

**BERRYVILLE TOWN COUNCIL**  
**Tuesday, December 16, 2008**  
**Berryville-Clarke County Government Center**  
**Regular Meeting**  
**7:30 p.m.**

**MINUTES**

**Roll:**

**Town Council:**

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

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

**Press:** Laura Oleniacz, Winchester Star; Cynthia Burton, Clarke Time Courier

1. **Call to Order** – Wilson Kirby, Mayor  
Mayor Kirby called the regular meeting to order at 7:30 p.m.
  
3. **Approval of Minutes-**  
November 18, 2008  
Upon motion by Ms. Daniel, seconded by Ms. Smith, the minutes of the November 18, 2008 meeting were approved with the correction of two typographic errors.
  
4. **Citizen’s Forum**  
Mr. Norm Freeman, 312 Jackson Drive, said that he polled 30 households on Jackson Drive with the question of “Do you want Mosby Boulevard and/or Early Drive extended to Main Street?” He said that 22 households answered yes on both, 1 household said no on both and 7 did not participate.  
  
A.C. Echols, 400 Custer Court, provided a handout to the council that included a summary of an economic development study by Clarke County and a rezoning plan and economic projections for the senior housing project known as Battlefield Heights.  
  
Jeff Callan, 84 Brooke Lane, complimented the council on a nice facility and said that the high school should have a nice facility. He said at the last council meeting he left feeling that the project was sunk. He said that is good that the Town Council is clarifying the issues to calm the community down. He said that everyone needs to work together to clarify what the issues are and how to proceed to accomplish the project.

5. **Report of Mayor – Mayor Wilson Kirby**

Mayor Kirby said that he received a letter from John Staelin regarding the school site and associated infrastructure. He said that the letter included an opinion from Bob Mitchell regarding road bonding. The Mayor said that the town's attorney is now reviewing this matter as well.

Mayor Kirby said that the town has not received an application or sketch plan for this project, so there is nothing to review. He said that typically, the applicant makes the first move, not the reviewing body. He said that while there has been a lot of discussion on this matter, it cannot move along until there is an application to review.

Mayor Kirby recognized Council member Kitselman.

Council member Kitselman said that he thinks that Mr. Staelin's letter is premature. He said that bonding the road is only one option and that without a plan the project cannot move along because there is no reference point for discussion. He said that there is a process to follow and that the transportation plan can't be ignored. He said that he thinks that we need to sit down and talk to Jeff Lineberry about options as soon as a plan is submitted.

Council member Daniel said that the school board has correctly indicated that the county will be involved in building Mosby Boulevard. The county has indicated that they will use VDOT funds for this project, so VDOT will be involved. She said that the VDOT process will be long and involved, so she would like to see an application to start moving the process along. She said that the town council can neither cooperate nor be obstructionist unless they get a plan. She said that she thinks the project will happen and that it is a good site, but that the project has to be done within the rules.

Mr. Kitselman said that Mr. Staelin's letter doesn't address the council's question about engineering costs for the road. He said that his research indicates that the engineering should cost around \$25,000.

Council member Smith said that she agrees that Mr. Staelin's letter is premature because we don't have all the facts yet. She said that everyone wants a new high school, but that we can't separate the roads issues from the high school plan. She said that it is not fair for the entire burden of building the necessary roads to fall on the citizens of the Town of Berryville.

Mayor Kirby said that he has heard that the high school is on the fast track, but these site development issues are not necessarily fast track items. He said that he believes that the issues can be worked through, but that a plan must be submitted.

Mayor Kirby recognized John Staelin, Chairman of the Clarke County Board of Supervisors. Mr. Staelin said that in regard to the engineering cost, those figures

were sent to Ms. Dunkle via e-mail. He said that VDOT originally said the cost would be \$900,000, but View Engineering has indicated the cost would be around \$700,000.

