

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Regular Meeting
May 11, 2021
7:00 p.m.

Town Council: Present—Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Donna McDonald; Diane Harrison; Grant Mazzarino; Kara Rodriguez

Staff: Present--Keith Dalton, Town Manager; Christy Dunkle, Community Development Director; Chief Neal White, Berryville Police Department; Paul Culp, Town Clerk; Cynthia Poulin, Finance Clerk

Press: Mickey Powell, *The Winchester Star*.

1. Call to Order

Mayor Arnold called the meeting to order at 7:00 p.m.

2. Pledge of Allegiance

3. Approval of Agenda

Mayor Arnold noted the non-standard seating arrangements occasioned by pandemic protocols.

Ms. McDonald moved to approve the agenda. The motion passed by unanimous voice vote.

4. Presentations/Awards/Recognitions

Josh Roller of Robinson, Farmer, Cox Associates gave a presentation on the Town's Fiscal Year 2020 audit report. He explained the purpose of the components of the report and associated documents. He said the audit had detected no indications of material weakness or significant deficiency.

5. Public Hearings

Proposed FY2022 Budget

Text Amendment to §614.8(c)(3) Rear Yard requirement of the Berryville Zoning Ordinance

Ms. Dunkle explained that the Planning Commission, acting on a request by Alton C. Echols, was sponsoring a text amendment that would decrease the rear yard setback for single-family detached dwellings from 40 feet to 30 feet in the Older Person Residential zoning district.

Mayor Arnold opened the public hearing at 7:13 p.m. No one addressed the matter, and he closed the hearing at 7:14 p.m.

6. Discussion of Public Hearing Items

No further discussion occurred.

7. Citizens' Forum

Lynelle Wilkins, Dee-Dee Liggins, and Dorothy Davis each addressed the meeting, asking for tax and fee exoneration for the George Williams Estate, the new owner of record for the Milton Valley Cemetery, which was to be discussed later by the Council as unfinished business.

8. Consent Agenda

The consent agenda comprised the minutes of the April 13 Town Council regular meeting, the April 5 Town Council work session, and the April 26 meeting of the Community Development Committee.

Recorder Gibson moved to adopt the consent agenda as presented. The motion passed by unanimous voice vote.

9. Unfinished Business

Taxes and Fees Owned by the George Williams Estate (New Owner of Record for the Milton Valley Cemetery)

Mr. Dalton rebutted remarks made during citizens' forum to the effect that the cemetery had received tax bills from the Town. He said a collections attorney had performed a title search at the Town's behest, and provided the **attached** summary of the property's history. He explained that the County had changed the property's status to tax-exempt and that the Town's treasurer could exonerate the penalties and interest, totaling \$9,922.24, owed to the Town, as the delinquency was not the fault of the taxpayer.

Recorder Gibson and Mr. Dalton briefly discussed the amount of the penalties, interest, and current tax lien total.

Ms. Harrison urged the Council to vote in favor of exoneration, explaining that the matter was one of importance and that she had researched it carefully for two years. She briefly summarized the ownership history of the property.

Ms. Harrison moved that the Council adopt the **attached resolution exonerating the taxes and fees owed on Tax Map Parcel 14A6-((3))-B-3 as of this date. The motion passed by unanimous voice vote.**

10. New Business

Mr. Dalton noted that the legislature had recently prohibited May municipal elections, overriding charter provisions of individual municipalities. He said the Council had previously expressed concerns about November elections inasmuch as they can lead to local issues becoming lost in national or state matters. He said he understood the Council to prefer that if elections must be in November, they should be held in odd-numbered years and therefore simultaneously with state rather than federal elections.

Mr. Dalton said that if the Council takes no action, the next two Town elections would be in November of 2022 for Recorder and Wards 2 and 4, and in November of 2024 for Mayor and Wards 1 and 3.

Mr. Dalton said that if the Council wishes to move its elections to odd-numbered years after the brief period allowing such changes by ordinance prior to July 1, it would have to request an amendment to the Town charter, which most likely would result in the terms in office of current members being shortened for alignment with the new schedule. In this scenario, elections for Recorder and Wards 2 and 4 would occur in November of this year, with elections for Mayor and Wards 1 and 3 in November of 2023.

Mr. Dalton said that action taken in that direction must be swift, because candidates for a November 2021 election would have to qualify by June 8, and that a special meeting of the Council, with a public hearing, had been set for May 17 at 7:00 p.m. for deliberation on this matter with the Town attorney and County elections registrar present. He said the meeting could be canceled if the Council had no interest in moving the elections.

Mr. Dalton said new legislation also stipulated that municipalities with ward systems for their councils must either eliminate at-large voting in favor of ward residency requirements.

Mr. Dalton said the registrar had expressed concern about the logistical and fiscal ramifications of setting up multiple precincts. He said a charter amendment would be necessary to change the ward system, and briefly described the required changes to verbiage.

Ms. Rodriguez asked whether candidates seeking to qualify under a system with residency requirements would have to collect signatures only from voters in their wards. Mr. Dalton said yes, but that since the law would not take effect until July 1, candidates for an election in November of this year could still collect signatures at large.

Ms. Rodriguez said that even if the Council does not wish to change the system, the May 17 meeting should occur in order for the public and the registrar to have the opportunity to share their thoughts. Mr. Dalton concurred, adding that the Town attorney's presence would be helpful. The consensus of the Council was that the May 17 meeting should occur.

