

October 18, 2010

**KILMARNOCK TOWN COUNCIL
Monday, October 18, 2010
Town Hall
Kilmarnock, VA**

Regular Meeting Minutes

1. Call to Order:

Mayor Booth called the Regular Meeting to order at 7:00 pm with the following Councilmembers present:

Raymond Booth, Mayor	Rebecca Nunn
William Smith, Vice-Mayor	John A. Smith
Randy Moubray	

Members Absent:

Shawn Donahue
Paul S. Jones

Staff Present:

Tom Saunders, Town Mgr.
Paul C. Stamm, Jr., Town Attorney
Jackie Blencowe, Town Clerk
Cindy Balderson, Deputy Clerk
Joan N. Kent, Transcriber
Michael S. Bedell, Chief of Police

Mayor Booth welcomed Kilmarnock residents, business owners, and guests. Mayor Booth led the recital of the Pledge of Allegiance.

2. Acceptance and Approval of Agenda

Councilmember Nunn stated that she would like to add VML Copy Policy under Old Business.

ACTION: Councilmember Nunn made a motion to accept the agenda for the October 18, 2010 Regular Town Council meeting as amended, seconded by Vice-Mayor Smith; and carried unanimously.

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3. Minutes: Approve, Correct, or Amend Minutes of the Regular Town Council Meeting held September 20, 2010.

Councilmember Nunn noted that there was a grammatical error on page 4. The third sentence from the bottom of the page should read “that many citizens around the property do not want the rezoning to take place”. The word “for” was to be deleted.

ACTION: Vice-Mayor Smith made a motion to approve the October 18, 2010 Regular Town Council Meeting Minutes as amended, seconded by Councilmember Smith; and carried unanimously.

4. Public Comments and Presentations:

A. Public Forum

Mayor Booth invited members of the audience to address Council with any issues or concerns that were not scheduled for public hearing or discussion on the agenda. Mayor Booth asked that comments be limited to 3 minutes per person.

There were no participants in the public forum.

B. Planning Commission Report: Councilmember Smith, Liaison

Councilmember Smith reported that the Planning Commission had submitted a resolution to Council regarding the denial of the rezoning request for the property located at 201 Irvington Road. Mr. Smith said that a copy of the resolution was included in each Councilmember’s packet but asked if anyone wanted him to read it out loud.

Mayor Booth replied that he did not think it was necessary because the issue had been resolved.

Town Attorney Stamm concurred that it was not necessary.

Councilmember Nunn stated that she wanted to remind Council that the Planning Commission was an advisory commission appointed by the Council and the proposed resolution carried no more weight than a simple request. Mrs. Nunn continued by saying that additionally, once Council had made the decision to deny the rezoning, Mr. Nunnally could only bring it back to Council after a period of six months. Mrs. Nunn said that she spoke to Mr. Nunnally on September 24, 2010 and again on Friday, October 15, 2010. On both occasions, Mrs. Nunn said he told her that he had withdrawn his offer on the Irvington Road property and, therefore, the offer was dead as though it had never existed which made the rezoning issue

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and the request moot. Mrs. Nunn advised that there was no longer an application or request for a zoning change and asked Town Attorney Stamm if that was correct.

Town Attorney Stamm conceded that it was.

Mayor Booth asked Councilmember Smith to continue with the Planning Commission Report.

Councilmember Smith advised that the Planning Commission was making the following recommendations to Council:

- 1) Recommend that signs be posted in front of properties subject to rezoning as part of the notification process.

ACTION: Councilmember Nunn made the motion to adopt the recommendation from the Planning Commission to post signs in front of properties subject to rezoning as part of the notification process, seconded by Councilmember Smith; and carried unanimously.

- 2) Recommend that Denis Bouslough be reappointed to the Planning Commission for a four year term to expire September of 2014.

ACTION: Councilmember Nunn made the motion to reappoint Mr. Denis Bouslough to the Kilmarnock Planning Commission for a four year term to expire September of 2014, seconded by Councilmember Smith; and carried unanimously.

- 3) Recommend that Ms. Geneva Dawson and Mr. Al Ludwig be appointed to fill the vacant seats on the Board of Zoning Appeals.
(Appointments to the BZA are made by the Circuit Court Judge)

Councilmember Nunn asked if the Planning Commission or BZA let it be known that there were vacancies in order to give citizens the chance to submit their names if they were interested.

