

MINUTES
BERRYVILLE TOWN COUNCIL
Berryville-Clarke County Government Center
Regular Meeting
September 12, 2017
7:30 p.m.

Town Council: Present-Patricia Dickinson, Mayor; Harry Lee Arnold, Jr., Recorder; Allen Kitselman; Erecka Gibson; David Tollett; Absent- Donna Marie McDonald
Staff: Keith Dalton, Town Manager; Christy Dunkle, Assistant Town Manager/Planner; Chief Neal White, Berryville Police Dept.; Dave Tyrrell, Director of Public Utilities; Ann Phillips, Town Clerk
Press: Cathy Kuehner, Winchester Star

1. Call to Order

Mayor Dickinson called the meeting to order at 7:31 p.m.

2. Pledge of Allegiance

3. Approval of Agenda

On motion of Recorder Arnold, seconded by Council member Tollett, the agenda was approved as presented unanimously.

4. Public Hearings

- a. Donald Riesgraf (Owner, DBSR, LLC), is requesting a Special Use Permit in order to allow contractor's establishment and light warehousing with outdoor storage per Section 609.3(a) of the Berryville Zoning Ordinance on the property located at 40 Cattleman's Lane, identified as Tax Map Parcel number 14A3-((A))-26, zoned L-1 Industrial.
SUP 02-17

Ms. Dunkle said the Planning Commission had made a site visit prior to holding a public hearing on the matter. She described the conditions that the Planning Commission recommended be incorporated into the approval of the Special Use Permit. The applicant, Donald Riesgraf, addressed the Council about his request. Mayor Dickinson asked about the number of lights, and Mr. Riesgraf noted there would be seven downward-casting lights.

The only speaker for the public hearing was Clissy Funkhouser who is an adjoining property owner. She requested the chain link fence facing her property 15' from the property line be black with black slats, the evergreens be hardy, and the lighting be zero-foot candles at the property line.

The public hearing was closed.

- b. The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to remove references to the Town of Berryville Stormwater Management Ordinance and replacing them to reference the Commonwealth of Virginia Stormwater Management Program (VSMP) following the repeal of the Town's Stormwater Management Ordinance. TA 01-17

Ms. Dunkle said the changes were necessary as a result of the repeal of the Town of Berryville Stormwater Management Ordinance in April, 2017.

There were no public hearing speakers. The public hearing was closed.

- c. The Berryville Planning Commission is sponsoring text amendments to the Berryville Zoning Ordinance in order to repeal and readopt Section 322 Erosion and Sediment Control updating the ordinance to align with regulations of the Commonwealth of Virginia. TA 02-17

Ms. Dunkle said the Planning Commission recommended that Council approve the modifications as presented. She said the changes reflect updated language to the model ordinance from the Commonwealth of Virginia including changes to code references, the addition of definitions, and identifying the Virginia Department of Environmental Quality as the regulatory agency overseeing erosion and sediment control programs.

There were no public hearing speakers. The public hearing was closed.

5. Citizens' Forum

The speakers were as follows:

Julie Abrera, representing Berryville Main Street, provided an update on the organization's activities, and thanked the Council for supporting the organization.

Bryant Condrey, representing the Tree Board, provided a report on the Board's mission and vision and noted some planned activities.

6. Consent Agenda

The consent agenda was unanimously approved on motion of Recorder Arnold, seconded by Council member Kitselman. The items on the Consent Agenda were:

- Minutes of Regular Meeting – 8/8/17
- Minutes of Budget and Finance Committee – 8/24/17
- Minutes of Police and Security Committee – 8/24/17
- Minutes of Streets and Utilities Committee Meeting – 8/25/17
- Minutes of Personnel Committee Meeting – 9/6/17

7. Report of Patricia Dickinson, Mayor

Mayor Dickinson said she is still seeking a Chairperson for the Event Planning Committee for the 2018-2019 commemoration of WWI and WWII anniversaries and the founding of the American Legion.

8. Report of Harry Lee Arnold, Jr, Recorder

Recorder Arnold had nothing to report.

9. Report of Christy Dunkle, Asst. Town Manager for Community Development

Donald Riesgraf (Owner, DBSR, LLC), is requesting a Special Use Permit

Ms. Dunkle noted the Special Use Permit requested by Donald Riesgraf. There was discussion of the conditions requested by Ms. Funkhouser, the adjoining property owner, and Mr. Riesgraf said he was willing to comply with the requested conditions.

Mayor Dickinson noted a concern regarding the use applied for and the section of the Ordinance used by the Planner to determine the buffer and the height of the lights. She said another section of the Ordinance would require a larger buffer. Council member Kitselman said the Planning Commission has recommended approval of the use and the Planner has worked with the adjoining property owners to assure any concerns have been addressed. He said he would not second-guess staff on the matter.

Mayor Dickinson said there will be boats and noisy construction equipment stored at the sight. She said the Planning Commission minutes from the July meeting referenced two lights, but the number is now seven, and added that the buffer was also discussed. Council member Kitselman inquired about the motivation for questioning this permit approval. He said the Planning Commission looked at the matter, and the professional staff has reviewed the information and worked with the adjacent property owners. He said the applicant wants to bring revenue to the Town in an industrial area that needs help and he questioned why the Mayor was objecting to the project. Mayor Dickinson said section 503.4 of the Zoning Ordinance states the Council's responsibilities when reviewing special use permit applications.

Council member Gibson noted that the tree buffer will eventually shield the lights at the planned height.

Mr. Dalton noted that he had a conversation with Council member McDonald who was unable to attend the meeting. He said she asked him to say that she was in favor of the special use permit being granted and had no concerns on the matter.