Council member Kitselman said that he received the e-mail and that is not how he understood it. He said that it doesn't cost a million dollars to engineer a road. Mr. Dalton said that as he recalls, View Engineering presented numbers before the Board of Supervisors indicating that the cost to complete Early and Mosby would be less than \$1,000,000 per project.

Council member Kitselman reiterated that all parties should sit down with Jeff Lineberry of VDOT and get these numbers straight.

Council member Daniel said that she wanted to assure everyone that the Town Council is not laying down any gauntlet. She reiterated that there is a process to be followed.

6. **Planning and Zoning Matters – Christy Dunkle**

Ms. Dunkle reported that the Planning Commission, BADA and BZA did not hold meetings in November. The ARB reviewed several items in the December meeting.

School Travel Plan

Ms. Dunkle reported that at the October Town Council meeting, council authorized staff to submit a letter of support for a School Travel Plan (STP) to be submitted to VDOT for review. As a part of the Safe Routes to School Program, an approved STP would enable the town to apply for infrastructure funds of up to \$500,000 that may be used for areas around schools. Ms. Dunkle said that she completed a draft of the STP, but the school board member who had agreed to furnish statistical information for the report did not respond and the report was not submitted.

Ms. Dunkle reported that she was notified this month that the town has received another bicycle helmet grant from the Virginia Department of Health to give away free bicycle helmets to the residents of Berryville and Clarke County.

7. **Closed Session – Pursuant to Section 2.2-3711.A.29 of the Code of Virginia, 1950, As Amended, for the purpose of discussing the award of a public contract for membrane bioreactor equipment.**

a. **Motion to enter Closed Session**

It was moved by Recorder Arnold, seconded by Council member Smith that the Council of the Town of Berryville enter Closed Session pursuant to Section 2.2-3711.A.29 of the Code of Virginia, 1950, As Amended, for the purpose of discussing the award of a public contract for membrane bioreactor equipment.

- b. Enter Closed Session
- c. Reconvene Open Session  
The Town Council reconvened in open session at 8:27 p.m.
- d. Certification of Closed Session

**Town of Berryville  
RESOLUTION**

MEETING DATE: December 16, 2008

MOTION BY: Harry Lee Arnold, Jr., Recorder

SECOND BY: Allen Kitselman

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Personnel Committee of the Council of the Town of Berryville, Virginia (Committee), 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 Committee hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Committee.

VOTE:

Ayes:	Wilson Kirby, Mayor Harry Lee Arnold, Jr., Recorder Mary Daniel Allen Kitselman Lawrence Russell, III Gail Smith
Nays:	None
Absent During Vote:	None
Absent During Meeting:	None

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Harry Lee Arnold, Jr., Recorder

Mayor Kirby asked Barry Woods of Stearns & Wheler, the town's engineers for the sewer plant project, to summarize the membrane project.

Mr. Woods explained that the town needs to pre-select and pre-purchase the membrane equipment in order to design the new sewer plant. He said that a competitive negotiation process defined by the Virginia Public Procurement Act allows the body to receive proposals with prices and other information about the product.

Mr. Woods said that the town received two proposals, one from Siemens and one from GE Zenon. He said a town evaluation committee evaluated the proposals and that Zenon was chosen because they were deemed more highly qualified and the best value for the town. He said that the evaluation committee then negotiated a 6.5% reduced price with Zenon.

Mr. Woods then explained that the contract before the council consists of a small initial amount for Zenon to assist in the design of the plant. Zenon will then be the supplier for the construction contractor and provide assistance with construction and installation training. He said that the total cost of the contracts is \$2,435,000.

Mr. Dalton said that there are two motions before the council, one regarding the competitive negotiation process and one authorizing the Mayor to sign the agreement with Zenon.

It was moved by council member Daniel, seconded by Council member Kitselman that the Council of the Town of Berryville approve the attached motion regarding competitive negotiations.