11. Council Member Reports

Mayor Arnold commended Ms. Dunkle and the Tree Board for the Town's Tree City USA recognition.

Recorder Gibson, Ms. McDonald, Mr. Mazzarino, and Ms. Rodriguez had nothing to add.

Ms. Harrison noted that Barns of Rose Hill would soon be resuming its Thursday jam sessions.

12. Staff Reports

Public Works

Nothing was added to the written report.

Public Utilities

Nothing was added to the written report.

Police

Nothing was added to the written report.

Community Development

Ms. Dunkle directed the Council's attention to the material in the agenda packet addressing the proposed text amendment to Section 614 Older Person Residential for which the public hearing had been held earlier in the meeting. She confirmed for Ms. Harrison that only setbacks and not lot sizes would change.

Ms. McDonald moved that the Council of the Town of Berryville adopt the attached ordinance modifying Article VI Section 614.8(c)(3) Rear Yard Requirements of the Berryville Zoning Ordinance, decreasing the rear yard setback for single-family detached dwellings from 40 feet to 30 feet in the Older Person Residential (OPR) zoning district. The motion passed by unanimous voice vote.

Administration and Finance

Nothing was added to the written report. Recorder Gibson and Mr. Dalton agreed that the Budget and Finance Committee would not need to meet in May.

Town Manager

Update: Invitation for Bids for Paving, Milling, and Striping

Mr. Dalton said there had been five responsive bidders and that the bids averaged approximately \$153,000, with a low bid of approximately \$115,000. He said the notice of intent to award had been issued and that the deadline for completion of the work had been extended from July 1 to August 15 and that he and Public Works Director Rick Boor were considering pricing for additional projects funded via VDOT reimbursables.

Water Bill Adjustment Request

Mr. Dalton directed the Council's attention to the agenda packet and briefed the members on the documents addressing an unexplained spike in the water use of a local resident who had then requested an adjustment of the bill for that usage. He explained the efforts of the Town to reach an explanation, and the authority of the Council under the local ordinance to make the requested adjustment. There was a discussion of possible causes for the increase and of policies governing such phenomena.

Ms. McDonald moved that the Council of the Town of Berryville find that the Town did not err in its denial of Mr. William Johnston's request for adjustment to his water bill for the period of 10/27/20 to 11/23/20 and that it therefore deny the appeal of the Town Manager's decision in this matter. The motion passed by unanimous voice vote.

13. Committee Updates

Budget and Finance

Recorder Gibson asked about a report that she had expected to see in the agenda packet but that had not been included. Mr. Dalton said the press of other business had precluded this but that staff would provide it promptly.

Community Development

Ms. Rodriguez said the committee would meet on May 18 at noon for discussion of the Town website, and again on June 28 at 9:00 a.m.

Personnel

Mayor Arnold and Ms. Dunkle agreed that the committee would meet on May 25 at 9:00 a.m. to discuss vacancies on the Berryville Area Development Authority and the Board of Zoning Appeals and the desire of a BADA member to transfer to the Planning Commission.

Public Safety

Ms. McDonald thanked Chief White and the police department for their role in the community.

Streets and Utilities

Ms. Harrison and Mr. Dalton agreed that the committee would not need to meet in May but might meet in June.

14. Closed Session

Recorder Gibson moved that the Council of the Town of Berryville enter closed session in accordance with §2.2-3711-A-7 of the Code of Virginia, to consult with staff regarding a pending lawsuit. The motion passed by unanimous voice vote.

The Council entered closed session at 8:09 p.m. and reconvened in open session at 8:36 p.m.

Recorder Gibson moved that that the Council of the Town of Berryville adopt the **attached resolution certifying it 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. The motion passed by unanimous roll-call vote.**

15. Other

Recorder Gibson moved that the Council of the Town of Berryville approve the **attached Settlement Agreement and Release by and between Berryville United Methodist Housing, L.P., County of Clarke, Virginia, and the Town of Berryville, Virginia and that the Mayor is hereby authorized to execute said agreement on behalf of the Town. Further, the Treasurer is authorized and directed to pay the reimbursement required by the Agreement from General Fund Contingency Funds. The motion passed by unanimous voice vote.**

16. Adjourn

The Council adjourned by consensus on a motion by Recorder Gibson at 8:38 p.m.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk

BERRYVILLE TOWN COUNCIL SIGN-UP SHEET

Citizens' Forum

Tuesday, May 11, 2021

7:00 p.m.

Name: _____ **Town of Berryville Resident?**

LYNELLE WILKINS Yes No

Dee Dee Liggins Yes No

Dorothy Davis Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Yes No

Taxes and Fees owed by George Williams Estate (new owner of record Milton Valley Cemetery)

History

The Town and Clarke County were in the process of having the property in question (identified as Tax Map Parcel 14A6-((3))-B-3) sold at auction for back taxes. The Town is owed:

\$ 1,557.14 for unpaid taxes from 2002 to 2020
\$ 7,658.91 for unpaid property maintenance
\$ 258.91 for advertising
\$ 9,140.26 for interest
\$ 781.98 penalties

\$19,397.20 TOTAL

The tax sale process includes completion of a title search on the subject property.