Councilmember Smith replied that to the best of his knowledge the Planning Commission had done that but advised that he could check with them to see and report back.

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Mayor Booth advised that he could address the issue. Mayor Booth stated that he spoke with a majority of the Planning Commission Members regarding the two vacancies on the BZA and asked for recommendations. Mayor Booth said that he did not receive a whole lot of feedback. Mayor Booth advised that he spoke with several Councilmembers as well and discussed some names with them. Mayor Booth stated that he began going over names himself and with the help of several Planning Commission Members and Councilmembers and they came up with those two names. Mayor Booth said he did not know if somebody else may be interested but stated that he spoke with Ms. Dawson and Mr. Ludwig and they were willing to serve. Mayor Booth advised that a name could not just be thrown out there and commented that the people have to be asked if they are willing to serve.

Councilmember Nunn replied that she just wondered if there were other interested people and if they had been given the opportunity to come forward.

Mayor Booth advised that he was open for names.

Councilmember Nunn replied that she did not have any suggestions but spotted Mr. Les Spivey in the audience and asked if he would be interested.

Mr. Spivey replied that was one thing that he had never been before.

Councilmember Nunn said that she was not opposed to the two recommended individuals but had just wondered if there were other people out there that would be interested.

ACTION: Vice-Mayor Smith made the motion to accept the recommendation of the Planning Commission and request that Ms. Geneva Dawson and Mr. Al Ludwig be appointed to fill the vacancies on the Kilmarnock Board of Zoning Appeals,

DISCUSSION:

Councilmember Moubray asked what the protocol was for selecting BZA members.

Town Attorney Stamm replied that historically in the Town of Kilmarnock there have been a group of names selected from people who have lived in Town for a while and will probably continue to do so. Mr. Stamm said that numerous phone calls were then made and when two people finally accept they become the recommendations.

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Councilmember Nunn wanted to know if Ms. Dawson and Mr. Ludwig were the only two people asked.

Town Attorney Stamm replied that he did not think so but said that the Mayor would have to answer that.

Mayor Booth replied that he went through the voter list twice and tried to find people that he thought would be receptive to the job. Mayor Booth said that other names were kicked around but as far as formally asking anyone else, they did not.

Town Manager Saunders advised that the BZA did very important work which kept the Town out of trouble but noted that there was nothing pending on their docket. Mr. Saunders advised that there was no rush if Council wanted to take some more time because one of the vacancies did not run out until March.

Councilmember Nunn indicated that she wanted to make a motion.

Mayor Booth advised that there was already a motion on the table made by Vice-Mayor Smith to recommend Ms. Dawson and Mr. Ludwig for appointment to BZA which had to be dealt with first. Mayor Booth asked if there was a second to Vice-Mayor Smith's motion.

Councilmember Smith seconded Vice-Mayor Smith's motion to recommend Ms. Geneva Dawson and Mr. Al Ludwig for appointment to Kilmarnock Board of Zoning Appeals;

Discussion:

Councilmember Moubray stated that he was fine with the two people who had been recommended but he still was not sure if protocol was followed in the selection process.

Councilmember Nunn stated that since there was no rush, she felt that others should be given the opportunity to state their interest.

Mayor Booth called for the vote which was two in favor of (Vice-Mayor Smith and Councilmember Smith) and two opposed (Councilmembers Nunn and Moubray). Mayor Booth broke the tie by voting in favor of the motion which was carried by a 3 to 2 vote.

5. Committee Reports

A. Water/Sewer Committee: Councilmember Smith, Chair

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1) Report from October 12, 2010 Meeting.

A copy of the Committee meeting notes was included in each Councilmember's packet.

