

June 15, 2009

KILMARNOCK TOWN COUNCIL
Monday, June 15 2009
Town Hall
Kilmarnock, VA

Regular Meeting Minutes

1. Call to Order:

Mayor Smith called the regular meeting to order at 7:00 pm with the following Councilmembers present:

Dr. Curtis H. Smith, Mayor
Paul Jones, Vice-Mayor
Gary L. Anderson
Howard Straughan

John A. Smith
Barbara Robertson
Rebecca Nunn

Staff Present:

Tom Saunders, Town Mgr.
Marshall Sebra, Zoning Adm., Asst. Town Mgr.
Paul C. Stamm, Jr., Town Attorney
Susan Cockrell, Community Dev. Strategist
Jackie Blencowe, Town Clerk
Joan Kent, Transcriber
M. S. Bedell, Chief of Police

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

Mayor Smith thanked Vice-Mayor Jones for chairing the May 18th Council Meeting while he was away at Kilmarnock Scotland. Mayor Smith stated that he had a wonderful trip and planned to give a presentation at the July Council meeting. Mayor Smith also thanked Councilmembers and Town Staff for the plant that he received while hospitalized for gastric bypass surgery.

2. Acceptance and Approval of Agenda

Vice-Mayor Jones requested that the agenda be amended so that the representative from the Kilmarnock Fire Department could be heard after the Committee Reports were given instead of during New Business.

ACTION: Councilmember Anderson made a motion to

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accept the agenda for the June 15, 2009 Town Council meeting as amended, seconded by Councilmember Smith; and carried unanimously.

3. Minutes: Approve, Correct, or Amend Minutes of the Regular Town Council Meeting held May 18, 2009.

Mayor Smith requested that the minutes be corrected to read that he was away on Town business in Kilmarnock Scotland as opposed to being absent from the May Council meeting.

ACTION: Councilmember Nunn made a motion to approve the May 18, 2009 Regular Town Council Meeting Minutes with the above amendment, seconded by Councilmember Straughan; and carried unanimously.

4. Public Comments:

Mayor Smith 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 Smith asked that comments be limited to 3 minutes per person.

A. Mrs. Joan Gravatt of 315 Irvington Road, Kilmarnock, VA, asked Council if the Town had a policy regarding condemned or neglected properties and, if so, what the policy was. Mrs. Gravatt stated that certain properties within Town limits had become devalued due to condemned properties.

B. Mrs. Fannie Clingan of 326 Irvington Road, Kilmarnock, VA, stated that she was present at the meeting for the same purpose as Mrs. Gravatt. Mrs. Clingan said that she was living next door to a property that had been condemned for several years and that nothing had been done about it. Mrs. Clingan stated that she had complained to the Town Office about the wild animals that were living under the old house. Mrs. Clingan said that she had consulted with the County Building Inspector but did not feel that she got anywhere. Mrs. Clingan stated that she had heard that in other jurisdictions the county would come in and demolish condemned buildings if they were not fixed or restored within a certain time period and the property owners were sent the bill. Mrs. Clingan said that the grass was being cut and the property owners had picked up some limbs but stated that they do nothing to the property in the fall. Mrs. Clingan said that leaves blow from that property over into her yard after she has paid people to get her leaves up and stated that she could no longer afford to do this.