The title search revealed that the property had been transferred to Milton Valley Cemetery in the 19th century. Seemingly, neither the County nor Milton Valley Cemetery were aware of the transfer. The tax sale process was suspended until the matter could be investigated fully.

It appears that in 1889 the property was purchased at tax auction by Mr. George Ricamore for taxes owed by Mr. Philip Williams. In 1891 Mr. Ricamore conveyed the property to the Milton Valley Cemetery Company. Apparently neither the Milton Valley Cemetery nor the County of Clarke acknowledged or knew about this transfer or the terms of the transfer were not met. Accordingly, the property was not occupied by Milton Valley and was carried in the County's tax roles as having stayed in the Williams family (last listed as George Williams Estate (George Williams died in 1918)).

On March 3, 2021 the Milton Valley Cemetery Association filed a Deed of Confirmation in the land records of the Circuit Court of Clarke County to clarify ownership of the parcel.

On March 16, 2021 the Clarke County Board of Supervisors voted to exonerate all taxes owed to the County for the parcel in parcel (penalties and interest will be forgiven by the Clarke County Treasurer). The County Commissioner of the Revenue has changed its tax roles to 1) reflect that the lot is owned by the Trustees of Milton Valley Cemetery and 2) that the property is now tax-exempt.

In accordance with §58.1-3916 of the Virginia Code, the Town's Treasurer will exonerate the penalties and interest owed to the Town totaling \$9,922.24. This action will be taken because the delinquency in this instance was not the fault of the taxpayer.

Request

The Trustees of the Milton Valley Cemetery Association request that the Town exonerate and forgive back taxes, maintenance fees, and other charges that make up the tax lien on the parcel. Once the penalties and interest are subtracted from the total, the current tax lien totals \$9,474.96. Of that, \$1,557.14 is tax principal.

Attachments

- Plat
 - o Tax Map Parcel 14A6-((3))-B-3 in YELLOW
 - o Milton Valley Cemetery in GREEN
 - o Access easement serving MVC in BLUE
- Correspondence from the Trustees of Milton Valley Cemetery Association dated March 4, 2021 containing request to consider lien forgiveness.
- Deed of Confirmation dated March 1, 2021
- Milton Valley Cemetery Association Tax Exoneration Resolution passed by the Clarke County Board of Supervisors on March 16, 2021.
- Draft resolution for the Town Council to review and consider

Sample motion

I move that the Council of the Town of Berryville adopt the attached resolution exonerating the taxes and fees owed on Tax Map Parcel 14A6-((3))-B-3 as of this date.

MILTON VALLEY CEMETERY TAX EXONERATION RESOLUTION

WHEREAS, the Trustees of the Milton Valley Cemetery Association are the owners of property located in the Town of Berryville and identified as Tax Parcel No. 14A6-((3))-B-3 (“the Property”); and

WHEREAS, the Property was deeded to Milton Valley Cemetery Company in 1891; and

WHEREAS, the Property has nevertheless been carried on the County tax rolls as owned by the George Williams Estate; and

WHEREAS, no real estate tax bills through calendar year 2020 were sent to the Milton Valley Cemetery Association and there are unpaid taxes on the Property through calendar year 2020 and the Town periodically maintained the Property;

WHEREAS, the unpaid tax principal, maintenance fees, and advertising fees total \$9,474.96.

NOW, THEREFORE BE IT RESOLVED that the Milton Valley Cemetery Association having received no real estate bills or notices through calendar year 2020, the real estate taxes through calendar year, property maintenance fees, and advertising fees, in the principal amount of \$9,474.96, are hereby exonerated.

APPROVED AND ORDERED ENTERED in the official records by the unanimous vote of the Berryville Town Council members assembled on the 11th day of May 2021.

APPROVED:

Harry Lee Arnold, Jr., Mayor

ATTEST:

Erecka Gibson, Recorder

AN ORDINANCE AMENDING
ARTICLE VI, SECTION 614.8(c)(3) REAR YARD SETBACK
OF THE TOWN OF BERRYVILLE ZONING ORDINANCE

BE IT ORDAINED, by the Council of the Town of Berryville, that Article VI, Older Person Residential, Section 614.8 Regulations for Single Family Detached Dwellings, of the Town of Berryville Zoning Ordinance shall be amended as follows:

ARTICLE VI

614.8 REGULATIONS FOR SINGLE FAMILY DETACHED DWELLINGS

- (a) Minimum lot size: 7,500 square feet
- (b) Minimum lot width: 60 feet
- (c) Minimum yard requirements
 - (1) Front Yard: 20 feet
 - (2) Side yard: 10 feet, except for corner lots, the side yard facing the side street shall be 20 feet or more for both main and accessory buildings
 - (3) Rear yard: ~~40~~ 30 feet
- (d) Accessory structures of less than 150 square feet: 5 feet from side and rear lot lines
- (e) Parking Requirements: The number of required off-street parking spaces shall be a total of 2 per unit.

SIGNED: _____
Harry Lee Arnold, Jr., Mayor

ATTEST: _____
Erecka L. Gibson, Recorder

Motion to Enter Closed Session

I move that the Council of the Town of Berryville enter closed session in accordance with §2.2-3711-A-7 of the Code of Virginia to discuss with staff a pending lawsuit.