Councilmember Smith reported that Town Manager Saunders advised that DEQ approved, in general, of allowing shallow wells in Town for private irrigation use but also advised that VDH had concerns about potential cross connection risks and would be sending some comments and guidelines. Mr. Smith said that there was discussion regarding what effect this change would have on water system revenue. Mr. Smith reported that water and sewer line bids had been received regarding the next phase of the MBR project and that Franklin Mechanical was the lowest bidder. Mr. Smith said that the Committee was recommending that Council award the bid to Franklin Mechanical for the amount of \$652,000. Mr. Smith stated that several broken water lines in Town had been repaired. Mr. Smith advised that a power failure during September 30th thru October 1st due to storms had caused repeated high level alarms at WWTP but noted that there was no overflow or interruption of service. Mr. Smith finalized by saying that the Church Street water tank maintenance and painting was underway.

2) Committee Recommendations to Council.

Recommend that Council award contract for Mary Ball Road water and sewer line extension to low bidder, Franklin Mechanical Corp. of Kilmarnock, for the amount of \$652,000.

ACTION: Councilmember Nunn made the motion to award the contract for Mary Ball Road water and sewer line extension to the low bidder, Franklin Mechanical Corporation, for the amount of \$652,000, seconded by Councilmember Smith; and carried unanimously.

B. Streets/Sidewalks/Playground Committee: Councilmember Nunn

1) Report from October 7, 2010 Meeting.

A copy of the Committee meeting notes was included in each Councilmember's packet.

Councilmember Nunn reported that the Committee recommended placing the holiday tree at the Palmer building. Mrs. Nunn advised that several topics concerning Baylor Park were discussed. One of which, Mrs. Nunn said, was that there were handicap requirements for parking but not for the trail itself. Mrs. Nunn advised that Mr. Rosenbaum had reviewed the potential VDOT requirements

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but thought that the Town might be exempt. Mrs. Nunn said that Mr. Rosenbaum suggested the Town submit scaled drawings based on sightlines and submitted a proposal to do this in the amount of \$2000. Mrs. Nunn stated that no bids for the parking area would be accepted until the VDOT site plan review was completed. Mrs. Nunn said that the rope bridge at the playground was fraying and alternatives were being discussed since the price to replace it was exorbitant. Mrs. Nunn advised that the maintenance of the playground plant bed was discussed and the Committee was trying to get volunteers to help. Mrs. Nunn said that the Mayor had agreed to help. Mrs. Nunn continued by saying that the Committee had discussed the need for a comprehensive plan that addressed downtown beautification and ongoing maintenance. Mrs. Nunn noted that there had been discussion concerning allowing garden clubs or business persons to adopt a median. Mrs. Nunn stated that the Town would provide liability coverage for the volunteers but no workman's compensation coverage. Mrs. Nunn said that the Lancaster County Board of Supervisors' public hearing regarding "No Through Trucks" on Main Street had been scheduled for October 28th, but noted that it might not happen on that date. Mrs. Nunn added that she would keep everyone posted. Mrs. Nunn said that the Committee discussed advisory items such as a citizen's request for a pedestrian crosswalk from Tri-Star to School Street. Mrs. Nunn advised that Mr. Sean Trapani would review the available options and report to staff. Mrs. Nunn said that there was a positive response to the Northern Neck River Ride with 350 riders in attendance. Mrs. Nunn advised that the Committee was given a demonstration of a street sweeper and received updates on further options for keeping the streets and sidewalks clean. Mrs. Nunn said that Halloween was designated to be observed on Sunday, October 31st, which was the same as Irvington. Mrs. Nunn reported that the fall banners had been installed in the Steptoe's area. Mrs. Nunn said that holiday banner sales would conclude on October 29th. Mrs. Nunn reported that Ms. Cockrell had reviewed the holiday decoration plan and schedule to ensure that the merchants would have holiday lights after Thanksgiving.

2) Committee Recommendations to Council

a. Recommend to proceed with a site plan for VDOT review for the entrance to Baylor Park through Progress Engineers at a cost of \$2,000.

ACTION: Councilmember Smith made the motion to proceed with a site plan for VDOT review for the entrance to Baylor Park through Progress Engineers at a cost of \$2,000, seconded by Vice-Mayor Smith; and carried unanimously.

b. Recommend the creation of a Kilmarnock Beautification Plan that would encompass what needed to be addressed, who would do it, when it would be done and to what standards.

ACTION: Councilmember Smith made the motion to

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create a Kilmarnock Beautification Plan as described, seconded by Councilmember Moubray; and carried unanimously.