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Councilmember Nunn replied that many residents had been complaining about certain properties in Town for years and nothing had been done. Mrs. Nunn said that her sympathy and empathy went out to those persons. Mrs. Nunn advised that she had spent hours on the phone and on the computer researching the situation and found that there was something that the citizens could do. Mrs. Nunn asked for patience while she went through the explanation of what she had found. Mrs. Nunn shared an email that she received from the local building inspector, Mr. Daum. The email explained that the procedures used by Mr. Daum were to first investigate the complaint received to determine any violations and whether the building was safe for human occupancy. Mrs. Nunn noted that the building at 320 Irvington Road had already been deemed unfit for human occupancy. Secondly, a notice of violation would be sent to owner or responsible party of the property. The property owner would then have 21 days to appeal the decision to the local Board of Building Code Appeals. A placard would be posted on the structure stating that it had been deemed unsafe or unfit. Mrs. Nunn continued by saying that if no appeal was filed or corrective action taken by the property owner, then consultation should be sought with the Town Attorney to take legal action. Mrs. Nunn said that in Lancaster County, legal action involved filing suit against the property owner in Circuit Court asking for a demolition order and a lien to be placed against the property owner for any fees incurred. Mrs. Nunn stated that what all this meant was that if the property owner did not do anything with the building then, with a court order, the Town could demolish it and send the bill to the property owner and if not paid could put a lien against the property. Mrs. Nunn said that Mr. Daum was bound by the Building Code of Virginia and the Virginia Maintenance Code, both of which state that a condemned building was to be torn down if it was in danger of collapse. Mrs. Nunn said that there was nothing in either of the codes that dealt with eyesores. However, the Council was bound by the Code of Virginia and took an oath to uphold it. Mrs. Nunn advised that the problem was if Council directed the Town Attorney to file suit in Circuit Court, Mr. Daum would testify that the condemned property was in compliance because it was boarded up. While he was sympathetic to the citizens of the Town and was keeping a watch on those condemned buildings and should he see that collapse was imminent, then he would recommend starting court proceedings. Mrs. Nunn continued by saying that Section 15.2-906 of the Code allowed a locality to adopt an ordinance requiring a property owner to remove, repair, or secure a building. Section 15.2-1115 allowed the Town to adopt ordinances requiring the abatement of all nuisances. Mrs. Nunn explained that a nuisance under the Virginia Code was defined as any act, omission, or use of property, which was hurtful to the health, tranquility, or morals of the community. Mrs. Nunn said that the municipality could abate the nuisance and bill the owner. Mrs. Nunn stated that this included the removal of the building. Mrs. Nunn continued by saying that Sections 48.1 through 48.6 of the Virginia Code were *perhaps the best solution yet and stated that five or more citizens could petition the local Circuit Court to impanel a special grand jury to investigate whether a property constituted a nuisance. If found to be a nuisance, then the owner could be fined \$10,000 and have to pay for the costs incurred for removing the building. Mrs. Nunn stated that she was sure

**Amended by Council 7/20/09*

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that there were more than five citizens who would be willing to sign a petition to impanel a special grand jury. Mrs. Nunn finished by saying that if it was the will of the citizens then the latter should be done.

Town Attorney Stamm advised that the Virginia Building Code and the Virginia Maintenance Code had the Town's hands tied. Mr. Stamm said that if the Town went forward with a suit at this time then the star witness would be Mr. Daum who would testify that the property owners at 320 Irvington Road were in compliance through remedial efforts. Mr. Stamm felt that at this point taking the matter to court would be a reasonably expensive waste of time. Mr. Stamm said that the citizens themselves could hire an attorney to take on their case.

Mrs. Nunn said that she did not feel that they had to hire an attorney just petition the court for a special grand jury investigation.

Mr. Stamm said that the outcome would more than likely be that the property owners would show up with their own attorney, who would show up with Mr. Daum, who would testify that the property owner was in compliance. As far as the property being in violation of tranquility, Mr. Stamm said an example of that would be if citizens were being awakened at four in the morning by a bunch of drug dealers living next door with music blasting. Mr. Stamm said that it was unfortunate but aesthetics don't count and it is almost as if you have to wait for the building to start falling down before anything can be done.

An unidentified male from the audience asked Mr. Stamm if his idea of compliance was for the property owner to put one board up on the building with a placard saying that it was unsafe.

Mr. Stamm retorted that it was not his idea of compliance and said that he wanted to get that straight right off the bat. However, Mr. Stamm advised that there was a code followed by the building inspector that said that it was in compliance. Mr. Stamm gave an example of imminent threat by describing a three-story building in the process of collapsing onto surrounding houses. Mr. Stamm said that the threat had to be to the public as a whole.

Mrs. Nunn said that she had spoken to the Commonwealth Attorney's Office and that they would uphold impaneling a special grand jury. According to them, the county was dealing with similar issues.

Town Attorney Stamm recommended that the citizens get with the Commonwealth's Attorney since he was willing to help them with that. Mr. Stamm said that the Town could not step above what the State said that it could and could not do. As of now, Mr. Stamm said that he felt that the Town had done all that it could do. According to the building inspector, it was his opinion that the property owners had met all remedial efforts imposed upon them. Mr. Stamm said that it

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was terrible that there were wild critters under the house, and he felt for Mrs. Clingan when she was walking her dog.