Council member Kitselman moved that the Council of the Town of Berryville approve SUP 02-17 in order to operate a contractor's establishment and light warehousing with outdoor storage per Section 609.3(a) of the Berryville Zoning Ordinance on the property located at 40 Cattleman's Lane, identified as Tax Map Parcel number 14A3-((A))-26, zoned L-1 Industrial with the following conditions:

1. A landscape buffer, including a fence, of 15' against the residentially zoned property to the east;
2. 8' chain link fence with slats on the inside of the tree border or landscape buffer;
3. Buffer will include Leyland Cypress and a variety of hardy evergreens at a starting height of 6-8';
4. All lights shall be downcast inward and not be directed onto adjacent properties;
5. Lights without surveillance cameras are timed to turn off at 10:00 pm;
6. The fence against the residentially zoned property to the east will be black with black slats;
7. The goal for the lighting will be zero foot-candles at the property line.

Council member Tollett seconded the motion. The Council discussed the motion. Ms. Dunkle clarified the fence location.

Council member Kitselman amended his motion to read as follows: I move that the Council of the Town of Berryville approve SUP 02-17 in order to operate a contractor's establishment and light warehousing with outdoor storage per Section 609.3(a) of the Berryville Zoning Ordinance on the property located at 40 Cattleman's Lane, identified as Tax Map Parcel number 14A3-((A))-26, zoned L-1 Industrial with the following conditions:

1. A landscape buffer of 15' against the residentially zoned property to the east;
2. 8' chain link fence with slats on the inside of the tree border or landscape buffer;

3. Buffer will include Leyland Cypress and a variety of hardy evergreens at a starting height of 6-8’;
4. All lights shall be downcast inward and not be directed onto adjacent properties;
5. Lights without surveillance cameras are timed to turn off at 10:00 pm;
6. The fence against the residentially zoned property to the east will be black with black slats;
7. The goal for the lighting will be zero foot-candles at the property line.

Council member Tollett seconded the motion which carried as follows:

Aye: Kitselman, Gibson, Tollett, Arnold
 Nay: None
 Abstain: Dickinson
 Absent: McDonald

Text Amendments to remove references to the Town Stormwater Management Ordinance

Ms. Dunkle noted the next action item for text amendments to the Berryville Zoning Ordinance necessary as a result of the repeal of the Town of Berryville Stormwater Management Ordinance in April 2017. Council member Gibson moved that the Council of the Town of Berryville adopt the attached ordinance amending Sections 305, 310, and 314 of the Town of Berryville Zoning Ordinance modifying references to the Town’s Stormwater Management Ordinance after its repeal in April, 2017. Council member Tollett seconded the motion which carried as follows:

Aye: Kitselman, Gibson, Tollett, Arnold
 Nay: None
 Abstain: Dickinson
 Absent: McDonald

AN ORDINANCE AMENDING THE
 TOWN OF BERRYVILLE ZONING ORDINANCE

BE IT ORDAINED, by the Council of the Town of Berryville, that the Town of Berryville Zoning Ordinance be modified as follows:

Section 305.1 A.: Stormwater shall be managed in accordance with ~~the Town of Berryville Stormwater Ordinance~~ Virginia Stormwater Management Program regulations.

Section 309.9(b): All provisions of Town ordinance and Virginia Stormwater Management Program regulations regarding storm drainage shall be complied with.

Section 310.10(b): All provisions of Town ordinance and Virginia Stormwater Management Program regulations regarding storm drainage shall be complied with.

Section 314.6(p): Provision for the adequate disposition of natural and storm water indicating the location, sizes, types, and grades of ditches, catch basins, detention ponds (showing 10-year and 100-year elevations), and pipes and connections to existing drainage systems. Plans shall be in accordance with the Berryville Stormwater System Master Plan and Virginia Stormwater Management Program regulations.

SIGNED: _____
 Patricia Dickinson, Mayor

ATTEST: _____
 Harry Lee Arnold, Jr., Recorder

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Text Amendments to the Berryville Zoning Ordinance in order to repeal and readopt Section 322
Ms. Dunkle noted the next action item recommended by the Planning Commission for approval of changes to Berryville Zoning Ordinance reflecting updated language to the model ordinance from the Commonwealth of Virginia including changes to code references, the addition of definitions, and identifying the Virginia Dept. of Environmental Quality as the regulatory agency overseeing E & S. Council member Kitselman moved that the Council of the Town of Berryville adopt the attached ordinance to repeal and readopt Section 322 Erosion and Sediment Control of the Town of Berryville Zoning Ordinance in order to conform to Commonwealth of Virginia model ordinance changes. Council member Gibson seconded the motion which carried as follows:

Aye: Kitselman, Gibson, Tollett, Arnold
Nay: None
Abstain: Dickinson
Absent: McDonald

AN ORDINANCE REPEALING AND READOPTING SECTION 322 EROSION AND SEDIMENT CONTROL OF THE TOWN OF BERRYVILLE ZONING ORDINANCE

BE IT ORDAINED, by the Council of the Town of Berryville that the Town of Berryville Zoning Ordinance be modified by repealing and readopting Section 322 Erosion and Sediment Control as attached.

SIGNED: _____
Patricia Dickinson, Mayor

ATTEST: _____
Harry Lee Arnold, Jr., Recorder

322 EROSION AND SEDIMENT CONTROL ORIDINANCE (12/07; 00/17)

322.1 TITLE, PURPOSE, AND AUTHORITY

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of the Town of Berryville". The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of the Town of Berryville by establishing requirements for the control of soil erosion, sediment deposition and non-agricultural runoff, and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, ~~Title 10.1, Chapter 5, Article 4 (§101.1-560 et.seq.)~~ **Title 62.1, Chapter 3.1. Article 2.4**, known as the Virginia Erosion and Sediment Control Law.

322.2

DEFINITIONS

Agreement in lieu of a plan – a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

Applicant – any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board – The Virginia ~~Soil and Water Conservation Board~~ **State Water Control Board**.

Certified inspector – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection, or (ii) is enrolled in the Board’s training program for project inspection and successfully completes such program within one year after enrollment.