Councilmember Nunn advised that the committee was studying how to provide the resourcing for Steptoe's Maintenance and noted that the Mayor had suggested that an additional maintenance person be hired.

Mayor Booth stated that it was time to come to realization and look at the hard facts. Mayor Booth continued by saying that the Town already had maintenance staff, but it was hard to get everything done. Mayor Booth commented that the existing maintenance staff was tightly strained and his concerns were that with the addition of the dog park, Baylor Park and especially if the street sweeper was purchased then it would add enough weight to break down the horse. Mayor Booth said at that point it would be necessary to add another person to the maintenance staff. Mayor Booth said that being careful and critical of how the Town spends its money now he did not want the decision placed solely on him. Mayor Booth stated that Town Manager Saunders and several members of the Council agree that maintenance has all it can do now.

Councilmember Nunn asked if the budget had to be changed in order to hire someone.

Town Manager Saunders replied that it would require a budget amendment.

Vice-Mayor Smith stated that it could be added as an agenda item for the next Admin/Finance Committee meeting.

Councilmember Nunn stated that she would like to add that all of the ten sponsors for the dog park had sent in their money except two. Mrs. Nunn advised that when she received the money from the last two they would be able to start on the dog park since Council had agreed to lend them \$5,000. Mrs. Nunn also reported that 22 bricks had been sold.

C. Police/Public Safety Committee: Councilmember Moubray

1) Report from October 7, 2010 Meeting.

A copy of the Committee meeting notes and the monthly police report was included in each Councilmember's packet.

Councilmember Moubray stated that the Committee discussed a few incidents involving the trolley. Mr. Moubray advised that Chief Bedell reported that the department could now conduct its own in-house CPR training. Mr.

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Moubray said that the new police car had arrived. Mr. Moubray stated that they also discussed the removal of animal carcasses from the highway.

2) Committee Recommendations to Council

There were no recommendations made to Council.

D. Emergency Preparedness Committee: Councilmember Moubray
Chair

1) Report from October 7, 2010 meeting.

A copy of the Committee meeting notes was included in each Councilmember's packet.

Councilmember Moubray reported that Town Manager Saunders advised the Committee that the recent high rain event had exposed some weak points in the Town's backup systems but that everything had been worked on and taken care of. Mr. Moubray advised that Chief Bedell had concerns about the ability to fuel police and other town vehicles during a prolonged power outage and asked if a small gravity fed tank could be placed in a secure location at the public works building. Mr. Saunders said that he would check into it and report back next week.

2) Committee Recommendations to Council

There were no recommendations made to Council.

E. Economic Development Committee: Vice-Mayor Smith, Chair

1) Report from October 12, 2010 meeting

A copy of the Committee meeting notes was included in each Councilmember's packet.

Vice-Mayor Smith reported that the Committee was aware that several businesses were closing in Town and that there were already several vacant store fronts. Mr. Smith said that the Committee discussed what the Town could do to promote new business. Mr. Smith advised that several small communities had been successful with what was referred to as an incubator process. Mr. Smith said that this was a process in which the Town would provide a building and basic necessities for a small one or two man operation at a reasonable rate and grow the business over a 12 month period. Mr. Smith advised that at the end of the specified period the business could move elsewhere. Mr. Smith stated that there was potential grant money out there for this type of program. Mr. Smith said that the Committee would be conducting further research

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to see if such a program would be viable. Mr. Smith stated that the Committee realized that small business was the heartbeat of Kilmarnock. Mr. Smith said that the Committee also discussed what Kilmarnock and the Northern Neck had to offer as a whole and agreed that it was waterfront. However, Mr. Smith stated that Lancaster County had very limited public access for fishing or walking on the beach. Mr. Smith said that there was currently no one from our area on the Governor's Economic Development and Jobs Creation Commission and the Committee suggested that the Town give its support to Lancaster and Northumberland Board of Supervisors on this matter. Mr. Smith advised that the Committee discussed a process to incorporate the Mayor's Economic Leadership Initiative into the Committee. Mr. Smith stated that Councilmember Nunn attended Lt. Governor Bolling's Economic Summit meeting.