DATE: May 11, 2021

MOTION: *Gibson*

VOTE:

Aye: *Unanimous roll-call vote.*

Nay:

Absent/Abstain:

ATTEST: 

Erecka Gibson, Recorder

BERRYVILLE TOWN COUNCIL

MOTION

CLOSED SESSION RESOLUTION

DATE: May 11, 2021

MOTION BY: *Gibson*

SECOND BY:

I move that the Council of the Town of Berryville adopt the following resolution certifying it 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:

Resolution

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

NOW, THEREFORE, BE IT RESOLVED that the Committee 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 Committee.

VOTE:

Aye: *Unanimous roll-call vote*

Nay:

Absent/Abstain:

ATTEST: 

Erecka L. Gibson, Recorder

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (the "Agreement") is entered into this 29th day of April 2021, by and between Berryville United Methodist Housing, L.P. ("BUMH"), County of Clarke, Virginia (the "County"), and Town of Berryville, Virginia (the "Town") (BUMH, the County, and the Town may be referred to individually as a "Party" and collectively as the "Parties.")

WHEREAS, BUMH owns the improved real estate located at 218 Mosby Boulevard, Berryville, Virginia (Parcel No. 14A7 A 1) (the "Property"); and

WHEREAS, the County and the Town assessed real estate taxes to BUMH for the County and the Town's 2017, 2018, 2019, and 2020 tax years based on assessments that BUMH contends are erroneous and at greater than the Property's fair market value; and

WHEREAS, the County and the Town have levied, but not yet billed, real estate taxes to BUMH for the County and the Town's 2021 tax year based on an assessment that BUMH contends is erroneous and at greater than the Property's fair market value; and

WHEREAS, BUMH filed an application for correction of erroneous assessment, styled *Berryville United Methodist Housing, L.P. v. County of Clarke, Virginia, and Town of Berryville, Virginia*, Case No. CL20-6123 (the "Action"), in the Circuit Court of Clarke County (the "Court") requesting (i) correction of the County and the Town's assessments of the Property for their 2017 tax years, and (ii) refunds of the excess taxes BUMH paid to the County and the Town due to the erroneous 2017 assessment, plus interest as required by Virginia law and the County and the Town's ordinances; and

WHEREAS, BUMH subsequently obtained leave of the Court to amend its application (the "Amended Application") to include (i) requests for correction of the County and the Town's assessments of the Property for their 2018, 2019, 2020, and 2021 tax years, (ii) refunds of the excess taxes BUMH paid to the County and the Town due to the erroneous 2018, 2019, and 2020 assessments, plus interest as required by Virginia law and the County and the Town's ordinances, and (iii) an abatement of the excess taxes levied, but not yet billed, to BUMH for the County and the Town's 2021 tax years; and

WHEREAS, the BUMH, the County, and the Town have agreed to resolve BUMH's claims set forth in the Action (as alleged in the Amended Application) on the terms set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each Party irrevocably acknowledges, BUMH, the County, and the Town represent, warrant, undertake, and agree as follows:

1.0 Settlement and Payment. In full and final settlement of BUMH's claims asserted in the Action (as alleged in the Amended Application), the Parties agree as follows:

1.1. Assessment Corrections. The County and the Town agree to correct their respective assessments of the Property for their 2017, 2018, and 2019 tax years to \$4,128,000. The County and the Town further agree to correct their respective assessments of the Property for their 2020 and 2021 tax years to \$4,280,000.

1.2. Real Estate Tax Refunds. The County agrees to refund the excess real estate taxes paid by BUMH based on the County's original assessments of the Property for the 2017, 2018, 2019, and 2020 tax years in the total principal amount of \$90,422.18. The Town agrees to refund the excess real estate taxes paid by BUMH based on the Town's original assessments of the Property for the 2017, 2018, 2019, and 2020 tax years in the total principal amount of \$24,947.32. The County and the Town agree to deliver their respective payments to BUMH by checks made payable to BUMH and delivered to BUMH's counsel (Williams Mullen, Attn. Shane L. Smith, 999 Waterside Dr, Ste 1700, Norfolk, VA 23510), no later than thirty (30) days after the County and the Town's respective governing bodies have approved this Agreement (which approval must occur no later than June 14, 2021).

1.3. 2021 Real Estate Tax Levies and Bills. The County agrees to correct its real estate tax levies to the Property for the 2021 tax year to the correct tax amount based on an assessment of \$4,280,000 and the County's real estate tax rate for 2021. The Town agrees to correct its real estate tax levies to the Property for the 2021 tax year to the correct tax amount based on an assessment of \$4,280,000 and the Town's real estate tax rate for 2021. The County and the Town agree that their respective real estate tax bills to BUMH (for the real estate taxes due for the 2021 tax year) will be based on their corrected real estate tax levies.

1.4. 2022 and 2023 Real Estate Tax Assessments, Levies, and Bills. The County and the Town agree that their respective assessments of the Property for their 2022 and 2023 tax years will be in the amount of \$4,280,000. The County and the Town further agree that their real estate tax levies and bills to BUMH for their 2022 and 2023 tax years will be based on assessments of the Property in the amount of \$4,280,000.

1.5. Waiver of Interest Claims. In exchange for the County and the Town's assessment corrections, real estate tax refunds, and other actions as set forth in Sections 1.1, 1.2, 1.3, and 1.4 of this Agreement, BUMH agrees to waive and release all claims for interest owed to BUMH on the excess real estate taxes collected by the County and the Town for their 2017, 2018, 2019, and 2020 tax years.

