

**BERRYVILLE TOWN COUNCIL**  
**Tuesday, March 9, 2010**  
**Berryville-Clarke County Government Center**  
**Regular Meeting**  
**7:00 p.m.**

**MINUTES**

**Roll:**

**Town Council:**

Present: Wilson Kirby, Mayor; Harry Lee Arnold, Jr., Recorder; Mary Daniel; Allen Kitselman; Allan W. McWilliams

Absent: Lawrence Russell, III

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

**Press:** Becky Lane, Winchester Star

**1. Call to Order** – Wilson Kirby, Mayor  
Mayor Kirby called the meeting to order at 7:00 p.m.

**2. Closed Session** - Pursuant to Section 2.2-3711.A.7 of the Code of Virginia, 1950, As Amended, for consultation with legal counsel related to borrowing for the wastewater treatment plant and the treated wastewater outfall line.

a. Motion to enter Closed Session

It was moved by Council member McWilliams, seconded by Council member Kitselman that the Council of the Town of Berryville enter Closed Session pursuant to Section 2.2-3711.A.7 of the Code of Virginia, 1950, As Amended, for consultation with legal counsel related to borrowing for the wastewater treatment plant and the treated wastewater outfall line.

**VOTE:**

Recorded Vote:

Ayes: Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Allen Kitselman  
Allan McWilliams

Nays: None

Abstain: None

Absent During Vote: Mary Daniel

Absent During Meeting: Lawrence Russell, III

b. Enter Closed Session

The Town Council entered closed session at 7:01 p.m.

Ms. Daniel entered the closed session room at 7:03 p.m.

- c. Reconvene Open Session  
The Town Council reconvened in open session at 8:03 p.m.
- d. Certification of Closed Session

**Town of Berryville  
RESOLUTION**

MEETING DATE: March 9, 2010

MOTION BY: Allan McWilliams

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 Allan McWilliams
Nays:	None
Abstain:	None
Absent During Vote:	None
Absent During Meeting:	Lawrence Russell, III

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Harry Lee Arnold, Jr., Recorder

**3. Public Hearing** – Proposed Resolution authorizing the issuance by the Town of Berryville of not to exceed \$18,000,000 Town of Berryville, Virginia general obligation bonds to acquire, construct and equip a wastewater treatment plant.

Mr. Dalton explained that when this Public Hearing was advertised the amount of the grant was still in question. He said that according to the most recent information, the grant should be for the full amount so the loan amount will be \$11,750,000. He noted that this is a general obligation loan, secured by revenue pledges for both the water and sewer funds. He then spoke about the preparation that the Town Council has made for this project and relayed that the Virginia Resources Authority (VRA) stated that Berryville is as well prepared for this as any jurisdiction they have seen.

Mr. Dalton said that the move by the Town Council to raise rates in 2006 built up the sewer fund balance and allowed the town to qualify for a 75% grant for qualifying improvements, an amount that every jurisdiction did not get. He reported that DEQ apparently pledged more money than they have for these grants. He said that the town has been very clear that it cannot move on with this project if they do not receive the full amount of the grant commitment of \$12,100,000. He said that he is waiting on word from DEQ on this matter.

Mr. Tyrrell then gave a brief overview of the history of the project and the current schedule.

Mr. Dalton then addressed the issue of user rates. He said that a rate study is currently in progress, but he is anticipating a user rate of approximately \$17 per 1000 gallons of usage. He said that Sterns and Wheler has estimated that the rate could be as high as \$22 per 1000 gallons.

Mr. Dalton said that this Public Hearing is about the terms of the \$11,750,000 loan from VRA which is a 25 year loan at 0% interest. He presented a letter from Dr. Sheryl Bailey, Executive Director of the Virginia Resources, that outlined VRA's proposed terms for the loan. He said that this letter was received at 5:00 p.m. today.

Mr. Dalton then introduced Carolyn Perry, the town's bond counsel. Ms. Perry said that she has 22 years of experience as a bond attorney and has worked on many wastewater treatment plant facilities and is quite familiar with the loan process. She said that the Town Council should be applauded for its planning and wise discipline in preparing for this project. She then explained the terms of the Virginia Resources Authority loan and the Department of Environmental Quality Water Quality Improvement Fund grant stating that both of these would have to come together for the project to move forward.