Councilmember Nunn said that the meeting was very good and noted that the Lt. Governor would be hosting another one which she felt the members of the Mayor's Economic Leadership Initiative should attend. Mrs. Nunn said that the meeting produced a lot of good ideas. Mrs. Nunn advised that a \$7500 grant was given to the Northern Neck for advertising. Mrs. Nunn stated that the Northern Neck had to match the funds and that the advertising would be handled by Northern Neck Tourism Guide. Mrs. Nunn said that there were all kinds of state agencies who would be willing to help the Town with economic development.

2) Committee Recommendations to Council

a. Recommend to Lancaster and Northumberland County Board of Supervisors that Kilmarnock concurs with the need for a representative on the Governor's Economic Development and Jobs Creation Commission and to push for said representative wherever possible.

ACTION: Councilmember Nunn made the motion to recommend to Lancaster and Northumberland County Board of Supervisors that Kilmarnock concurs with the need for a representative on the Governor's Economic Development and Jobs Creation Commission, seconded by Councilmember Smith; and carried unanimously.

b. Recommend to Lancaster County Board of Supervisors that Kilmarnock supports the need for public access to creeks and rivers.

ACTION: Councilmember Moubray made the motion that the Town recommend to the Lancaster County Board of Supervisors that Kilmarnock supports the need for public

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access to creeks and rivers, seconded by Councilmember Smith; and carried unanimously.

F. Town Centre Committee: Councilmember Smith, Chair

1) Report from October 12, 2010 meeting.

A copy of the Committee meeting notes was included in each Councilmember's packet.

Councilmember Smith reported that Town Manager Saunders told the Committee that he had a very preliminary conversation with some members of the community library foundation regarding their possible interest in acquiring part of the Town Centre property for a new building. Mr. Saunders advised that they had some research to complete before deciding if this option was viable and expected to hear back from them soon. Mr. Smith said that Town Manager Saunders also reported that Rappahannock Community College was investigating the possibility of opening a workforce development campus in or near Kilmarnock. Mr. Smith said that Mr. Saunders expected to meet with college and county officials soon in regards to this. Mr. Smith said that Councilmember Nunn gave a summary on the dog park. Mr. Smith stated that the Committee also discussed the best way to proceed on the "People's Park" concept and agreed to begin drawing up a list of names of those who might serve on a Park Advisory Committee.

2) Committee Recommendations to Council

There were no recommendations to Council.

G. Administration/Finance Committee: Vice-Mayor Smith, Chair

1) Report from October 8, 2010 meeting.

A copy of the Committee meeting notes was included in each Councilmember's packet.

Vice-Mayor Smith advised that the auctions closed on the used tractor and the backhoe through GovDeals.com which netted \$9,939.00 for the Town. Mr. Smith said that Councilmember Donahue questioned whether or not chain link fencing could be used at the dog park. Research showed there were no restrictions, and it could be used. Mr. Smith said that there was some discussion on how to improve Councilmember attendance at scheduled Committee meetings.

Vice-Mayor Smith said that the Town had offered to do whatever they could to help with this issue.

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Mr. Smith said that the Committee also considered potential dates for a review session on the 5 yr. revenue/expense projections following up on the presentation from Steve Jacobs of Robinson, Farmer, Cox and Associates.

2) Committee Recommendations to Council

Recommend that Council approve the disbursements from September 21, 2010 to October 18, 2010.

ACTION: Councilmember Moubray made a motion to approve the disbursements from September 21, 2010 to October 18, 2010 as presented, seconded by Councilmember Smith; and carried unanimously.

6. Administrative Comments and Reports: Town Manager Saunders

A. Pat Chenoweth had returned to full-time status.

B. Church Street water tank maintenance was nearly complete.

Town Manager Saunders advised that the painting was almost complete and then someone would come and do the graphics. Mr. Saunders said that it was still undecided what the graphics were going to be.

C. Investment Report for Period Ending September 30, 2010

Town Manager Saunders advised that each Councilmember had a copy of the report for their review.

D. Traffic Cones at Wal-Mart

Town Manager Saunders advised that cones at Wal-Mart were placed there because of serious erosion that was caused by the rain. Mr. Saunders said that the problem exists on private property and Wal-Mart was taking the lead in having it fixed.