2.0 Dismissal of Action. Within five (5) business days after the execution of this Agreement by all parties, the Parties shall endorse, and BUMH shall submit to the Court for entry, an Agreed Dismissal Order for the dismissal of the Action in the form attached as Exhibit A.

3.0 Releases.

3.1. BUMH'S Releases of the County and the Town. Effective upon payment by the County and the Town of the refunds set forth in Section 1.2 of this Agreement, BUMH releases and forever discharges the County and the Town from any and all claims, demands, causes of action, or right or entitlement to relief, known or unknown, which BUMH ever had, has, or may

have arising from or relating to the County and/or the Town's assessments of or to the Property for the 2017-2023 tax years, excepting any assessments, levies, and/or bills of any ad valorem taxes, fees, or charges other than real estate taxes for the 2021, 2022, and/or 2023 tax years, which the Parties understand and agree are not within the scope of this Agreement (and, for good measure, are not contemplated by the County and/or the Town).

3.2. The County and the Town's Releases of BUMH. Effective upon execution of this Agreement by all the Parties, the County and the Town each release and forever discharge BUMH and its predecessors, successors, assigns, and/or heirs, from any and all claims, demands, causes of action, or right or entitlement to relief, known or unknown, which the County and/or the Town ever had, have, or may have arising from or relating to their respective assessments of or to the Property for their 2017-2023 tax years, excepting any assessments, levies, and/or bills of any ad valorem taxes, fees, or charges other than real estate taxes for the 2021, 2022, and/or 2023 tax years, which the Parties understand and agree are not within the scope of this Agreement (and, for good measure, are not contemplated by the County and/or the Town).

4.0 Representations and Warranties. Each Party represents and warrants to the other Party as follows, and acknowledges that reliance upon such warranty and representation by each other Party is intended, reasonable, foreseeable, and anticipated and that each warranty and representation shall survive the execution and delivery of this Agreement:

4.1. Authority. Each Party is duly and fully authorized to enter into, execute, deliver, and perform under this Agreement. Each person signing this Agreement on behalf of any Party represents and warrants that he or she is authorized to bind the Party for whom he or she is signing this Agreement, and each such Party represents and warrants that the person executing this Agreement on its behalf is authorized to do so.

4.2. Competency. Each Party is fully competent and able to enter into, execute, deliver, and perform its obligations under this Agreement.

4.3. Good Standing. Each Party which is an entity represents and warrants that it is in good standing and authorized to transact business.

4.4. No Bankruptcy. No Party is a debtor in any bankruptcy, insolvency, or similar proceeding.

4.5. No Breach or Violation. The Parties' execution, delivery, and performance under this Agreement shall not constitute, either alone or in conjunction or combination with any other events or circumstances, a breach or violation of any other agreement, law, statute, ordinance, or regulation. The Parties are not aware of any reason why this Agreement shall not be binding and enforceable according to its terms.

4.6. Counsel and Advisors. The Parties have read this Agreement, have had the opportunity to consult with counsel and advisors of their choosing, and fully understand every term of this Agreement and the legal effect of this Agreement.

4.7. No Assignment. The Parties have not granted, assigned, pledged, hypothecated, sold, or otherwise transferred any right or claim against the other Parties, such that there are any other parties necessary fully to accomplish the terms of this Agreement.

4.8. Investigation. The Parties have had the full, complete and unfettered opportunity to investigate all facts and circumstances pertinent to this Agreement and are fully satisfied with the terms, conditions, and effect of this Agreement.

4.9. Consideration. This Agreement is executed solely for the consideration herein expressed, the sufficiency of which is expressly and irrevocably acknowledged.

4.10. No Inducement. No promise, representation, or inducement has been offered or made by any Party except as set forth in this Agreement.

5.0 Miscellaneous Provisions.

5.1. Binding Effect. Each provision and term of this Agreement shall inure to the benefit of and be binding on the Parties and each of their respective successors, heirs, personal or legal representatives, assigns, directors, officers, shareholders, agents, and/or employees.

5.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the matters set forth herein.

5.3. Modification. This Agreement, including the provisions of this paragraph, shall not be amended or modified, in whole or in part, except in writing signed by each Party.

5.4. Severability. If any provision of this Agreement is held to be unenforceable or invalid, such provision shall be fully severable and shall not affect the validity of any otherwise valid provision. In lieu thereof, there shall be added a provision that is as similar in terms to such unenforceable or invalid provision as may be possible and be enforceable and valid.

5.5. Headings. The headings to the various provisions of this Agreement are for the convenience of the Parties and are not intended, and shall not be construed, to give guidance on the proper interpretation or construction of this Agreement.

5.6. Governing Law. This Agreement shall be governed, construed and enforced under the laws of the Commonwealth of Virginia without giving effect to any conflict of laws principles.

5.7. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one agreement. This Agreement shall not be enforceable against any Party until an original or counterpart has been executed by each Party.

5.8. Drafting. Each Party has borne equal responsibility for the drafting of each provision of this Agreement, and this Agreement accurately, fully, and correctly reflects the

agreement of the Parties. This Agreement shall not be construed in favor of or against any Party by virtue of his or its role in drafting this Agreement.