Certified plan reviewer – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of a plan review, (ii) is enrolled in the Board’s training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article I (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 **or a professional soil scientist as defined in § 54.1-22** of the Code of Virginia.

Certified program administrator – an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board’s training program for program administration and successfully completes such program within one year after enrollment.

Clearing – any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

Department – the ~~Department of Conservation and Recreation~~ **Department of Environmental Quality**.

Development – means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

Director – means the director of the ~~Department of Conservation and Recreation~~ **Department of Environmental Quality**.

District or Soil and Water Conservation District – refers to the Lord Fairfax Soil and Water Conservation District.

Erosion and Sediment Control Plan or Plan – a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, and appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions and all information deemed necessary by the **VESCP** plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area – an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes.

Excavating – any digging, scooping or other methods of removing earth materials.

Filling – any depositing or stockpiling of earth materials.

Grading – any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land-disturbing activity – any ~~land change which man-made change to the land surface that~~ may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surface road, street or sidewalk provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) ~~Surface or deep mining~~ **Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;**
- (6) ~~Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas~~ **Tilling, planting, or harvesting or agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or**

natural in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163;

- (7) ~~Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (§10.1-604 et seq.) of Chapter 6 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163; Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;~~
- (8) ~~Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company~~ **Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Va. Code §10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;**
- (9) **Disturbed land areas of less than 10,000 square feet in size, or less than 2,500 square feet in all areas of the jurisdiction designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;**
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, or the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance; and
- (12) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

Land Disturbing Permit or approval – a permit issued by the Town of Berryville for clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any ~~purpose set forth herein~~ **other land disturbing activity.**

~~**Local erosion and sediment control program or local control program**~~—an outline of

~~the various methods employed by the Town of Berryville to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.~~

Natural channel design concepts – the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

Owner – the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Peak Flow Rate – the maximum instantaneous flow from a given storm condition at a particular location.

Permit, state – an approval to conduct a land-disturbing activity issued by the Board in the form of a State stormwater individual permit or coverage issued under a State general permit.

Permittee – the person to whom the ~~permit-authorizing~~ land-disturbing **activities approval** is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person – any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, ~~any interstate body, or any other legal entity~~ **governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.**

Plan-approving authority, VESCP – the Zoning Administrator responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units or lands and for approving plans.

Program authority or VESCP Authority – the Town of Berryville which has adopted a soil erosion and sediment control program that has been approved by the Board.

Responsible Land Disturber or RLD – an individual ~~from the project or development team, who will be in charge of and~~ **holding a certificate issued by the department who is** responsible for carrying out ~~a the~~ land-disturbing activity **in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or**

~~permit as a prerequisite for engaging in land disturbance. covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.~~

Runoff volume – the volume of water that runs off the land development project from a prescribed storm event.

Single-family residence – a noncommercial dwelling that is occupied exclusively by one family.

~~**State Erosion and Sediment Control Program or State Program** – the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia, including regulations designed to minimize erosion and sedimentation.~~

State waters – all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdictions.

Town – the incorporated Town of Berryville.

Transporting – any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

~~**Virginia Erosion and Sediment Control Program or VESCP** – a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and non-agricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.~~

~~**Water quality volume** – the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.~~

322.3

LOCAL EROSION AND SEDIMENT CONTROL PROGRAM

~~A. Pursuant to § 10.1-562 of the Code of Virginia, the Town of Berryville hereby adopts the regulations, references, guidelines, standards and specifications~~

~~promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channel waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the “Virginia Erosion and Sediment Control Regulation” and the Virginia Erosion and Sediment Control Handbook, as amended.~~

~~In addition, in accordance with § 10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts that are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.~~

~~In accordance with § 10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-, 2- and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.~~

~~B. Before adopting or revising regulations, the Town of Berryville shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the Town of Berryville is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the Town of Berryville proposes or revises regulations that are more stringent than the state program.~~

~~C. Pursuant to § 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of the Town of Berryville shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.~~

~~D. The Town of Berryville hereby designates the Zoning Administrator as the plan-approving authority.~~

~~E. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Zoning Administrator.~~

Pursuant to § 62.1-44.15:44 of the Code of Virginia, the Town of Berryville hereby establishes a VESCP program and adopts the regulations promulgated by the Board (for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources) and the *Virginia Erosion & Sediment Control Handbook*, third edition. In accordance with § 62.1-44.15:52 of the Code of Virginia, any plan

approved prior to July 1, 2014 that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-, 2-, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

- A. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements for natural and man-made channels shall be satisfied by compliance with water quantity requirements specific in § 62.1-44.15:28 of the Stormwater Management Act and 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Regulations.
- B. Pursuant to § 62.1-44.15:53 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of the Town of Berryville shall contain a certified program administrator, a certified plan reviewer, and a certified inspector (who may be the same person).
- C. The Town of Berryville hereby designates the Zoning Administrator as the plan-approving authority.
- D. The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the Zoning Administrator.

322.4

SUBMISSION AND APPROVAL OF PLANS; CONTENTS OF PLANS

- A. Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Zoning Administrator for the Town of Berryville an erosion and sediment control plan for the land-disturbing activity and such plan has been approved by the ~~plan-approving~~ **VESCP** authority. **No approval to begin land disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required.** Where land-disturbing activities involve lands under the jurisdiction of more than one ~~local-control program~~ **VESCP**, an erosion and sediment control plan, at the option of the applicant, may be submitted to the ~~Board~~ **Department** for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity

results from the construction of a single-family residence, an “agreement in lieu of a plan” may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