Mrs. Nunn said that she contacted the game warden who told her that he could only remove dogs and cats. However, he knew of someone who removed foxes and said that he would get in touch with him. Mrs. Nunn advised that she contacted the health department about the septic tank line possibly being broken but they stated that since there was no one occupying the house, there wasn't anything that they could do. Mrs. Nunn said that she had tried to pursue every avenue that she could think of and felt having a special grand jury impaneled was the best option.

Councilmember Straughan felt that condemned or unsightly properties should be publicized so that people would know who owned the property and what was going on with it.

Town Attorney Stamm replied that there was nothing in Town Code that permitted the Town to do anything about it. Mr. Stamm said that if the building inspector was satisfied that the property owner had complied with his rules, then publicizing the issue could lead to litigation against the Town. Mr. Stamm said that no one was saying that private citizens couldn't take the matter to Circuit Court, but he was saying that the Town was limited as to what it could do.

Mrs. Clingan said that most people only see the front of the house with one board across it but she had to look at the entire mess everyday. Mrs. Clingan said that Little Ed came and put a board over the door; however, the roof was now falling in with trees growing through it.

Mr. Stamm said that still did not constitute a public nuisance. Mr. Stamm stated that he didn't like the place anymore than anyone else did and thought it looked awful but said once again that the Town could not do anything other than what the State allowed it to do.

Mrs. Nunn said that if House Bill 332 were to pass, then it would give the Town the teeth it needed to deal with this type of mess. Mrs. Nunn noted that the bill had not been passed as of yet.

Mayor Smith stated that there were two buildings downtown that were eyesores and nothing could be done with them either.

Mrs. Clingan wanted to know if the Town could write a letter to the property owners stating that there would be a petition filed for a special grand jury if something wasn't done with the property.

Town Attorney Stamm replied that the Town could not draft a letter threatening citizen action.

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Mrs. Nunn advised that someone had approached the owner in an attempt to purchase the property but he replied that he didn't know how much money he wanted for it.

Mayor Smith commented that this issue had been frustrating for all.

Mrs. Gravatt thanked Council for hearing her out and Mrs. Nunn for all of the research that she had conducted.

5. Presentations

A. Planning Commission Report: Gary Anderson, Council Liaison

There was no Planning Commission meeting held in May.

6. Public Hearings:

A. First Reading of the 2009/2010 Fiscal Year Budget

1. Mayor Smith opened the public hearing.

2. Mayor Smith asked for Staff Comments.

There were no staff comments.

3. Mayor Smith asked for public input or comments.

There were no public comments.

4. Mayor Smith closed the public hearing.

5. Mayor Smith asked for Council discussion and/or action.

Councilmember Nunn stated that the Town usually spent \$4000 on Christmas festivities, which was recently reduced to \$2000. Mrs. Nunn suggested that it be removed from the budget and that the Holiday party be held at her home instead in an effort to save money.

Councilmember Straughan stated that he felt it was important that the Town Staff have a Christmas party and felt that \$2000 was a minimal expense. Mr. Straughan said that he would review that particular item.

Vice-Mayor Jones stated that the money could stay in the budget whether it was used or not.

ACTION: Councilmember Anderson made a motion to accept the first reading of the 2009/2010 Fiscal Year Budget and Tax Rates as presented, seconded by Vice-Mayor Jones; and carried unanimously.

7. Committee Reports

A. Water/Sewer Committee: Councilmember Anderson, Chair

1) Report from June 3, 2009 Meeting

Councilmember Anderson advised that a copy of the committee notes from the meeting were included in each Councilmember's packet.

2) Committee Recommendations to Council

a. Recommend that Council reject both bids received for Well #3 (Hospital) due to inconsistencies and put the project back out for bid.

ACTION: Councilmember Nunn made a motion to reject both bids received for Well #3 due to inconsistencies and to put the project back out for bids, seconded by Councilmember Straughan; and carried unanimously.

B. Streets/Sidewalks/Playground Committee: Councilmember Nunn, Chair

1) Report from June 4, 2009 Meeting.