She said that because she only received the loan documents from VRA at 5 p.m. she was not able to review all of the details. She said that the VRA has asked for a pledge of full faith and credit including general funds and water and sewer fund revenues. She said that she is not pleased about the pledge of water fund revenues and hopes to be able to negotiate that out of the loan deal. She said that VRA is proposing one loan that will be

broken into two phases and that they have also asked that the Town of Berryville fund a debt service reserve of 2 years of principal payments. She said there is a chance that could be worked back to a one year of reserve.

Council member Daniel asked if the terms are negotiable or is the VRA in a position to say “take it or leave it”. Ms. Perry said that in her experience, VRA has been a borrower advocate but in tough economic times, they are worried about their bond rating. She said that nevertheless there may be options that are more palatable to Berryville that will provide more flexibility.

Mr. Dalton said that he would advise speaking to VRA about the following: getting rid of the phased approach to the loan; allowing water funds to stay on the water side of the system; allowing escrow funds to remain in the community; and cutting back the two-year escrow to one year. Mayor Kirby asked the Town Council if they would allow him to write a letter to VRA outlining the staff’s and Town Council’s concerns about the proposed terms of the loan. By consensus, the Town Council authorized the Mayor to write such a letter.

Mayor Kirby called for public comment.

Alton Echols, 400 Custer Court, stated that his concerns are:

- What will water and sewer rates be?
- If you don’t get the full grant, what will you get?
- The public is fearful of rate increases. The Robert Regan House is fearful of an availability fee increase.
- If no sewer taps are sold will there be enough revenue to pay for this loan?

Upon motion by Council member McWilliams, second by Recorder Arnold, the Public Hearing was closed at 8:38 p.m.

#### **4. Approval of Minutes:**

January 12, 2010

Upon motion by Council member McWilliams, seconded by Council member Kitselman, the minutes of the January 12, 2010 meeting were approved.

Budget and Finance Committee

February 24, 2010

Upon motion by Recorder Arnold, seconded by Council member Daniel, the minutes of the February 24, 2010 Budget and Finance Committee meeting were approved.

Budget Work Session

March 3, 2010

Upon motion by Recorder Arnold, seconded by Council member Kitselman, the minutes of the March 3, 2010 Budget Work Session were approved with the correction of several typos.

**5. Citizen's Forum:**

Alton Echols, 400 Custer Court, spoke about his concerns about a requirement for a fire lane at the Robert Regan House. He said that he is concerned because this will raise the cost of the project.

**6. Report of Mayor: Wilson Kirby**

Mayor Kirby introduced a Resolution of Congratulations on Boyce's 100<sup>th</sup> Anniversary.

Upon motion by Council member Daniel, seconded by Council member McWilliams, the Council of the Town of Berryville unanimously adopted the attached Resolution of Congratulations of Boyce's 100<sup>th</sup> Anniversary.

VOTE:

Recorded Vote:

Ayes:

Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Mary Daniel  
Allen Kitselman  
Allan McWilliams

Nays:

None

Abstain:

None

Absent During Vote:

None

Absent During Meeting:

Lawrence Russell, III

**TOWN COUNCIL OF THE TOWN OF BERRYVILLE  
CONGRATULATIONS ON BOYCE'S 100<sup>TH</sup> ANNIVERSARY**

WHEREAS, the citizens of the Town of Boyce are celebrating their 100th anniversary in 2010; and

WHEREAS, the Town of Boyce was founded in 1880 at the crossing of the Millwood-Winchester Turnpike that became Route 723 and the newly built Shenandoah Valley Railroad; and

WHEREAS, the Town of Boyce was incorporated in 1910 as the second town in Clarke County; and

WHEREAS, prominent St. Louis attorney Colonel Upton Boyce was instrumental in finding the money needed to complete the construction of the Shenandoah Valley Railroad when the financial panic of 1873 hit the country; and

WHEREAS, the Shenandoah Valley Railroad, which traversed the settlement, extended from Hagerstown, Maryland, to Roanoke, providing transport for the area's livestock and goods; and

