30.00 per hour to \$40.00 per hour.

The Town Council unanimously set a Public Hearing on the matter for their January 11, 2011 meeting.

Update on Clarke County High School

Ms. Dunkle reported that work on the storm water management facility continues. She said that DCR conducted a follow-up site visit on December 2, 2010 and that the site was deemed to be in compliance with the Virginia Storm Water Management Program.

Ms. Dunkle also reported that a resident of Jackson Drive contacted the Virginia Fire Marshall's office about possible damage to their home from the blasting on the site. She explained that Seismic measurements are required to be taken during each blast and that those results have been forwarded to Town staff. She said that the report submitted as a part of the complaint investigation indicates that all shots have been within the appropriate level as set forth by the U.S. Bureau of Mines. The investigation at 103 Jackson Drive found evidence that the crack was pre-existing.

Ms. Dunkle reported that the owners of Rosemont also complained that one of the columns on the house had been damaged from blasting at the high school site. She said that the blasting report states that there is no evidence to suggest that the blast in question was any different than the previous five and that all of these blasts were below U.S. Bureau of Mines damage criteria limits.

Ms. Dunkle said that updated drawings of Mosby Boulevard were reviewed by the county and the School Board on December 7. She said that VDOT has scheduled a public hearing on the matter for January 12, 2011 at the Government Center.

Mr. Dalton said that he has asked VDOT to be present at the next Town Council meeting for a briefing on the Mosby Boulevard project. He said that he would like to have staff review the plans and put together a comment letter for the Town Council to review if they wish. He said that he knows that Council member Daniel would like to discuss crosswalks with VDOT as well. He said that the next council meeting would be a good time to bring up any other VDOT issues.

Council member Kitselman said that he is concerned about what he is hearing in the media about the Mosby project. He said that he has asked Clarke County staff to brief the BADA on the project at tomorrow's BADA meeting. He said that we basically know nothing about what is going on with the project. Council member Kitselman said the Town needs to be more plugged into this.

Mr. Dalton said that he agrees with Mr. Kitselman and that he has asked VDOT if the plans or exhibits will be made available to the public here at the Town Office and has received no answer. He said that the plans were initially delivered by VDOT to the County and not to the Town. He said that Ms. Bouffault kindly provided the exhibit that was posted at the Town Council meeting. He noted that Ms. Bouffault has some concerns with the plan as shown on the exhibit.

Council member Kitselman said that the article in the Clarke Daily News about the plan has shades of a year ago with a lot of misinformation circulating. He said that despite what was reported in the Clarke Daily News, this road does not cut the campus in half. He said that the report also erroneously stated that there are safety and economic concerns that have been ignored in planning the road. He said that he doesn't know how these assertions were in the report without quotations because they are the opinion of the reporter. He said that if this road is not built, it would be a hardship on everyone – taxpayers, the school board and everyone in Clarke County.

Mayor Kirby said that as far as the issue of Mosby Boulevard cutting the campus in two, the School Board originally bought 44 acres and that the 12 acres that will be on the north side of Mosby were later given to the School Board. He said that this may have made it look like the campus had been divided by Mosby, when in fact it had not.

Council member Kitselman said that it is important to remember that Mosby Boulevard has been a part of the Town and County comprehensive plans from the start.

Mr. Dalton brought to the Town Council's attention an invitation to the Northern Shenandoah Valley Regional Commission's presentation about the Rural Long Range Transportation Plan draft recommendations to be held on Monday, January 3rd. He said that the NSVRC is encouraging local officials and staff to attend the presentation which

will provide a synopsis of the draft plan which has a time frame to 2035.

Council member Daniel asked about the two complaints about the tree save area on the school site. Ms. Dunkle said that the complaints were about the maintenance of the area within the fence and that the grass wasn't being cut. Council member Kitselman said that the matter was discussed with Ms. Bouffault at the last BADA meeting and that the BADA asked that the General Contractor clean up and keep an eye on the situation.

Mr. Dalton said that it is a big accomplishment that the base asphalt for the parking lot has gone down and that the project is moving along well.

Barns of Rose Hill

The Mayor recognized Stan Kerns from the Barns of Rose Hill who gave an update on the project and reported that he is looking forward to a June completion date.

Action Item – Text Amendment Assisted Living Facilities

Ms. Dunkle said that at the November meeting the Town Council approved text amendments concerning assisted living facilities to align with state code modifications. She said that action was not taken on the amendment to Section 102 Definitions, modifying the definition for “dwelling, single family” to include group homes, family day homes and assisted living facilities.

Upon motion by Recorder Arnold, seconded by Council member Kitselman, the Council of the Town of Berryville approved the attached ordinance amending the definition for “dwelling, single family” by including group homes, family day homes or assisted living facilities (as defined in § 15.2-2291 Code of Virginia, 1950, as amended).