E. VML Conference

Town Manager Saunders stated that he found the VML Conference to be very educational and helpful to him. Mr. Saunders advised that there were good speakers and good subjects which were well presented. Mr. Saunders said that he learned a lot outside of the classroom by talking to other people from other cities around the state. Mr. Saunders advised that next year the VML conference would be held in Henrico, and he encouraged all Councilmembers to attend.

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Councilmember Nunn added that the information presented was invaluable.

8. Old/Unfinished Business

Mayor Booth advised that Councilmember Nunn had asked to add VML Copy Policy under Old Business. Mayor Booth said that this matter had been disposed of, and he saw no need for the discussion but he would hear her briefly on this issue.

Councilmember Nunn advised Mr. Booth that the reason for the discussion was because he sent an email to Council, the Planning Commission and the Virginia Municipal League on October 2, 2010 that was critical of the Town Manager and of prior Councils, including four members of the current Council. Mrs. Nunn said that in her opinion Mr. Booth's criticism was inaccurate, undeserved, and unfair but stated that she was not going to waste Council's time with a point-by-point rebuttal of his accusations. However, Mrs. Nunn did ask Mayor Booth to explain in open session his contention that having confidential, secret conversations with VML officials somehow leads to "open government" but sharing information from VML with all Councilmembers contributes to what he referred to as "business as usual". Mrs. Nunn said that she did not accept Mayor Booth's premise or his conclusion. Mrs. Nunn stated that in her opinion Mr. Booth owed both Council and the citizens of the Town a clearer explanation of what he was trying to accomplish with his demands that information he received from the VML not be shared with all of Council as it has been in the past here and by every other community that she had talked to. Mrs. Nunn reminded Mayor Booth that this decision to change policy must be made by the entire Council, not by him, one Councilmember. Mrs. Nunn finalized by asking Mayor Booth to enlighten everyone on her question which was why he thought if everyone went to VML individually it was considered "open government", but if it was copied to everyone then it was "business as usual".

Mayor Booth stated that he would be glad to respond and did so by saying that he stood by all of his comments in his memo and would be glad to release it to anyone interested including the press. Mayor Booth advised Councilmember Nunn that it was not uncommon for the two of them to disagree on most things and he, therefore, did not find it uncommon that they disagree on this issue. Mayor Booth said that as far as he was concerned this was not a long standing policy of Council but seemed to be one that was cooked up about the time that he was sworn in as Mayor. Mayor Booth said that he knew there were some people who had stated that this was a long standing policy of Council, but when he asked for documentation to prove it none could be provided. Mayor Booth said he thought that since the policy had been reversed, it spoke to the fact that he was right regarding this matter. Mayor Booth welcomed Mrs. Nunn to disagree.

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Councilmember Nunn said that Council had never voted on the reversal of the policy.

Mayor Booth replied there was never any previous policy but policy that was made by the Town Manager.

Councilmember Nunn said that it was not policy made by the Town Manager because it was a policy when she first started serving on Council and Town Manager Saunders was not employed here then.

Mayor Booth stated that he was going to limit discussion on this and said that he would refer the matter to the Administrative/Finance Committee if she wanted him to but noted that he was not going to allow a vote on this. Mayor Booth advised Councilmember Nunn that she was welcome to object.

Councilmember Nunn noted her objection and stated that decisions must be made by the entire Council and not by one individual.

Mayor Booth replied that he did not make any decision on this whatsoever.

Councilmember Nunn said to Mayor Booth that he told the Town Manager to reverse the policy and that was one individual telling another individual what to do.

Mayor Booth said that Town Manager Saunders was the one who started tampering with the policy, and if he had left it alone in the first place then he would not need to reverse himself.

Councilmember Nunn replied that Town Manager Saunders did not do anything to the policy because it was a policy before he came to work for the Town.

Mayor Booth said that he was limiting discussion on this issue and was willing to refer it to the Admin/Finance committee. Mayor Booth advised Mrs. Nunn that if she had a motion to make, then he would deny it, and then if she objected he would put it forth to Council to make a ruling.