5.9. Further Assurances. Each Party agrees, without further consideration other than reimbursement for reasonable out-of-pocket expenses, to take such further action as is reasonably required to accomplish the purposes of this Agreement, including but not limited to procuring and providing such resolutions, in suitable form, as may be necessary to document the authority of each corporate Party to enter into this Agreement.

5.10. Enforcement. Any action to enforce this Agreement may be brought by any Party in the Circuit Court of Clarke County, Virginia, and each Party irrevocably consents and submits to that Court's jurisdiction and to waive any objections to jurisdiction and venue in any action concerning this Agreement.

WHEREFORE, the Parties execute this Agreement to reflect and acknowledge their agreement to the terms set forth above.

[Remainder of Page Left Blank Intentionally]

BERRYVILLE UNITED METHODIST HOUSING, L.P.

BY: OTM Mary Hardesty GP, LLC, a Texas Limited Liability Company, its General Partner

BY: On Track Ministries, Inc., a Texas non-profit corporation, its Sole member

By: [Redacted Signature]

Print Name: Cliff McDaniel

Its: President

STATE OF Texas,
CITY/COUNTY OF Fort Bend, to wit:

The foregoing instrument was duly acknowledged before me, a Notary Public in and for the city/county and state aforesaid, this 29 day of April, 2021, by Cliff McDaniel of Berryville United Methodist Housing, L.P., on behalf of the company, who

is personally known to me

has produced a Tx Drivers license as identification before me.

[Redacted Signature]
Notary Public

My commission expires: 7/2/23

Notary Registration No. 10485450



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Approved as to form:

COUNTY OF CLARKE, VIRGINIA,

Robert T. Mitchell, Jr.
County Attorney

By: _____

Print Name: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to wit:

The foregoing instrument was duly acknowledged before me, a Notary Public in and for the city/county and state aforesaid, this ____ day of _____ 2021, by _____ of the County of Clarke, Virginia, who

is personally known to me

has produced a _____ as identification before me.

Notary Public

My commission expires: _____

Notary Registration No. _____

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Approved as to form:

TOWN OF BERRYVILLE, VIRGINIA,

Robert T. Mitchell, Jr.
Town Attorney

By: _____

Print Name: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to wit:

The foregoing instrument was duly acknowledged before me, a Notary Public in and for the city/county and state aforesaid, this ____ day of _____ 2021, by _____, _____ of the Town of Berryville, Virginia, who

is personally known to me

has produced a _____ as identification before me.

Notary Public

My commission expires: _____.

Notary Registration No. _____

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EXHIBIT A

VIRGINIA: IN THE CIRCUIT COURT OF CLARKE COUNTY

BERRYVILLE UNITED METHODIST HOUSING, L.P.,

Plaintiff,

v.

Case No.: CL20006123-00

COUNTY OF CLARKE, VIRGINIA,

and

TOWN OF BERRYVILLE, VIRGINIA,

Defendants.

AGREED DISMISSAL ORDER

THIS CAUSE came upon the agreement and representation of the parties that all claims in this action have been resolved on mutually agreeable terms. The parties request that the Court dismiss this action, with prejudice, and that the Settlement Agreement and Release (filed with this Order) be incorporated into, and be made part of, this Order by reference.

UPON CONSIDERATION WHEREOF, and for good cause shown, the Court ORDERS, ADJUDGES, and DECREES that this action should be, and hereby is, DISMISSED, WITH PREJUDICE, with each party to be responsible for its own attorney's fees and costs, and that the terms of the Settlement Agreement and Release executed by the parties are hereby incorporated into, and made part of, this Order.

The Clerk is directed to place this matter among the ended causes.

ENTER this ____ day of _____, 2021

Judge

WE ASK FOR THIS:

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SEEN AND AGREED:

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[End of Settlement Agreement and Release]

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Called Meeting
May 17, 2021
7:00 p.m.

Town Council: Present—Harry Lee Arnold, Jr., Mayor; Erecka L. Gibson, Recorder; Donna McDonald; Diane Harrison; Kara Rodriguez. Absent—Grant Mazzarino

Staff: Present--Keith Dalton, Town Manager; Paul Culp, Town Clerk

Also present: Town Attorney Robert Mitchell; Clarke County Registrar and Director of Elections Barbara Bosserman

Press: Mickey Powell, *The Winchester Star*.

1. Call to Order

Mayor Arnold called the meeting to order at 7:02 p.m.

2. Approval of Agenda

Recorder Gibson moved to approve the agenda. The motion passed by unanimous voice vote.

3. Unfinished Business

Public Hearing: Amending Dates on Which Regular Town Elections Will Be Held

Mr. Dalton noted that the General Assembly had recently prohibited May municipal elections, overriding charter provisions of individual municipalities. He said the Council had previously expressed concerns about November elections inasmuch as they can lead to local issues becoming lost in national or state matters. He said he understood the Council to prefer that if elections must be in November, they should be held in odd-numbered years and therefore simultaneously with state rather than federal elections.

Mr. Dalton said that if the Council takes no action, the next two Town elections would be in November of 2022 for Recorder and Wards 2 and 4, and in November of 2024 for Mayor and Wards 1 and 3.

Mr. Dalton said that if the Council wishes to move its elections to odd-numbered years after the brief period allowing such changes by ordinance prior to July 1, it would have to request an amendment to the Town charter. He said that if the Council acted to change the timing of elections, those for

Recorder and Wards 2 and 4 would occur in November of this year, with elections for Mayor and Wards 1 and 3 in November of 2023. Mr. Dalton said candidates for a November 2021 election would have to qualify by June 8.