Recorded vote:

Aye –	Wilson Kirby, Mayor
	Harry Lee Arnold, Jr., Recorder
	Mary Daniel
	Allen Kitselman
	Lawrence Russell, III
	Gail Smith
Nay –	None
Abstain -	None
Absent -	None

TOWN COUNCIL  
TOWN OF BERRYVILLE  
MOTION REGARDING COMPETITIVE NEGOTIATIONS

Date: December 16, 2008

Motion By: Mary Daniel

Second By: Allen Kitselman

I hereby move, pursuant to Virginia Code §2.2-4301, subparagraph 3.b. of the requirements for competitive negotiations, that Council hereby determine that only one offeror for the membrane bioreactor equipment for the new Berryville Waste Water Treatment Plant, Zenon Environmental Corporation, is clearly more highly qualified than others under consideration, and that the Mayor be authorized to execute a writing setting forth this determination.

VOTE:

Aye: Wilson Kirby, Mayor  
Harry Lee Arnold, Jr., Recorder  
Mary Daniel  
Allen Kitselman  
Lawrence Russell, III  
Gail Smith

Nay: None

Absent: None

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

It was moved by council member Daniel, seconded by Council member Russell that the Council of the Town of Berryville approve the attached motion to authorize signature.

Recorded vote:

Aye –	Wilson Kirby, Mayor
	Harry Lee Arnold, Jr., Recorder
	Mary Daniel
	Allen Kitselman
	Lawrence Russell, III
	Gail Smith
Nay –	None
Abstain -	None
Absent -	None

TOWN COUNCIL  
TOWN OF BERRYVILLE  
MOTION TO AUTHORIZE SIGNATURE

Date: December 16, 2008

Motion By: Mary Daniel

Second By: Lawrence Russell, III

I hereby move that the Council of the Town of Berryville authorize Wilson Kirby, Mayor to sign the agreement with Zenon Environmental Corporation on behalf of the Town Council after final review by the town's attorney.

VOTE:

Aye: Wilson Kirby, Mayor  
Lee Arnold, Jr., Recorder  
Mary Daniel  
Allen Kitselman  
Lawrence Russell, III  
Gail Smith

Nay: None

Absent: None

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

8. **Report of the Town Manager**

Compact Fluorescent Bulb Distribution

Mr. Dalton reported that CFL will be distributed to town residents on December 15<sup>th</sup> and 16<sup>th</sup> through a grant from the Clean Energy Foundation.

Citizen Request

Mr. Dalton presented a letter from Mr. Douglas Ross of 307 First Street. Mr. Ross is concerned with speeding on First Street and would like to see additional fines on that street. He said that as he understands the state law, it provides for additional fines on residential streets. He said that he is unsure of how the law applies to streets in industrial areas such as the east end of First Street. He said that VDOT would have to rule on the matter and that a traffic study is usually done in these cases. Chief White said that he would like to do the study during a 10 day period with no holidays or bad weather. Mr. Dalton said that he would notify Mr. Ross of the process for addressing his request.

Council member Daniel asked if there would be a public hearing on the matter. Mr. Dalton said that VDOT will require a public hearing or some other form of public support for the project.

Mr. Dalton suggested referring the matter to the Streets and Utilities Committee. There was a discussion of the industrial area on First Street. Council member Daniel asked if staff could speak to VDOT about the additional fine issue before the committee meets.

Water and Sewer Billing Adjustment Policy

Mr. Dalton explained that the Water and Sewer Billing Adjustment Policy was adopted by the Town Council in 1993 and sets out specifications for adjustment of water bills for high usage. The policy allows for one adjustment per 12 month period at the discretion of the Town Manager. Mr. Dalton said that he has always interpreted this to mean the adjustment of one monthly bill. He explained that a citizen asked for an adjustment of two monthly bills for one leak and has asked that the council address the issue. Mr. Dalton said that he will get the information on this case to the council for further consideration.