- B. The standards contained within the “Virginia Erosion and Sediment Control Regulations”, the Virginia Erosion and Sediment Control Handbook as amended is to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between publications, the State regulations shall take precedence.
- C. The **VESCP** plan-approving authority shall review ~~conservation~~ **erosion and sediment control** plans submitted to it and grant written approval within ~~45~~ **60** days of the receipt of the plan if it determines that the plan meets the requirements of the **Erosion and Sediment Control Law and the** Board’s regulations, and if the person responsible for carrying out the plan certifies that s/he will properly perform the ~~conservation~~ measures included in the plan and will conform to the provisions of this ~~article~~ **ordinance**. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of **the responsible land disturber, an individual holding a certificate of competence**, to the program authority, as provided by ~~§ 10.1-561~~ **§ 62.1-44.15:52** of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of ~~an individual holding a certificate of competence~~ **the responsible land disturber** prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.
- D. ~~The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval. When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved by the person authorized to proceed with the proposed activity. When the plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.~~
- E. **The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.**
- F. **An approved plan may be changed by the plan-approving authority when The VESCP authority may require changes to an approved plan when:**
 - (1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or

- (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.
- G. Variances: The **VESCP** plan approving authority may waive or modify any of the standards that are deemed to be **inappropriate or** too restrictive for site conditions by granting a variance. A variance may be granted under the following conditions:
- (1) At the time of plan submission, an applicant may request a variance to become part of the approved Erosion and Sediment Control Plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
 - (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the plan-approving authority does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
 - (3) **The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.**
- H. In order to prevent further erosion, the Town of Berryville may require approval of a plan for any land identified in the local program as an erosion impact area.
- I. When a land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.
- J. **In accordance with the procedure set forth in § 62.1-44.15:55(E) of the Code of Virginia, any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board. Approval of general erosion and sediment control specifications does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit**

plans and obtain permits as may be required by such ordinances and regulations.

- K. State agency projects are exempt from the provisions of this ordinance except as provided in the Code of Virginia ~~§ 10.1-564~~ **§ 62.1-44.15:56.**

322.5

PERMITS; FEES; SECURITY FOR PERFORMANCE

- A. Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities may not issue any such permit unless the applicant submits with his/her application an approved erosion and sediment control plan, **and** certification that the plan will be followed, **and evidence of state permit coverage where it is required.**
- B. No person may engage in any land-disturbing activity until s/he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.
- C. An administrative fee of \$200.00 shall be paid to the Town of Berryville at the time of submission of the erosion and sediment control plan.
- D. No land-disturbing permit shall be issued until the applicant submits with his/her application an approved erosion and sediment control plan **or agreement in lieu of an approved erosion and sediment control plan** and certification that the plan will be followed.
- E. All applicants for permits shall provide to the Town of Berryville a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the Zoning Administrator, to ensure that measures could be taken by the Town of Berryville at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of the applicant by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the Town of Berryville to take such conservation action, the Town of Berryville may collect from the applicant any costs in excess of the amount of the surety held. Within sixty (60) days of adequate stabilization, as determined by the Zoning Administrator in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpected or unobligated portion thereof shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

322.6

MONITORING, REPORTS, AND INSPECTIONS

- A. **The responsible land disturber, as provided by § 62.1-44.15:52, shall be in charge of and responsible for carrying out the land-disturbing activity and**

provide for periodic inspections of the land-disturbing activity. The Town of Berryville may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

- B. The Zoning Administrator shall periodically inspect the land-disturbing activity in accordance with Section ~~4VAC50-30-60~~ **9VAC25-840-60** of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the Zoning Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by ~~registered or certified mail~~ **mailing with confirmation of delivery** to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

- C. Upon ~~determination of a violation of this ordinance~~ **issuance of an inspection report denoting a violation of Va. Code §§ 62.1-44.15:55, -44.15:56**, the Zoning Administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the Zoning Administrator may, ~~in conjunction with or subsequent to a notice to comply as specified in this ordinance~~, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land disturbing activities have commenced without an approval plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the

Circuit Court of the County of Clarke. **The Town of Berryville shall serve such order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring, and shall remain in effect until permits and plan approvals are secured, except in such situations where an agricultural exemption applies.**

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Zoning Administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by ~~registered or certified mail~~ **mailing with confirmation of delivery** to the address specified in the permit application or the land records of the Town of Berryville.

The owner may appeal the issuance of an order to the Circuit Court of the County of Clarke.

Any person violating or failing, neglecting or refusing to obey an order issued by the Zoning Administrator may be compelled in a proceeding instituted in the Circuit Court of the County of Clarke to obey same to comply therewith by injunction, mandamus or other appropriate remedy.

Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the Zoning Administrator from taking any other action authorized by this ordinance.

322.7

PENALTIES, INJUNCTIONS, AND OTHER LEGAL ACTIONS

- A. Violators of this ordinance shall be guilty of a Class I misdemeanor.
- B. Any person who violates any provision ~~of this ordinance shall~~ **of Va. Code §§ 62.1-44.15:55. 62.1-44.15:56 shall**, upon a finding of the District Court of the County of Clarke be assessed a civil penalty. The civil penalty for any one violation shall ~~be not be less than~~ **\$100 nor more than \$1,000**, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ~~\$3,000~~ **\$10,000**, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. **Any such civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.15:63.**

~~Note: The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of this section. Refer to Code of Virginia, Section 10.1-562 J.~~

- C. The Zoning Administrator or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of the County of Clarke to enjoin a violation or a threatened violation of ~~this ordinance of Va. Code §§ 62.1-44.15:55, -44.15:56~~, without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.
- D. In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to the Town of Berryville in a civil action for damages.
- E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the Town of Berryville. Any civil penalties assessed by a court shall be paid into the treasury of the Town of Berryville except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.
- F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, ~~or~~ **order of the VESCP authority** the Town of Berryville may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection **B or E**.
- G. The Commonwealth's Attorney shall, upon request of the Town of Berryville ~~or the permit issuing authority~~, take legal action to enforce the provisions of this ordinance.
- H. Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

322.8

APPEALS AND JUDICIAL REVIEW

- ~~A. Any applicant under the provision of this ordinance who is aggrieved by any action of the Town of Berryville or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by by the Town Council provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Town Council shall be heard at the next regularly scheduled Town Council public hearing~~

~~provided that the Town Council and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the Town Council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Town Council may affirm, reverse or modify the action. The Town Council's decision shall be final, subject only to review by the Circuit Court of the County of Clarke.~~

B. A. Final decisions of the Town of Berryville under this ordinance shall be subject to review by the County of Clarke Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.