Mr. Dalton said new legislation also stipulated that municipalities with ward systems for their councils must eliminate at-large voting in favor of ward residency requirements. He said that although this matter was not technically part of the public hearing, the present meeting might be a suitable forum in which to discuss it.

Mr. Dalton said the registrar had expressed concern about the logistical and fiscal ramifications of setting up multiple precincts. He said a charter amendment would be necessary to change the ward system.

A question from Ms. Rodriguez prompted a discussion of how ballots and precincts would be arranged. Ms. Bosserman said additional precincts would be needed for Town voters, with ballots listing candidates for other offices as well as Town offices. She said each new precinct would require the expenditure of \$12,000 for voting equipment, plus the need for additional poll workers.

Ms. Rodriguez said moving elections to November would increase turnout but would also promote partisanship. She said she found this disappointing, and also expressed concern about the confusion and expense that would arise from the revised ward system, but said she preferred to retain the ward system as a means of assuring representation for different parts of town. She recommended inaction on election dates for the time-being because of the limited time for candidates to qualify, with the possibility of a charter amendment later.

Mayor Arnold asked whether Town candidates would appear on a separate ballot. Ms. Bosserman said they would appear on the same ballot with candidates for other offices. He asked for clarification about the arrangement of precincts, and Ms. Bosserman said Town and non-Town voters would vote in different precincts located in the same building, with distinct ballots.

Mayor Arnold said he favored having elections in odd-numbered years but that the time for qualification was very brief. He noted the low turnout in the recent special elections but said they had been uncontested and had therefore received little publicity. Recorder Gibson said the fact that the elections had been special rather than general had exerted an effect on turnout.

Mayor Arnold said it would be necessary to provide ample publicity concerning any changes to the system.

Ms. Harrison asked whether elections would become officially partisan. Ms. Bosserman said candidates would be required to file as independents but that party endorsements would be permissible.

Ms. Harrison said the Town should not act immediately to change the election calendar, as doing so in haste would seem reactive.

Ms. McDonald asked for an explanation of the pros and cons of changing the ward system or not doing so.

Mr. Dalton said the ward system guarantees the geographic distribution of Council members and that this is true even under the current system with its at-large voting. He said the disadvantages of retaining it, with the mandated residence requirement for voters, would result from the aforementioned complications related to ballots and precincts, while abolishing the ward system in favor of purely at-large voting would result in a simple process.

Mr. Dalton noted that census results would necessitate the redrawing of ward boundaries. He and Ms. Rodriguez discussed how this was to be accomplished without disenfranchising current Council members. Ms. Bosserman provided a map depicting the arrangements of wards and election districts.

There was a further discussion of ballots. Ms. Rodriguez warned of the possibility of confusion among voters.

Ms. Harrison cautioned against allowing the Town Council to become too homogeneous in terms of the interests represented thereon.

Ms. McDonald noted the importance of personal relationships with constituents and said that this should be preserved, along with representation of interests that vary from ward to ward.

Ms. Bosserman said she would deal successfully with any complexities arising from any Council decision.

Mayor Arnold said he perceived a decline in interest in running for office and suggested that this might eventually necessitate the change to purely at-large voting.

The Council having discussed the matter, Mayor Arnold opened the public hearing at 7:52 p.m. Inasmuch as no one from the public wished to address the meeting, Mayor Arnold closed the hearing at 7:52 p.m.

In further discussion, Ms. McDonald said she had no preference regarding the dates of elections but noted the limited opportunity for qualifying.

Recorder Gibson asked Mr. Dalton what he preferred. Mr. Dalton said he would have preferred that local elections not be mixed with state or national ones because of the partisan atmosphere and the possibility that voters uninformed about local matters would nonetheless vote on them because they were voting in state or local elections at the same time. He said he would prefer association with

state rather than national elections, but that the time for immediate action probably was too short. He recommended waiting for a charter amendment.

Mr. Dalton clarified for Recorder Gibson that current terms would be extended by six months in order to align them with the November election date.

Mayor Arnold agreed that odd-numbered years would be preferable but the time for immediate action was insufficient.

Recorder Gibson said if the Council acted immediately to change the election date, the limited opportunity for qualification would be disadvantageous for aspiring candidates not currently serving on the Council and that this would appear exclusionary. She recommended not taking immediate action.

4. New Business

None.

5. Other

Mr. Dalton commended Mr. Mitchell and Ms. Bosserman for their expertise and assistance.

6. Adjourn

The meeting adjourned by consensus at 7:56 p.m. on a motion by Ms. Rodriguez.

Erecka L. Gibson, Recorder

Paul Culp, Town Clerk

BERRYVILLE TOWN COUNCIL COMMUNITY DEVELOPMENT COMMITTEE
Berryville-Clarke County Government Center
MINUTES
May 18, 2021

A meeting of the Berryville Town Council Community Development Committee was held on Tuesday, May 18, 2021 at 12:00 p.m. in the Berryville-Clarke County Government Center, located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the committee present: Kara Rodriguez, chair; Diane Harrison

Staff participating: Christy Dunkle, Community Development Director; Paul Culp, Town Clerk; Front Desk Clerk Karen Johnson; Administrative Assistant Leslie Kelly, Berryville Police Department

Participating remotely: Megan Johnson, Client Success Manager for CivicEngage

1. Call to Order

The meeting came to order by consensus at 12:05 p.m.