WHEREAS, residents named their community Boyceville to honor Colonel Boyce for his many contributions; and when the railroad finally came to town, 232 acres from five family farms were platted to plan and build what is now Boyce; and

WHEREAS, the Town of Boyce first held elections on December 20, 1910, and William Gaunt was elected mayor; George Garvin, M. O. Simpson, and John T. Sprint were elected as council members; and George Harrison was elected recorder; and

WHEREAS, appearing on the National Register of Historic Places, the Town of Boyce remains an attractive and friendly community that provides its residents with a great quality of life; now, therefore, be it

RESOLVED the Council of the Town of Berryville congratulates their friends and neighbors in the Town of Boyce on the occasion of their 100th anniversary.

By Order of the Town Council of the Town of Berryville on this the ninth day of March, 2010.

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Wilson Kirby, Mayor

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Harry Lee Arnold, Jr., Recorder

## 7. **Planning and Zoning Matters:** Christy Dunkle

### Set Public Hearing

Ms. Dunkle requested that the Town Council set a Public Hearing on the following matter for their next meeting:

**The Berryville Area Development Authority recommends the amendment of the Berryville Area Plan, Chapter V, Planning Area Analysis for Sub-areas 5, 6, and 6A so as to add 15 acres to Sub-area 6A, taking 14 acres from Sub-area 6 and one acre from Sub-area 5, in order to expand the area in the Plan that is devoted to Older Person Residential uses.**

By consensus, the Town Council set a Public Hearing on the matter for their next regular meeting on April 13, 2010.

### Valley EarthFest in Rose Hill Park and Rixey Moore Parking Lot

Ms. Dunkle reported that staff met with Cheryl Ash, the organizer of the third annual Valley EarthFest, scheduled for Sunday, April 18, 2010 with an evening reception on Saturday night, April 17, 2010. Ms. Ash has requested the use of the Rixey Moore Parking Lot in order to accommodate additional vendors. Ms Dunkle said that there is also a request that the Bluemont Vineyard and the Catoctin Creek Distillery be permitted to offer wine and brandy tastings, respectively, in the Rixey Moore lot. Ms Dunkle said that Berryville Main Street has no problem with the use of the parking lot at the rear of 23 East Main Street.

Mayor Kirby asked if the Town Council had any problem with this use. The Council did not and Mayor Kirby indicated that the Council has no problem with the event as submitted to staff.

### Discussion – Sponsorship of Text Amendment to Section 609 L-1 Industrial

Ms. Dunkle reported that she has received several inquiries in the past year from potential property and business owners to conduct recreational businesses in vacant buildings in the L-1 Industrial Zoning District.

The Town Council asked staff to gain the Planning Commission's input on the matter and report back to the Council.

### Robert Regan House

Ms. Dunkle said that the fire access issue of which Mr. Echols spoke during the Citizens Forum was about a recommendation by the BADA to connect fire access to the parking lot. Mr. Dalton said he understands that the Regan House representatives would like to have a comfort level that the preliminary plat is what the Council would like to see on the final plat. He said that he doesn't believe that the fire lane access recommendation is meant to add additional cost and that they are just talking about a gravel section that will connect the fire lane.

There was a brief discussion about the process for final plat approval in which Mayor Kirby pointed out that the Town Council will have final approval of the final site plan.

#### Clarke County Farmers Market

Ms. Dunkle reported that the Farmer's Market had its annual organizational meeting and that the market will be held in the Rixey Moore parking lot on Saturdays from May to October.

### **8. Report of the Town Manager – Keith Dalton**

#### Update on Clarke County High School Project

Mr. Dalton reported that since February 9, the BADA has reviewed the final site plan and discussions concerning fire flow have continued. The BADA will hold another work session on March 25. The BADA also scheduled another meeting on the matter on April 1 to review the application.