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10. Report of Keith Dalton, Town Manager

Establishing Trick or Treat Hours

Mr. Dalton noted the Town Code permits the Town Council to establish the date and hours during which "trick or treating" will be permitted. Council member Gibson moved that the Council of the Town of Berryville establish Trick or Treat Hours as 6:00 – 8:30 pm on Tuesday, October 31, 2017. Council member Kitselman seconded the motion which carried as follows:

| | |
|----------|------------------------------------|
| Aye: | Kitselman, Gibson, Tollett, Arnold |
| Nay: | None |
| Abstain: | Dickinson |
| Absent: | McDonald |

Scheduling Town Attorney for Closed Session

Mr. Dalton noted there had been earlier discussion of having Town attorney Robert Mitchell attend the October meeting for a closed session regarding the property referred to as Wheeler Lane. He said that he had not received further input and inquired whether that meeting should be scheduled. The Council discussed the matter. Council member Gibson inquired whether the decision to have Mr. Mitchell attend should be made after the September Streets and Utilities Committee meeting where the other property owner will be speaking. Recorder Arnold said he is not in favor of having Mr. Mitchell attend at this time. He said there is no urgency and the property owners may work things out. Mayor Dickinson said she would prefer to have the matter on the agenda so the issue will be resolved. Council member Kitselman said he is not sure the Council wants to resolve the issue, and perhaps the Town should not be in the middle of the issue. Council member Tollett said the issue will not be resolved except in court, and said he has stated before that his opinion is the Council should stay out of the matter and let the courts handle it. The Mayor said it appeared that three of the Council members preferred not to have Mr. Mitchell attend the October meeting for a closed session.

11. Report of Erecka Gibson - Chair, Budget and Finance Committee

Council member Gibson had no report. She said the Committee will meet at the end of the month. Ms. Moreland noted that audit field work would start the week of September 18.

12. Report of Donna McDonald - Chair, Community Improvements Committee

In the absence of Council member McDonald, Council member Kitselman said the Town received four proposals on the Structural Evaluation of the Livery Stable.

13. Report of David Tollett – Police and Security Committee

Council member Tollett noted the next Committee meeting will be on September 29 at 9:00am.

14. Report of Patricia Dickinson – Chair, Streets and Utilities Committee

Mr. Tyrrell said the water tank painting project is in the permitting stage.

Water/Sewer User and Availability Fee Schedule

Mayor Dickinson noted the draft scope of work for the availability fee schedule study. She said the list of deliverables should include the spreadsheet of the rate model.

Council member Kitselman asked why the word ‘recommend’ had been struck. Mayor Dickinson said an engineer can calculate but that recommending a rate structure involves more such as a customer analysis. Council member Kitselman asked why an engineer would be hired if not to look at goals and objectives of the schedule. Mayor Dickinson said doing so would expand the scope. Council member Kitselman asked why the Council would pay for something and not get a complete answer, adding that it is a waste of money. Mayor Dickinson said it would be useful information. Council member Kitselman noted the budget for the study is \$20,000 and asked where the feedback is coming from that tells the Town that its current fees are wrong.

Council member Gibson said the 20 year projection in the scope is too long. She said with technology, five or ten years is more practical. Council member Tollett said that much of the equipment is obsolete already.

Mr. Dalton said he had a few concerns about the matter. He said the scope is expanding and getting more detailed, it seems the Council and staff are beyond their expertise. He said it may be a good idea to have the in-house engineer draft a scope of services, with the Council then having the opportunity to make additions or changes to the scope. Mr. Dalton said if the wrong questions are asked, and the wrong product is received, it would be a huge mistake. He said the change to a fixed flat rate fee is concerning to him. He said the current schedule is based on usage. Council member Gibson said the Council doesn’t know what the best schedule is, and she is happy with the word recommended being used. The Mayor said the most important part of the scope is the deliverables, and that the spreadsheet would allow any schedule to be used.

Council member Gibson and Mayor Dickinson discussed the different rate schedules and wording of the scope. Mayor Dickinson asked about the wording in the previous version of the scope. Mr. Dalton said that previous wording was as follows: “Develop a recommended schedule that would generate adequate revenues and reflect the true costs of providing water and sewer services. The rate schedule shall be easy to administer and easily understood by the Town and its customers.” Mayor Dickinson said she would agree with using the previous wording. Council member Gibson asked about the difference between block rate and fixed flat rates. Mr. Dalton said unless there is a change in programming of the meters, the Town will continue to bill to the nearest thousand. He explained tiered rate systems, and asked Mr. Tyrrell to address the issue.

Mr. Tyrrell provided an overview of the project. He said the Council needed to be very careful of its approach on the matter. He cautioned against the fixed flat rate request, saying he did not think this is what the Council intended. He said it may not be a bad idea to update the schedule, but it may not be a necessity either. He said the Town needs to decide its goals such as conservation or encouraging business. He said tiered schedules encourage conservation. He said some costs can be flat, like administrative fees, but that usage fees should not be flat. He said the Council needs to be sure it is asking for what it really wants. Mayor Dickinson said she understands the costs need to be computed and then the spreadsheet would allow the rates to be set according to the Council's goals. Mr. Tyrrell said that an engineer could determine the costs.

Recorder Arnold said he was in favor of having the engineer draft the scope of services. Mayor Dickinson said the current draft is not that far off, and she was not in favor of waiting another month to begin the conversation with the engineers.

Council member Tollett said he had thought the current schedule was fine and that what Council had asked for was a check to make sure it was still covering the costs.