2. Approval of Agenda

The agenda was approved by consensus.

3. Unfinished Business

Discussion: Website

Megan Johnson (“Ms. Johnson”), representing the Town’s website provider and meeting with the committee via Zoom, summarized the products and services that are available with the package purchased by the Town.

There was a brief discussion of further coordination between the website and the Town’s bill-payment portal, and of the site’s mobile-responsiveness.

Ms. Johnson then shared the website’s analytics from the previous twelve months. She said the site had received 57,000 visitors in that time, with 103,000 page views and 84,000 unique page views. She said this represented a 2 percent decline from the previous twelve-month period but suggested that the pandemic had reduced residents’ interactions with the Town. She said the average visit to the website was about 2.5 minutes, an indication that visitors are finding the desired information quickly, but that actions per view averaged six, suggesting that too many clicks were needed.

Ms. Johnson said the most-visited pages, in order, were Area Events, Bill Payment, Police Activity Log, Taxes, Bid and Procurement Opportunities, and Employment Opportunities.

Ms. Harrison said she would like to see more attention paid to agendas and minutes.

Ms. Johnson said the most frequent searches, in order, were for information on trash, the Town Code, maps/GIS, taxes, and yard sales, but that search items were not numerous.

Ms. Johnson said 46 percent of website traffic was from mobile devices, with smartphones accounting for 42 percent and tablets for 4 percent. Ms. Harrison suggested that the figure would be higher if the area had more bandwidth. Ms. Johnson said interaction with the website via mobile devices had increased every year since 2016.

Ms. Johnson recommended rearranging the sitemap to improve navigation, and connection of the News Flash feature with the Town's activity on the County Facebook page. She said she did not recommend an app for a Town the size of Berryville.

There was a discussion of the need to make changes to the website in alignment with the Town's branding and marketing initiative. Ms. Johnson said CivicEngage recommended reconstruction of websites every four years and that this was included in the Town's contract. She said there would be an additional fee if the Town wished for CivicEngage to update the information on the website as well as its design and layout.

There was a brief discussion of compliance with the Americans with Disabilities Act.

There was a brief discussion of the possibility of giving the police department its own sub-site.

Ms. Harrison asked Ms. Johnson to provide quotes on the cost of a complete re-design and a re-design involving branding only.

4. New Business

None.

5. Other

None.

6. Adjournment

The committee adjourned by consensus at 1:02 p.m.

BERRYVILLE TOWN COUNCIL PERSONNEL, APPOINTMENTS, AND POLICY COMMITTEE
Berryville-Clarke County Government Center
MINUTES
May 25, 2021

A meeting of the Berryville Town Council Personnel, Appointments, and Policy Committee was held on Tuesday, May 25 at 9:00 a.m. in the Berryville-Clarke County Government Center, located at 101 Chalmers Court in Berryville, Virginia.

Attendance:

Members of the Committee present: Mayor Jay Arnold, Chair; Recorder Erecka Gibson

Staff present: Christy Dunkle, Community Development Director; Paul Culp, Town Clerk

Also present: John Hudson

1. Call to Order

Mayor Arnold called the meeting to order at 9:00 a.m.

2. Approval of Agenda

Recorder Gibson moved to approve the agenda. The motion passed by consensus.

3. Unfinished Business

Discussion: Appointments to the Board of Zoning Appeals, Planning Commission, and Berryville Area Development Authority

Ms. Dunkle explained that Thomas Parker would like to move from the BADA to the Planning Commission and that the term for the position on the latter body would expire on 12 November 2021.

Recorder Gibson moved that the committee recommend to the Town Council in its June meeting the reassignment of Thomas Parker from the BADA to the Planning Commission for completion of a term in office ending on November 12, 2021. The motion passed by unanimous voice vote.

The committee then discussed with Mr. Hudson the possibility of his appointment to the BADA vacancy that would be created by Mr. Parker's departure. Mayor Arnold said he had contacted Mr. Hudson about this, and briefly described Mr. Hudson's background in community affairs. Mr. Hudson explained that he had retired as chief marketing officer of the Bank of Clarke County and is now president of the Bank of Clarke County Foundation. He said his other community activities had

included leadership positions in the Salvation Army, the Clarke County Educational Foundation, and the Shenandoah Area Council on Aging, and service on the Architectural Review Board.

Ms. Dunkle and Mr. Hudson briefly discussed matters that might come before the BADA soon, such as updates to the Berryville Area Plan and the consideration of new site plans.

Recorder Gibson moved that the committee recommend to the Town Council in its June meeting the appointment of John Hudson to the BADA for completion of the unexpired term of Thomas Parker. The motion passed by unanimous voice vote.

A discussion established that the Town had not received any applications for the vacancy on the Board of Zoning Appeals. Ms. Dunkle noted that this was also true of a vacancy on the Tree Board.

Mayor Arnold said he would discuss the matter with residents who might be interested.

4. New Business

None.

5. Other

None.

6. Closed Session

None.

7. Adjourn

There being no further discussion, Recorder Gibson moved for adjournment, which occurred by consensus at 9:23 a.m.