

August 17, 2009

**KILMARNOCK TOWN COUNCIL
Monday, August 17, 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
John A. Smith

Barbara Robertson
Rebecca Nunn
Howard Straughan

Staff Present:

Tom Saunders, Town Mgr.
Paul C. Stamm, Jr., Town Attorney
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.

2. Acceptance and Approval of Agenda

Vice-Mayor Jones recommended that the agenda be altered to move the request for Springwood Subdivision's sewer system approval listed under Section #8 Old Business to be heard after Section #5 Public Hearing.

ACTION: Vice-Mayor Jones made a motion to accept the agenda for the August 17, 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 July 20, 2009.

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Councilmember Nunn requested a change to page #7 under Committee Recommendations to Council in regards to the Memorial Christmas Decoration Program. Mrs. Nunn stated that the Committee decided to do away with the option of purchasing a wreath for the amount of \$400 because the cost was too high. The Committee decided on two options, which were the purchase of a banner for \$100 or a bow set for \$120.

ACTION: Councilmember Straughan made a motion to approve the July 20, 2009 Regular Town Council Meeting Minutes with the above amendment, seconded by Councilmember Anderson; and carried unanimously.

4. Public Comments and Presentations

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. Public Comments

Mrs. Betty Jones of 36 Claybrook Avenue in Kilmarnock, VA, voiced her concern in regards to the trash and abandoned property at 44 Claybrook Avenue located next door to her residence.

Following Mrs. Jones' comments, Councilmember Nunn advised that she had previously spoken to Mrs. Jones in regards to this issue. Mrs. Nunn said that as the result of their conversation she made seven phone calls herself and discovered that the Town of Kilmarnock could amend its current ordinance to make it stricter in regards to what people could not have in their yards. Mrs. Nunn advised that there were lawn mowers, air tanks, fire extinguishers and bicycles in the yard at 44 Claybrook Avenue. Mrs. Nunn said that the Town could make its ordinance as specific as it wanted to and, although Councilmembers had been previously told that the courts would not uphold it, she had been informed that they would. Mrs. Nunn stated that she spoke with legislative services and four town attorneys who advised her that the Town could not make its ordinance more lax than the Code of VA but could definitely make it stricter and the courts would uphold it. Ms. Nunn said that she spoke with the Mayor of White Stone, Mr. Lloyd B. Hubbard, who told her that their town ordinance had been amended to specify what a person could not have in their yard. Mrs. Nunn stated that if there was a violation in White Stone they sent a letter to the property owner which allowed them ten days to clean it up. If the property owner failed to do so, then the town cleaned it up and sent them the bill as well as a fine. Mrs. Nunn proposed that the Town of Kilmarnock change its ordinance to specify what people could not have in

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their yards. Mrs. Nunn noted that Mrs. Jones and Mrs. Clingan both had a continuing problem with neighboring properties and said that Grace Church called every week to complain about the house on Roseneath Avenue. Mrs. Nunn finalized by saying that the Town needed to put this down in writing and if the Davises and the Williamsons wouldn't clean up their properties then the Town would and they would receive the bill and a fine.

Mayor Smith addressed Mrs. Jones' concerns by saying that a letter would be sent to the property owners of 44 Claybrook Avenue.

Councilmember Nunn reiterated her proposal to amend the Town's ordinance to establish a definition of what constituted trash and debris in a person's yard.

Mrs. Jones said that there had to be oil and gas leaking from all the old lawn mowers.

Mayor Smith assured Mrs. Jones that Council was in agreement with her and would look into the situation.

Mrs. Jones replied that she hoped so because she had been trying to get something done with that property before the last two Town Managers had left.

Mayor Smith agreed that Council would have to put teeth into the existing ordinance.

Mrs. Nunn asked about the motion she had made in regards to the ordinance.

Mayor Smith said that Council would take it up during New Business.

Town Attorney Stamm asked Councilmember Nunn if she had an ordinance drafted.

Mrs. Nunn replied that she did.

B. Presentations

Planning Commission Report: Councilmember Anderson, Council Liaison

Councilmember Anderson stated that he was unable to attend the Planning Commission meeting. Town Manager Saunders advised that the Planning Commission was currently spending most of its time reviewing the Comprehensive Plan chapter by chapter. Mr. Saunders said that the meeting was abbreviated due to a storm which interrupted electricity.

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5. Public Hearing:

The purpose of the public hearing was to solicit public input on text amendments and map revision for the Town of Kilmarnock's Chesapeake Bay Preservation Overlay Ordinance.

- A. Mayor Smith opened the public hearing.
- B. Mayor Smith asked for Staff comments.