Mayor Dickinson asked how the Council would know if the current schedule is adequate without studying the costs. Council member Tollett said the in-house engineer would be able to compute the costs. Council member Gibson said she is not opposed to having the engineer review the scope. Council member Kitselman agreed with Council member Gibson. Recorder Arnold said the Council can ask for any deliverables it desires, but would have to pay for them.

Mayor Dickinson asked Mr. Dalton if Mr. Tyrrell had been involved in preparing the draft scope. Mr. Dalton said that he had. He added that he personally has been involved in several fee structure evaluations revisions and felt relatively comfortable until the revisions made at the last Committee meeting. He said his biggest concerns were the flat rate fee requirement, and the removal of the word recommended for the fee schedule. He noted that the Preventive Maintenance and Replacement Schedule would probably put the project out of budget, and may be redundant to what Mr. Tyrrell currently has in place.

By consensus, the Council agreed to have the in-house engineer, Pennoni Associates, assist Mr. Dalton and Mr. Tyrrell in finalizing the scope of services.

Pedestrian Crossing Signal – East Main St.

The Mayor noted the Town has planned to add lighted pedestrian crossing signals at three locations. She said that the fourth location recommended for a signal is at the Washington Square Apartments on East Main Street. The Council discussed the location and necessity of adding the crossing signal. Mayor Dickinson said the other option is removing a parking spot at the existing crosswalk. Recorder Arnold said when he asked earlier, the issue of adding the crosswalk was not addressed because of budgeting. The Council discussed budgeting for the signal. The consensus of the Council was that it was more economical to purchase and install the signals at one time rather than individually. **Council member Gibson moved that the Council of the Town of Berryville authorize the Town Manager to sign the contract and any other related documents in order to purchase and install a pedestrian crossing signal at the crosswalk on East Main Street mid-block between Church Street and Chalmers Court with funding to be from the General Fund contingency. Council member Kitselman seconded the motion which carried as follows:**

Aye: Kitselman, Gibson, Tollett, Arnold
Nay: None
Abstain: Dickinson
Absent: McDonald

Revised FY2018 Street Work Priorities / Public Works Building

Mr. Dalton said the Street Work Priorities may need to be reviewed as a result of the bids for the Public Works Building once the Council has made a decision on the contract for the installation of the building.

15. Report of Harry Lee Arnold, Jr. – Chair, Personnel Committee

Recorder Arnold moved that the Council of the Town of Berryville re-appoint Debbie Zimmerman to the Berryville Planning Commission for a four year term beginning November 13, 2017 and ending November 12, 2021. Council member Gibson seconded the motion which carried as follows:

Aye: Kitselman, Gibson, Tollett, Arnold
Nay: None
Abstain: Dickinson
Absent: McDonald

Recorder Arnold moved that the Council of the Town of Berryville appoint Mayor Patricia Dickinson as representative and Christina Dunkle as alternate to the Northern Shenandoah Valley Regional Commission for a one-year term to begin September 13, 2017, and end September 12, 2018. Council member Gibson seconded the motion which carried as follows:

Aye: Kitselman, Gibson, Tollett, Arnold
Nay: None
Abstain: Dickinson
Absent: McDonald

16. Other

Mr. Dalton clarified the scheduled committee meetings.

17. Closed Session

Recorder Arnold moved that the Council of the Town of Berryville enter a closed session in accordance with §2.2-3711-A-29, Code of Virginia, in order to discuss the award of a public contract for a building at the Public Works Department site. Council member Kitselman seconded the motion which carried as follows:

Aye: Kitselman, Gibson, Tollett, Arnold
Nay: None
Abstain: Dickinson
Absent: McDonald

The Council entered closed session at 9:10 p.m. At 9:47 p.m., the members of the Town Council being assembled within the designated meeting place in the presence of members of the public and the media desiring to attend, the meeting was reconvened. The Clerk read the resolution of certification at the Mayor's request. Council member Kitselman moved that the following Resolution Concerning Certification of the Closed Session be adopted. Recorder Arnold seconded the motion which carried on the following roll call vote:

Kitselman- Aye
Arnold- Aye

Gibson- Aye
Tollett- Aye
Dickinson- Aye

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Council of the Town of Berryville, Virginia, 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 Committee 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 Committee.

Harry Lee Arnold, Jr., Recorder

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Public Works Building Expansion Funding

Mr. Dalton said the Council had earlier discussed the expansion of the Public Works Building. He said bids have been received and there is an apparent low bidder. He said the Council must take action in order for the project to move forward. Ms. Moreland said the Council could increase the water and sewer fund balances by \$25,000 each with the monies to come from CIP reserve funds allocated for Public Works site plan expansion. **Council member Kitselman moved that the Council of the Town of Berryville instruct the Treasurer to move \$25,000 each in to the water fund account and the sewer fund account with monies coming from the CIP reserve funds allocated for Public Works site plan expansion. Council member Tollett seconded the motion which carried as follows:**

**Aye: Kitselman, Gibson, Tollett, Arnold
Nay: None
Abstain: Dickinson
Absent: McDonald**

Recorder Arnold moved that the Council of the Town of Berryville authorize the Town Manager to finalize negotiations with the apparent low bidder and execute all contract related documents in relationship to the Public Works building. Council member Gibson seconded the motion which carried as follows:

**Aye: Kitselman, Gibson, Tollett, Arnold
Nay: None
Abstain: Dickinson
Absent: McDonald**

18. Adjourn

There being no other business, upon motion of Council member Tollett, seconded by Council member Kitselman, the meeting was adjourned at 9:53p.m.

Harry Lee Arnold, Jr., Recorder

Ann W. Phillips, Town Clerk

MINUTES
BERRYVILLE TOWN COUNCIL
COMMUNITY IMPROVEMENTS COMMITTEE
Berryville-Clarke County Government Center
Regular Meeting
September 25, 2017

Committee members: Present- Donna Marie McDonald, Chair; Allen Kitselman

Staff: Keith Dalton, Town Manager; Christy Dunkle, Planner; Ann Phillips, Town Clerk

Press: None

1. Call to Order

Chair McDonald called the meeting to order at 7:03 p.m.