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

Councilmember Nunn commented that staff planted the Main Street medians and did a good job. The total cost of the project was \$464.50 *\$484.56. Mrs. Nunn stated that Town Manager Saunders and Community Development Strategist Susan Cockrell had been in negotiations with VDOT to have the median closest to Irvington Road removed and that VDOT had agreed to allow the Town to do so. Town Manager Saunders had a company coming to give an estimate on the cost. Mrs. Nunn reported that a letter had been sent to the property owner at 329 Roseneath Avenue in regards to condition of the property and thanked Assistant Town Manager Marshall Sebra for doing so. Mrs. Nunn stated that

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Kilmarnock resident Carolyn Delano had presented a wonderful idea to her in regards to Christmas decorations. Mrs. Delano recommended that the Town allow citizens to purchase a decoration in memory of a loved one. Mrs. Nunn stated that Susan Cockrell and Franklin Carter would inventory the decorations, discard the battered ones and see how many were needed. Mrs. Nunn advised that funding was now available to proceed with placing streetlights on Black Stump Road.

2. Committee Recommendations to Council

a. Recommend Black Stump Road lighting project be authorized to proceed.

ACTION: Councilmember Nunn made a motion to proceed with the Black Stump Road lighting project, seconded by Councilmember Anderson; and carried unanimously.

In a separate matter, Mrs. Nunn addressed the employee evaluation forms and moved that they be accepted as presented.

Councilmember Anderson stated that he felt a special meeting should be held to discuss the evaluation of employees.

Vice-Mayor Jones agreed with Councilmember Anderson and stated that he felt the discussion should be held during closed session.

Mayor Smith advised that the evaluations needed to be done and noted that it would be an agenda item at the next meeting and urged Councilmembers to be prepared to discuss it.

C. Police/Public Safety Committee: Vice-Mayor Jones, Chair

1. Report from June 8, 2009 meeting.

Vice-Mayor Jones advised that a copy of the monthly police report and a copy of the committee meeting notes were included in each Councilmember's packet.

D. Emergency Preparedness Committee: Councilmember Anderson, Chair

1. Report from June 8, 2009 meeting.

Councilmember Anderson reported that it was a good meeting and that a copy of the committee meeting notes was included in each Councilmember's packet.

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E. Economic Development Committee: Councilmember Smith, Chair

There was no meeting held.

F. Administration/Finance Committee: Vice-Mayor Jones, Chair

1. Report from June 5, 2009 meeting.

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

Vice-Mayor Jones stated that the committee had a lengthy discussion regarding the need for sidewalks on School Street and Town Centre Drive. Mr. Jones advised that there was only enough funding to do one area. The Town Manager was in the process of getting estimates. Vice-Mayor Jones stated that one question that the committee had was since the sidewalks go to the curb of private property owners, if something happened would the Town be responsible.

Town Manager Saunders replied that the Town was already responsible for those sidewalks on Main Street.

Councilmember Nunn asked Town Attorney Stamm if the Town could be held liable for anything that happened on a sidewalk installed by the Town.

Town Attorney Stamm replied that the Town was not liable for negligence unless it was gross negligence.

2. Committee Recommendations to Council

a. Recommend that Council approve the disbursements from May 18, 2009 to June 15, 2009.

ACTION: Councilmember Smith made a motion to approve the disbursements from May 18, 2009 to June 15, 2009, seconded by Councilmember Anderson; and carried unanimously.

9. New Business (Agenda Amendment)

A. Kilmarnock Fire Department request for Town land behind Firehouse.

Mr. Mike Christopher of 451 Aquilla Point Drive in White Stone, VA, was present to represent the Kilmarnock Volunteer Fire Department in their request for

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a boundary line adjustment on School Street. Mr. Christopher stated that the Fire Department was requesting an additional 5,318.5 +/- square feet of land from the Town to use for storage and an additional fire truck when acquired.

Mayor Smith advised that his only concern was that there had been a request by a property owner to construct a large development behind the Lancashire. Mayor Smith stated that if the request went through then the pumping station on School Street would have to be greatly enlarged.

Councilmember Anderson suggested that the Town be given time to consult with its engineer. Mr. Anderson stated that he was not opposed to the idea but noted that the Town's engineer was familiar with the future growth of the Town and what would be required as far as land use was concerned.