Councilmember Nunn stated that she did not think that all of the Councilmembers understood what VML did. Mrs. Nunn said that VML was not going to respond to anything contentious or personal. Mrs. Nunn advised that they answered questions concerning insurance, legislation and things like that. Mrs. Nunn said that VML would not answer questions such as what can be done to get Councilmember Nunn to shut up. Mrs. Nunn continued by saying that because of what VML did for the Town she felt that any questions emailed to them should be copied and sent to all Councilmembers.

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ACTION: Councilmember Nunn made the motion that all emails sent to VML be copied and sent to each Councilmember,

Mayor Booth disallowed the motion and stated that he would like to address one thing. Mayor Booth wanted to advise the citizens in the audience that the Virginia Municipal League offered advice on how to best run the Town's government and in many other areas. Mr. Booth said that another area they offer advice on was legal matters. Mr. Booth stated that certainly the Mayor or any other Councilmember should be able to go to the VML and ask for an opinion on something without it automatically being copied to every public official in this Town. Mayor Booth said that he was not going to go into the details concerning this two or three month old fight regarding his unobstructed access to the VML. Mayor Booth suggested that some of the parties involved in this would be best served by putting this issue to bed which he was willing to do. Mayor Booth continued by saying that this argument somehow precludes open government. The fact that people such as himself, Councilmembers and Planning Commission Members could not run ideas by VML without being copied to all public officials in this Town was going to absolutely retard the use of the VML by these public officials. This would create a less open government as opposed to a more open government. Mayor Booth advised that it was easier on the surface to say that if one of the public officials goes to the VML then let's send that information everywhere. However, Mayor Booth continued, everyone knows that sometimes an individual comes up with a stupid idea or all kinds of ideas and very often people seek confidential advice and base their actions on that advice. Mayor Booth added that to take confidentiality away from public officials' use of the VML did not make sense. Mayor Booth reiterated that he would not allow a vote on Mrs. Nunn's motion and asked if she wanted to state her objection.

Councilmember Nunn stated that VML did not respond to legal questions, they responded to legislative questions. Mrs. Nunn advised that the VML was not going to give legal advice

Mayor Booth said that he believed there were legal implications.

Councilmember Nunn stated that every time a legal question was asked VML referred the person ~~back~~ to the Town Attorney or Commonwealth Attorney.
**Corrected by Town Council 11/15/10*

Mayor Booth said that he was closing discussion on this issue and asked if Mrs. Nunn would like to note her objection.

Councilmember Nunn replied "absolutely"*. **Quotes added by Town Council 11/15/10*

Mayor Booth advised Councilmembers that Councilmember Nunn did not have to have a second to her objection and asked Town Attorney Stamm if that was correct.

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Town Attorney Stamm conceded that it was.

Mayor Booth asked Councilmembers who were in favor of entertaining Councilmember's Nunn objection to signify by saying "aye".

There was one vote in favor of the objection and three votes against.
**(Should have been a rising vote) *Corrected by Town Council 11/15/10*

Vice-Mayor Smith wanted to know if this issue would be referred to Admin/ Finance Committee or if the issue was done.

Mayor Booth said that from his standpoint he felt that everyone had heard enough about this so there would be no referral.

9. New Business

Town Manager Saunders stated that for clarification purposes, he needed to know which of the new BZA appointments would fill which term.

ACTION: Councilmember Smith made the motion that Ms. Geneva Dawson be appointed to replace former Mayor Edward J. Davis, Sr. on the BZA with the term to expire the 3rd Monday in March 2011 and Mr. Al Ludwig be appointed to replace C. Welby Saunders on the BZA with the term to expire the 3rd Monday in March 2012. Motion was seconded by Vice-Mayor Smith. Voting in favor of the motion were Vice-Mayor Smith and Councilmembers Smith and Nunn. Voting against the motion was Councilmember Moubray. Motion passed by a three to one vote.

10. Council Comments

Vice-Mayor Smith wanted to thank the families of two former Mayors who recently passed away, Mayor Edward J. Davis, Sr., and Mayor B. Brainard Edmonds, Jr., for their service and noted that Kilmarnock would not be where it was today without their hard work.

11. Adjournment

Mayor Booth asked if there was a motion to adjourn.

ACTION: Councilmember Nunn made the motion to enter into Closed Session to discuss a serious personnel infraction relating to a

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specific individual as permitted by VA Code 2.2 -3711(A)(1). There was a matter concerning personnel who works directly for Council and serves at their pleasure that has occurred. There was no choice but to request that Council go into Closed Session to discuss the personnel matter which under law could not be discussed in open session.