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

AN ORDINANCE AMENDING
ARTICLE I, SECTION 102, SPECIFIC TERMS,
OF THE TOWN OF BERRYVILLE ZONING ORDINANCE

BE IT ORDAINED, by the Council of the Town of Berryville, that Article I, Section 102 Specific Terms, of the Town of Berryville Zoning Ordinance shall be amended as follows (addition in bold):

SECTION 102

(12/10) Dwelling, single-family – A residential dwelling unit other than a mobile home, designed for and occupied by one family. **This term shall include group homes, family day homes or assisted living facility (as defined in § 15.2-2291 Code of Virginia, 1950, as amended).**

SIGNED: Wilson A. Kirby
Wilson Kirby, Mayor

ATTEST: Harry Lee Arnold, Jr.
Harry Lee Arnold, Jr., Recorder

Date: December 14, 2010

8. Report of Town Manager

Berryville-Clarke County Government Center HVAC Evaluation

Mr. Dalton said that the HVAC System Evaluation for the Berryville-Clarke County Government Center provided to the Town Council identifies short-comings of the HVAC system and possible actions to remediate the problems. He requested that the Town Council continue this meeting until December 21 at 3:00 p.m. to address the HVAC system issue.

Extension of Contract with BFI Waste

Mr. Dalton said that the initial term of the Town's current contract for garbage and recycling collection services will expire on June 30, 2011. He said that the contract provides for extension of the contract by written agreement of both parties provide that an agreement must be reached at least 90 days prior to contract expiration.

Mr. Dalton said that if the Town Council desires an agreement will be brought to the Council in January 2011. He noted that the relationship with the contractor has been good and that they are interested in extending the contact.

Darbybrook Homeowners Association

Mr. Dalton said that he has been researching what was done with Hermitage stormwater pond and what we have spent to maintain it. He said that Public Works expends more man hours at the Hermitage pond than they presumably would at the Darbybrook pond so it is not comparing apples to apples.

Mr. Dalton said that there are several issues he would like to address with Mr. Smalley so that the Town Council has no surprises when they are considering this matter. Those issues are:

- The stormwater pond requires some remedial repair and maintenance;
- The ownership of and maintenance responsibility for the landscaped entrance features and the other low impact stormwater maintenance facility must be determined;
- It must be determined who is responsible for the private road on Fairfax Street that has three or four houses on it and;
- Legal fees will be incurred that were not incurred in the Hermitage Pond matter and it must be determined who is responsible for those fees.

He said that he would like to introduce these issues to Mr. Smalley and confer back with the Town Council if they so wish. Mayor Kirby suggested that Mr. Dalton start this discussion with Mr. Smalley and perhaps invite him to the Town Council meeting when he wishes to present something on the matter.

Ms. Dunkle noted that there is also a playground on Fairfax Street that has liability and maintenance issues.

There was a consensus that the Town Council that they are interested in Mr. Dalton making an initial contact with Mr. Smalley about the matter.

Holidays

Mr. Dalton noted that the Governor has granted additional holiday time off with a closure on December 23.

Mayor Kirby said that last month the decision was made to implement what the Governor granted and he is comfortable with granting the additional time this month as well.

Upon motion by Council member Daniel, seconded by Council member Russell the Council of the Town of Berryville granted additional staff holiday leave time, closing all Town offices on December 23, 2010.

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

9. Standing Committee Reports

a) BADA Liaison – Allen Kitselman

Council member Kitselman reported that the BADA will meet tomorrow.

b) Budget Finance / CIP – Jay Arnold

Mr. Dalton reported that Ms. Moreland has begun the staff process on the budget.

c) Community Improvements – Allen Kitselman

Council member Kitselman reported that an e-mail was sent out to stakeholders for potential TOD signs. They were invited to pass the e-mail along to all who are interested. He said that there has been a lot of response to the e-mails from those who are interested in talking about the program. He said that he is pleased with the response from the stakeholders.

Council member Kitselman said that there have been two meetings about forming a county-wide arts council. He said that it was discovered through these meetings that the Shenandoah Arts Council is a vibrant organization and that it makes sense to become an active part of that Council. He said that it makes sense to plug into the organization and build on what they have while communicating Berryville/Clarke County's unique needs.

d) Planning Commission – Lawrence Russell.

Nothing to add to report.

e) Police and Security – Mary Daniel.

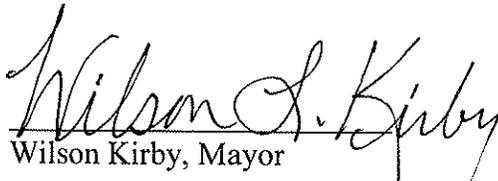
Nothing to add to report.

f) Streets and Utilities – Wilson Kirby
Nothing to add.

g) Personnel / Appointments – Wilson Kirby
Nothing to add.