Mayor Smith stated that he was not opposed to the request either and suggested that both the Town's engineer and the Fire Department's engineer get together with the Town Manager who would report back to Council on their findings.

8. Administrative Comments and Reports: Tom Saunders, Town Manager

A. Internet Provider Progress Update

Town Manager Saunders reported that a copy of the schedule for the dismantling of Kaballero equipment from Town towers was included in each Councilmember's packet. Mr. Saunders stated that the process should be completed by July 1, with the final walkthrough to inspect the towers scheduled July 1st through July 3rd.

B. Demolition of Accessory Building on Town Property

Town Manager Saunders reported that Assistant Town Manager Sebra had been meeting with contractors in regards to the demolition of the metal building behind the Town Office and progress was being made.

C. DEQ's Discharge Permit for the WWTP

Town Manager Saunders reported that he had a scheduled meeting with DEQ in Richmond in a few weeks to start the process for the Town's discharge permit for the WWTP.

D. VML Reservations are requested by June 16.

Town Manager Saunders reported that those Councilmembers who wished to attend the VML Conference this year in Roanoke, VA, should fill out the

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form found in the back of their packets and return it to the Town Office by June 16th.

E. Upcoming Water Quality Report

Town Manager Saunders advised that one surprise he had encountered since being new to the job was that by the end of the month, the Town had to supply its customers with a water quality report. Mr. Saunders said that the reports would not be as professional as last years but that they would get done and out on time.

F. Police Performance

Town Manager Saunders commended Chief Police Bedell and his officers on how they handled the mass influx of traffic during the recent police officer's funeral that was held in Kilmarnock. Mr. Saunders advised that there were hundreds of visitors in Town for the solemn event and that the officers kept traffic flowing smoothly.

G. Bike Path

Town Manager Saunders reported that VDOT has the funding to construct a three foot bike path from Wilson's Lane to Harris Drive on the east side of route 200.

Town Manager Saunders thanked Council and Staff for helping him to get up to speed in regards to Town business during his transition.

9. Old Business

A. Main Street Island Removal

Vice-Mayor Jones stated that he had contacted two contractors for a price to remove the center island from Main Street and neither had gotten back to him with a price.

10. New Business

A. Adopt the following resolutions in order to comply with CDBG pre-contract requirements.

1. Local Business and Employment Plan
2. Non-discrimination Policy
3. Section 504 Grievance Policy

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4. Anti-displacement Plan
5. Fair Housing Certification
6. Section 504 Self-evaluation

Town Attorney Stamm stated that he had examined each resolution and recommended that they be adopted in accordance with CDBG pre-contract requirements.

ACTION: Councilmember Anderson made a motion to adopt Resolutions 1 through 6 as presented in accordance with CDBG pre-contract requirements, seconded by Councilmember Smith; and carried unanimously.

B. Happenings Around Town: Susan Cockrell, Community Dev. Strategist

1. Visiting Sailors

Community Development Strategist Susan Cockrell advised that Irvington hosted 40 Sailboat owners at the Rappahannock Yacht Club and the trolley was sent down to pick a majority of them up so they could do some shopping in Kilmarnock.

2. Kilmarnock History DVDs

Community Development Strategist Susan Cockrell advised that there were 25 Kilmarnock History DVDs for sale at the Town Office and noted that all proceeds went to the Kilmarnock Museum.

3. Farmer's Market and Wine Tasting

Community Development Strategist Susan Cockrell advised that the Farmer's Market was scheduled for June 27th. In addition, there would be a wine tasting event held on that date at the Town lot hosted by four local vineyards.

4. Steptoes Walkabout

Community Development Strategist Susan Cockrell advised that the next Steptoes Walkabout event was scheduled for July 3rd.

5. Revised Website

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Community Development Strategist Susan Cockrell reported that the Town's revised website would have immediate breaking news and weather conditions on its host page and that any updates could be done remotely.

Mayor Smith thanked Ms. Cockrell for helping him with the preparations for his trip to Kilmarnock Scotland.

11. Council Comments

There were no Council comments.

12. Adjournment

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

Meeting adjourned at 8:32 pm

Prepared by:

Joan N. Kent

Dr. Curtis H. Smith, Mayor

Jacqueline L. Blencowe, Clerk