Mayor Booth stated that he did not feel that he knew enough about this to warrant going into Closed Session.

Councilmember Nunn said that it was a personnel issue and that was all he had to know.

Mayor Booth said that he was not sure he had to allow this request either but noted that he hated to say "no" to everything Councilmember Nunn was asking for. Mayor Booth asked Town Attorney Stamm for advice.

Town Attorney Stamm said that the Mayor could allow it or not because the Closed Session was not added before the approval of the agenda. Mr. Stamm said that the key was notification to the press which was seated in the audience.

Councilmember Nunn said that she sent an email to the Mayor concerning this matter earlier this afternoon.

Mayor Booth admitted that he received an email at 5:30 pm and that Councilmember Nunn had discussed the need for this Closed Session briefly before the meeting. However, Mayor Booth added, he did not ask her to put it on the agenda. Mayor Booth stated that his position on this was that he did not have enough information to allow a Closed Session. Mayor Booth advised that he did not have a lot of experience in dealing with Closed Sessions because they did not have them in the Planning Commission.

Councilmember Nunn said that Council had to go into Closed Session to discuss personnel issues.

Mayor Booth replied that he understood that but asked for parliamentary advice from Town Attorney Stamm because he felt that he did not have adequate basis to grant a Closed Session.

Town Attorney Stamm replied that Mayor Booth should accept Councilmember Nunn's motion to go into Closed Session then deny the motion, so that Councilmember Nunn could object. Then the decision whether to go into Closed Session or not would rest upon other Councilmembers. Town Attorney

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Stamm stated that his only concern was that it was not on the docket that was published. Town Attorney Stamm advised that it was entirely up to the chair.

Mayor Booth said that with all due respect to Councilmember Nunn the problem he had, although granted she had sent him an email at 5:30 pm, was that he had no knowledge of the subject matter. Mayor Booth realized that personnel issues had to be discussed in Closed Session but advised that it would have been helpful to know what needed to be discussed.

Councilmember Nunn handed Mayor Booth a piece of paper to which he commented out loud that she had done. Mayor Booth asked Councilmember Nunn if she wanted him to read it.

Councilmember Nunn replied that she did not want him to read it out loud because it was the issue for Closed Session.

Town Attorney Stamm advised the Mayor that he could take a recess to read whatever it was that Councilmember Nunn had handed him.

Mayor Booth replied that it was just appropriate not to enter into Closed Session....

Councilmember Nunn interrupted by saying that she did not have all of the information herself until 5:30 pm.

Mayor Booth replied that might necessitate the fact that the Closed Session should be held next month. Mayor Booth stated that he was not going to allow a Closed Session for this matter tonight. Mayor Booth advised Councilmember Nunn that she could discuss it with him any time between now and the next meeting to see if it warranted going into Closed Session.

Councilmember Nunn noted her objection and asked for a vote from Council.

Mayor Booth stated that the chair had ruled that Council not enter into Closed Session but noted that Councilmember Nunn had objected to his ruling and, therefore, her request would require a two-thirds vote by Council to overrule his decision. Mayor Booth advised that Councilmember Nunn did not need a second to her objection.

Mayor Booth asked for all who were in favor of Councilmember Nunn's objection to his ruling not to enter into Closed Session to signify by saying "aye". Councilmember Nunn and Vice-Mayor Smith were in favor of. Mayor Booth asked those opposed to signify by saying "nay". Councilmembers Moubray and Smith were opposed. Councilmember Nunn's objection to the chair overruling her motion to enter into Closed Session did not receive the

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majority two-thirds vote that was needed. Council did not enter into Closed Session. **(Should have been a rising vote) *Corrected by Town Council 11/15/10*

Mayor Booth asked for a motion to adjourn.

ACTION: Councilmember Smith made a motion to adjourn, seconded by Vice-Mayor Smith; and carried unanimously.

Meeting adjourned at 8:13 pm

Prepared by:

Joan N. Kent

Raymond C. Booth, Jr., Mayor

Jacqueline L. Blencowe, Clerk