Adjourn

Upon motion by Council member Daniel, seconded by Council member Russell and passed, the Council meeting was continued to 3:00 p.m. on December 21, 2010.


Wilson Kirby, Mayor


Harry Lee Arnold, Jr., Recorder

BERRYVILLE TOWN COUNCIL
Tuesday, December 21, 2010
Berryville-Clarke County Government Center
Continued Regular Meeting
3:00 p.m.

MINUTES

Roll:

Town Council:

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

Staff: Keith Dalton, Town Manager; Christy Dunkle, Asst. Town Manager/Planner; Neal White, Chief of Police; Celeste Heath, Town Clerk
Robert Mitchell; Town Attorney

1. Call to Order – Wilson Kirby, Mayor

Mayor Kirby called the meeting to order at 3:02 p.m.

2. Closed Session –Pursuant to Va. Code §2.2- 3711(A)(7) for consultation with legal counsel regarding probable litigation concerning the Joint Government Center HVAC system.

a. Motion to enter Closed Session

It was moved by Recorder Arnold, seconded by Council member Kitselman that the Council of the Town of Berryville enter Closed Session pursuant to Va. Code §2.2-3711(A)(7) for consultation with legal counsel regarding probable litigation concerning the Joint Government Center HVAC system.

VOTE:

Recorded Vote:

Ayes: Wilson Kirby, Mayor
Harry Lee Arnold, Jr., Recorder
Allen Kitselman
Lawrence Russell, III
David Tollett

Nays: None

Abstain: None

Absent During Vote: Mary Daniel

b. Enter Joint Closed Session with the Clarke County Board of Supervisors

The Town Council entered closed session at 3:02 p.m.

Ms. Daniel entered the closed session at 3:25 p.m.

c. Reconvene Open Session

The Town Council reconvened in open session at 3:41 p.m.

d. Certification of Closed Session

**Town of Berryville
RESOLUTION**

MEETING DATE: December 21, 2010

MOTION BY: Mary Daniel

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.

CALLED VOTE:

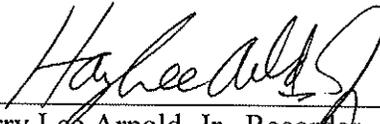
Recorded Vote:

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

3. Joint Session with Clarke County Board of Supervisors

Mr. Mitchell explained the situation with the Berryville-Clarke County Government Center which was constructed under contract with Brechbill & Helman Construction Company and pursuant to an agreement with Baughan and Baukhages Architects. He explained that the contractor owes the Town and County for liquidated damages because of construction delays.

Mr. Mitchell said that there have been problems with the HVAC system in the building and that an outside engineer was engaged to conduct an evaluation of the system. He said that both boards have been supplied copies of the report that indicates that the problem is primarily a design issue. He said that the report identifies several items that need to be corrected and are the responsibility of the contractor.

Mr. Mitchell said that the agreement that the boards are considering calls for payment of the liquidated damages and repair to the HVAC system by Brechbill and, in turn, payment of outstanding invoices to Brechbill by the Town and County.

He noted that item 5(e) in the agreement may be subject to change because there is some concern as to whether the contractor is responsible for this item. He suggested that authorization to change this item if needed should be left with the Joint Building Committee.

The Clarke County Board of Supervisors unanimously approved the attached Agreement.

Upon motion by Recorder Arnold, seconded by Council member Daniel, the Council of the Town of Berryville approved the attached Agreement with Brechbill & Helman Construction Co., Inc. dated December 21, 2010, subject to the Joint Building Committee having the authority to modify Paragraph 5.e. of the Agreement as to the obtaining and payment for an "as is" air flow test.

VOTE:

Recorded Vote:

Ayes:

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

Nays:

None

Abstain:

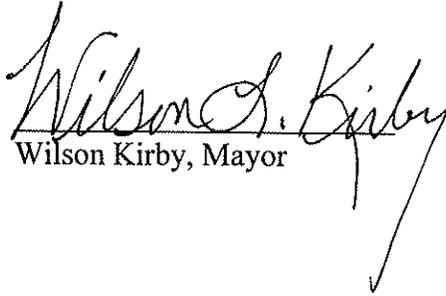
None

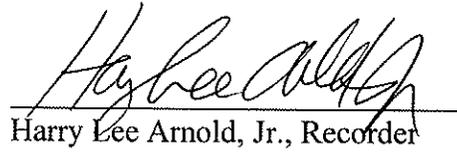
Absent During Vote:

None

Adjourn

Upon motion by Council member Daniel, seconded by Council member Russell and passed, the Council meeting was adjourned 3:49 p.m.


Wilson Kirby, Mayor


Harry Lee Arnold, Jr., Recorder