2. Approval of Agenda

The agenda was approved.

3. Update – Livery Stable Evaluation RFP

The Committee and staff discussed the proposal from Damron Engineering which had been ranked as the first choice by the Committee members. Mr. Dalton said the non-binding cost estimate had been received, and the next step would be negotiation. He asked the Committee for guidance on the scope and direction on negotiations. The Committee agreed by consensus to ask Mr. Dalton to present a counter offer to Damron.

Mr. Dalton noted a planned kickoff meeting for the project is tentatively scheduled for October 18.

Chair McDonald said that she had discussed fundraising opportunities for the livery stable with Mr. Dalton and asked the development committee at The Barns for their thoughts on fundraising.

4. Other

Chair McDonald inquired about inserting an advertising flyer into the Town water bills and/or tax bills to promote activities at The Barns. Mr. Dalton expressed concern about such a practice, noting that clear direction and a policy from Town Council would be needed to avoid problems. He said he would check on the specifics and provide information to the Chair and the Town Council members.

5. Adjourn

There being no further business, the meeting was adjourned at 7:22 p.m.

BERRYVILLE TOWN COUNCIL
Budget & Finance Committee
Tuesday, September 26, 2017
Berryville-Clarke County Government Center
10:30 a.m.

MINUTES

Roll:

Town Council:

Present: Erecka Gibson, Chair; Patricia Dickinson

Staff: Keith Dalton, Town Manager; Desiree Moreland, Treasurer; Ann Phillips, Town Clerk

Press: None

1. **Call to Order**

Chair Gibson called the continued meeting to order at 10:30 a.m.

2. **Approval of Agenda**

The agenda was approved as presented.

3. **Discussion – Work Plan Internal Audit of Cash Disbursements and Procurement**

The Committee and staff discussed revisions to the draft Purchasing Policy. The Committee and staff discussed the terms ‘competitive bidding’ and ‘solicitations.’ Ms. Dickinson agreed to provide a brief on her concerns to the Town Manager. Mr. Dalton shared that he would circulate the brief to the Town Council and staff. It was agreed that the Committee will continue reviewing the draft at the next Committee meeting.

4. **Discussion – Bank Accounts Update**

Ms. Moreland provided information regarding types of bank accounts and possible changes that could be made with the Town’s larger accounts at the Bank of Clarke County.

5. **Other**

Ms. Moreland provided information including pricing on the budgeting software package offered by Southern Software.

It was agreed that the Committee will meet on October 24 at 10:00 a.m. and will discuss the Work Plan, the Purchasing Policy and the P-Card Policy.

6. **Adjourn**

There being no further business, the meeting was adjourned at 11:44 a.m.

BERRYVILLE TOWN COUNCIL
Streets and Utilities Committee
Tuesday, September 26, 2017
Berryville-Clarke County Government Center
12:00 p.m.

MINUTES

Town Council:

Present: Patricia Dickinson, Chair; David Tollett

Staff: Keith Dalton, Town Manager; Rick Boor, Director of Public Works; Christy Dunkle, Assistant Town Manager / Planner; Ann Phillips, Town Clerk;

Press: None

Others: Norma Slattery; Harry Lee Arnold, Jr.; Alton Echols

1. **Call to Order**

Chair Dickinson called the meeting to order at 12:00 p.m.

2. **Approval of Agenda**

The agenda was approved as presented.

3. **Presentation**

Mrs. Slattery read a prepared statement regarding the issue of her driveway which has been referred to as Wheeler Lane. (Attachment A)

4. **Project Updates**

Staff provided updates on various projects including the water tank painting project; the planned crosswalk signage; the water/sewer user and availability fee study; the Livery Stable analysis; the Swan Avenue walking path and demolition of sidewalk; and the Public Works Pole Barn.

5. **Adjourn**

There being no further business, the committee adjourned at 12:22p.m.

Rebuttal Points to Maple's Claims to Street and Utilities Commission

Thank you for letting me talk with you today about the request by Carl and Patty Maples for the Town to "vacate" ownership of my driveway at 211 Swan Avenue. I haven't prepared a long dissertation for this because it seems to me the Town doesn't claim ownership of my driveway and assumes that I own the land, and before me the Wheelers, since both Town and County tax bills have been regularly sent to Wheelers and now me, and paid.

1. Patty and Carl have enjoined the town to get in the middle of this ongoing land dispute by petitioning the town to "vacate" ownership of the pipe stem driveway for 211 Swan Avenue. They have done this on advice of their counsel to give them standing to swoop in and stake ownership to this ~ 5th of an acre property, leaving 211 Swan without any ingress or egress, and bypassing my ownership rights. In effect, the town (and county) would be inserted into the middle of a property rights case that should be taken care of between property owners and not with the town/county. The town's attorney has also advised the town not to take a part in this land dispute.
2. This approach is an underhanded way to avoid the cost of bringing suit against me, bypassing the land rights of myself, blocking access to my property to gain something I and the Wheelers have always allowed them, the Bowens before them, etc. to use as needed. And note, access through my driveway is in addition to their own driveway. Why Patty and Carl are pushing this is a mystery to me since they gain nothing and lose money since they would then be taxed for this 0.2 acreage.
3. This land grab of the Maples would mean that I have no legal way into my property. While I have not retained a lawyer for this latest foray of theirs, I'm sure there are laws on the books that prohibit lack of ingress and egress to a property, especially an existing property that has been on the books since 1950 and whose owners have been paying taxes and maintaining a driveway for the use of their 1.78 acre property.
4. In addition to rebutting this land grab petition of the Maples, I would like to request the town/county require the Maples to take down the "Wheeler Lane" street sign they have put up. While it is about an inch within their lines, it has led to confusion for people looking for my house. This includes home health medical support for the 8 Jun shoulder surgery and 7 Sept surgery redo as well as most other people looking for my property. I have no idea how emergency services would deal with this confusion. Since the town has never recognized Mr. Wheeler's "gift" to the town of his driveway, it is not formally named. Yes, the very unique character who was Beau Wheeler named his driveway after himself, but it is not a recognized street name and I am asking the town/county to support my request for the Maples to take this confusing and potentially dangerous sign down.