9. **Standing Committee Reports:**

a) BADA Liaison – Allen Kitselman

No report.

b) Budget Finance / CIP -

Finance Monthly Report

It was moved by council member Daniel, seconded by Council member Russell that the Council of the Town of Berryville approve the attached resolution regarding Affirmation of Authorization to Pick-up the Employee's Contribution to VRS.

Recorded vote:

Aye –	Wilson Kirby, Mayor
	Harry Lee Arnold, Jr., Recorder
	Mary Daniel
	Allen Kitselman
	Lawrence Russell, III
	Gail Smith
Nay –	None
Abstain -	None
Absent -	None

RESOLUTION

Affirmation of Authorization to Pick-up the Employee's Contribution to  
VRS for TOWN OF BERRYVILLE – 55368  
Under § 414(h) of the Internal Revenue Code

WHEREAS, the TOWN OF BERRYVILLE provides its employees with tax deferral pursuant to § 414(h) of the Internal Revenue Code with respect to their member contributions to the Virginia Retirement System (referred to as VRS) by picking up member contributions to VRS: and

WHEREAS, VRS keeps track of such picked up member contributions, and treats such contributions as employee contributions for all purposes of VRS;

WHEREAS, The Internal Revenue Service in Notice 2006-43 has provided transition relief for existing pick up arrangements provided that an authorized person takes formal action to evidence the establishment of the pick up arrangement no later than January 1, 2009.

WHEREAS, in order to avail itself of the protection given under Notice 2006-43, the Town of Berryville desires to affirm its intention to establish and maintain a pick up arrangement through formal action by its governing body.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the existing member contribution pick up arrangement is hereby affirmed as it relates to salary reduction elections in effect prior to the date of this Resolution, and it is further

RESOLVED that effective the first pay day on or after December 16, 2008, the TOWN OF BERRYVILLE shall pick up member contributions of its employees to VRS, and such contributions shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States; and it is further

RESOLVED that such contributions, although designated as member contributions; are to be made by the TOWN OF BERRYVILLE in lieu of member contributions; and it is further

RESOLVED the pick up member contributions shall be paid from the same source of funds as used in paying the wages to affected employees; and it is further

RESOLVED that member contributions made by the TOWN OF BERRYVILLE under the pick up arrangement shall be treated for all purposes other than income taxation, including but not limited to VRS benefits, in the same manner and to the same extent as member contributions made prior to the pick up arrangement; and it is further

RESOLVED that nothing herein shall be construed so as to permit or extend an option to VRS members to receive the pick up contributions made by the TOWN OF BERRYVILLE directly instead of having them paid to VRS; and it is further

RESOLVED that notwithstanding any contractual or other provisions, the contributions of each member of VRS who is and employee of the TOWN OF BERRYVILLE shall be picked up using the method under which the employer will pay the employees' statutorily required contributions to VRS and the salary will not be modified.

Adopted by the Council of the TOWN OF BERRYVILLE, Virginia this sixteenth day of December 2008.

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Wilson Kirby, Mayor

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Harry Lee Arnold, Jr., Recorder

- c) Community Improvements – Allen Kitselman  
Council member Kitselman said that there will be a summit at Berryville Main Street to do visioning exercises centered on downtown.
- d) Personnel / Appointments – Wilson Kirby  
Nothing to add.
- e) Planning Commission Liaison- Lawrence Russell
- f) Police and Security – Lawrence Russell  
Police Department Monthly Report – Chief Neal White  
Nothing to add.
- g) Streets and Utilities – Wilson Kirby  
Public Utilities Monthly Report  
Public Works Monthly Report  
There was a brief discussion about the move to the new government center.

10. **Adjourn**

There being no further business, on motion by Council member Russell, seconded by Council member Smith and passed, the council meeting was adjourned at 8:53 p.m.

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Wilson Kirby, Mayor

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Harry Lee Arnold, Jr., Recorder