Mr. Dalton discussed a recommended framework for an agreement on the fire flow issue. He said that he believes that any agreement should include the following:

- A provision that the Town's attorney will draft an agreement.
- A provision that the Town will manage all aspects of the project.
- Approval by both the Town Council and the School Board before May 12, 2010.
- Establishment of a cost sharing ratio of 50% Town responsibility and 50% School Board responsibility.
- A provision that the school share shall be paid to the town within 15 days of request and must be received prior to the approval of a contract for the project.
- Establishment of a maximum contribution of \$250,000 for each party.
- A means by which the agreement may be renegotiated or amended should the cost of the project exceed \$500,000.
- Acknowledgement by the School Board that the approved PHRA Plan, as amended, meets their needs and acknowledgement by the Town that the plan meets applicable fire flow requirements of the Town.
- Establishment of a requirement that substantial completion for the project be reached within 18 months of the date of the final approval of the agreement.
- Provision that the Town will explore the possibility of establishing an agreement that would provide for pro-rata payments by developers of property within the High Pressure Zone that benefit from the project. Such an agreement would provide for disbursement of 50% of any said payments to the Clarke County School Board.

Ms. Daniel asked what benefit this project would have to the town. Mr. Dalton said that there would be a global benefit in an increase in water volume in town especially on the high side.

Upon motion by Recorder Arnold, seconded by Council member Daniel, the Council of the Town of Berryville authorized the Town Manager to work with the Clarke County School Board, staff and attorneys to develop an agreement regarding a pump station at the Clarke County High School site. The final agreement shall be presented to Town

Council for approval and the Council authorizes the expenditure of up to \$10,000 to finalize plan, specifications and bid documents.

Recorded Vote:

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

Nays: None

Abstain: None

Absent During Vote: None

Absent During Meeting: Lawrence Russell, III

Wastewater Treatment Plant and Outfall Line

Mr. Dalton said that he would like to address Alton Echols' concerns about the project.

- He said that the rate study is expected soon and should answer questions about rate increases. He reiterated that it is looking like the sewer rate should be approximately \$17 per 1000 gallons. Availability fee increases are also being reviewed.
- He said that if the entire grant is not received staff will recommend that we not move forward on the project and that staff is not sure what that will mean for the town.
- He said that all of the numbers for the project are based on getting no revenue from availability fees; therefore, if fees begin to come in again the situation will improve.

Mr. Dalton said that he recommends setting meetings for March 23 to consider the bond resolution and March 29 to consider award of the contract.

Upon motion by Council member Daniel, seconded by Council member McWilliams, the Council of the Town of Berryville set a special meeting for March 23, 2010 at 3:30 p.m. and March 29, 2010 at 3:30 p.m.

Recorded Vote:

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

Nays: None

Abstain: None

Absent During Vote: None

Absent During Meeting: Lawrence Russell, III

Barns of Rose Hill

Stan Kerns was present, representing the Barns of Rose Hill. Mr. Dalton said that the plans for the Barns are being reviewed by VDOT and that the project should be moving

along shortly. He said that the financial arrangement between the Barns of Rose Hill and the town needs to be worked out as the project moves forward because the town owns the property, will receive VDOT grant funds and will enter into the contract for construction. Mr. Kerns gave the Town Council an overview of the project.

Mr. Dalton said that he will meet with Mr. Kerns to work out the details including financial and construction site issues and present something to council at one of their next meetings.

**8. Standing Committee Reports:**

a) BADA Liaison – Allen Kitselman

Nothing to add to report.

b) Budget Finance / CIP – Jay Arnold

Upon motion by Council member Daniel, seconded by Recorder Arnold, the Council of the Town of Berryville set a Public Hearing on Proposed Tax Rates for 2010 for their next regular meeting.

c) Community Improvements – Allen Kitselman

Council member Kitselman said that the committee is still working on a visit to Luray to see their downtown improvements. The Community Summit effort continues and will have a Facebook page soon.

d) Personnel / Appointments – Wilson Kirby

Mayor Kirby said that there is an opening on the Board of Zoning Appeals and called for citizen applications.

e) Planning Commission – Lawrence Russell.

Nothing to add to report.

f) Police and Security – Lawrence Russell.

Nothing to add to report.

g) Streets and Utilities – Wilson Kirby

Mr. Dalton said that the Josephine Street project will start soon and that an informational meeting will be held.

**Adjourn**

There being no further business, on motion by Council member McWilliams, seconded by Council member Daniel and passed, the Council meeting was adjourned at 9:44 p.m.

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Wilson Kirby, Mayor

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Harry Lee Arnold, Jr., Recorder