There are many laws, codes, statutes on the books. And there have been many property changes, some large, some small. Some well documented others not so much. I have not hired anyone to do a title search at this time or to research the laws of this town and county, but I suspect if done another case could be evolved based on case law to support my claim as rightful owner.

I believe Carl and Patty Maples are trying to hoodwink the town into getting involved in what has been and should be a private matter between the two property owners as the town attorney advised. If the town does get involved, this would also bring Clarke County into the fray since they recognize my ownership and tax my driveway also. Additionally, it would give 211 Swan Avenue no legal ingress and egress to the property, while providing two driveways for 207 Swan. Obviously, this would open the town/county up to lawsuits.

I ask the town council, along with the county leaders and their attorneys to get together to look carefully at this matter and understand that this is the Maples' backdoor way of getting my property on advice from their Fairfax County attorney, John Farrell of McCandlish, Lillard Legal Counsel. It is without merit and should not be supported by the town/county.

And again, I ask the town or county to require the Maples to remove the "Wheeler Lane" sign before something serious happens to myself, my family, or my property.

Thank you for your time.

MINUTES
BERRYVILLE TOWN COUNCIL
POLICE AND SECURITY COMMITTEE
Berryville-Clarke County Government Center
Regular Meeting
September 29, 2017
9:00 a.m.

Committee members: Present- Dave Tollett, Chair; Pat Dickinson

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

Press: None

Other: Dennis Couture

1. Call to Order

The meeting was called to order at 9:02 a.m. by Committee Chair Tollett.

2. Approval of Agenda

The agenda was approved with one addition.

3. Department Update

Chief White said that he had been asked to research speed enforcement cameras and has learned that such cameras are not allowed in Virginia.

Chief White reported that construction on the new criminal justice academy is on schedule to begin at the end of October.

He said that he is awaiting the contract from the vendor for the e-citation package.

4. Discussion – Berryville Code Chapter 10, Article 2

The Committee and staff discussed the draft revision of Chapter 10. Chief White reviewed the revisions made at the last Committee meeting. The Committee and staff agreed by consensus to forward the draft to Town Attorney for his review and his draft of a section 10-8 in regard to private signs mimicking official street signs.

5. Discussion – Berryville Code Chapter 4 – Laying Hens

The Committee and staff discussed the draft version of Chapter 4 addressing laying hens. By consensus, the Committee agreed to forward the draft to the Town Attorney for review, with the plan to have it on the November Town Council agenda.

Mr. Dalton said that he had to leave the meeting for another appointment. Prior to his departure, he reported that the crosswalk signs had been ordered. He said that the changes to the traffic signaling in the downtown is still pending and he will check with VDOT.

6. Discussion – Speeding Concerns on South Buckmarsh and East Main

The Committee and staff reviewed the traffic speed study data for South Buckmarsh and East Main Streets. Dennis Couture, Town resident, expressed his continued concerns about speeding on South Buckmarsh Street. Ms. Dickinson said traffic calming measures are needed on South

Buckmarsh Street. She asked Chief White for recommendations on what to ask VDOT. Chief White said he would review speed reduction options while continuing to collect speed study data. It was agreed to forward the matter to the Streets and Utilities Committee.

7. Discussion – Police Department Career Development

Chief White provided a draft General Order for a training and retention incentive program that he and Chair Tollett had developed. It was decided that the Committee members will individually provide comments on the draft to the Chief.

8. Other

Ms. Dickinson said she had been looking at the Town Code in regard to trash collection. She provided a draft document (Attachment A) illustrating her thoughts on appropriate curbside collection. She said it is her desire that the Council decide the policy, followed by the Town Manager building a contract and revising the Town Code to address the issue. Chair Tollett asked if there were a perception that trash was not being collected. Ms. Dickinson said her intent is to address perceived inequalities. It was agreed the issue should be reviewed at a Town Council work session.

Chair Tollett said that the next meeting will be October 26.

9. Adjourn

There being no further business, the meeting was adjourned at 10:38 a.m.

Trash Collection Policies

| | Curbside Service | | | |
|---|------------------|------------------|--------------|---|
| | Frequency | Trash Containers | Recycle Bins | Notes |
| Single Family Homes
(DR-1-2-3-4) | Once Weekly | Max 2 Bins | No Limit | 3 rd bin is \$20 per year |
| Town Houses (AR) | Once Weekly | Max 2 Bins | No Limit | 3 rd bin is \$50 per year

Town House HOA may request dumpster service (at no cost to HOA), requires town manager approval. |
| Business (Downtown) | Twice Weekly | Max 2 Bins | No Limit | No additional bins are permitted. |
| Home Occupations,
Home Offices | Once Weekly | Max 2 Bins | No Limit | 3 rd bin is \$50 per year

The amount of trash must closely approximate the volume of refuse generated by a typical residential unit. |
| Churches,
Organizations and
Government Agencies | Once Weekly | Max 2 Bins | No Limit | 3 rd bin is \$50 per year

Amount of refuse must closely approximate the volume of refuse generated by a typical residential unit. If the volume is greater, the business must make other arrangements for trash pickup. |

| No Curbside Service Offered | |
|---|---|
| Apartments (MR) | Residential apartment complexes must have dumpster service, provided by the town. |
| Businesses (Shopping Centers and Nursing – Convalescent – Rest Homes) and other businesses by SUP | If the amount of refuse is greater than the volume of refuse generated by a typical residential unit, the business must make private arrangements for trash pickup. |
| Commercial (C1, C2, LI, BC, B, BP, ITL) | Commercial trash pickup is not provided by the town. |