Town Attorney Stamm advised that the Planning Commission had reviewed the text amendments and map revision with Assistant Town Manager Sebra and was recommending approval by Council. Mr. Stamm stated that the changes were necessary.

Town Manager Saunders said that the changes were needed in order to bring the Town into the same condition as the rest of the land in Lancaster and Northumberland Counties.

- C. Mayor Smith asked for public comments.

There were no public comments.

- D. Mayor Smith closed the public hearing.
- E. Mayor Smith called for Council's discussion and/or action.

ACTION: Councilmember Anderson made a motion to approve the proposed amendments to the Chesapeake Bay Preservation Overlay Ordinance as presented and to adopt the map into the Town's code, seconded by Councilmember Straughan; and carried unanimously.

8. Old Business Topic: Agenda change per Council Action in No. 2

A. Request for sewer system approval for the Springwood Subdivision on Black Stump Road. Letter from Mr. Jones Felvey

Attorney John Martin, who represented Our Northern Neck, stated that he was present to answer any questions that Council had as the result of the letter that he wrote to Councilmember Anderson regarding the ownership situation on Black Stump Road.

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Town Manager Saunders apologized and stated that not all of the Councilmembers had seen the letter and he had failed to have copies made.

Attorney Martin advised that the gist of the letter was that the tax maps at the Lancaster County Commissioner of Revenue's Office were wrong and the error was carried over into the survey and into the first letter that he sent to Mr. Anderson and the Water/Sewer Committee. Mr. Martin said that Mrs. Beth Cornwell at the Commissioners Office was very helpful in researching who the correct owners were. Mr. Martin continued by saying that the first three landowners on Black Stump Road located on the right-hand side when turning off of Irvington Road bordered the road and did not go to the centerline. Mr. Martin continued by saying that Our Northern Neck's deed showed that their property did go to the centerline; therefore, an easement was needed from Mr. Felvey for the waterline which he was prepared to sign. Mr. Martin advised that Mr. Self who owned the property behind Mr. Felvey had already signed it. Mr. Martin said that to the extent that the sewer line was in VDOT's right of way, the only easements the Town needed were from Self and Felvey's companies.

Mayor Smith asked Town Attorney Stamm if he would take care of this.

Town Attorney Stamm replied that he would and noted that the only glitch was that the Town needed to figure out what kind of pump station Mr. Self and Mr. Felvey would have to build or if they could build one together.

Attorney Martin said that both he and Mr. Felvey had met with the previous Town Manager, Ms. Burlison, some time back when they initially started the design process. Mr. Martin said that he was informed by Ms. Burlison that what the Town required was enough capacity for the forty lots in Mr. Felvey's subdivision plus an additional nine which would take in all of the existing properties out to Irvington Road because the soil was bad. By doing this, the Town wanted to ensure that those nine properties on Black Stump Road would be able to hook onto the system if necessary.

Mr. Jones Felvey, President and Chairman of Our Northern Neck, asked Council if they had seen the article in the Rappahannock Record reporting that a 33,840 pound rock was stolen from the subdivision. Mr. Felvey said that he had J&J take the huge chunk of granite to the subdivision site with intentions of using it as a climbing rock for the children's playground. However, Mr. Felvey said that someone stole it. Mr. Felvey laughed and stated that everyone had to enjoy where they lived and said that Kilmarnock was a wonderful town that represented the Northern Neck. Mr. Felvey advised that his generation was remiss in supporting its core people. Mr. Felvey said that the core people that he was referring to were the teachers, government workers and nurses. Mr. Felvey noted that without them the community would not function and that was why Our

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Northern Neck was going to support them by building forty single-family homes. Mr. Felvey said that many people have asked him why he was doing this and his answer has been that he was trying to support this area and make it an example for the nation. Mr. Felvey asked why the Northern Neck couldn't have the most wonderful community of all. Mr. Felvey advised that he had some wonderful people working with him such as his Senior Vice-President-Mr. Al Burkholder, his land planner-Mr. Cunduff Simmons, and his marketing director-Mr. Barry Anderson, a retired Federal judge. Mr. Felvey noted that Mr. Anderson served 33 years on the bench in Richmond, VA. Mr. Felvey advised that none of them was in this for the money. Mr. Felvey said that he had many things biting him in the rear because he had never done such a project before. Mr. Felvey said that the pumping station was the last issue to be dealt with and stated in simple terms that he owned 934 feet of the 4-inch line running down Black Stump Road. Mr. Felvey said that he didn't want to own it but Attorney Martin said that he did. Mr. Felvey advised that it was on his property free and clear. Mr. Felvey said that he had no intentions of blocking anyone from using it because that would be absurd. Mr. Felvey stated that they were all there as friends just trying to get a project done and noted that it was almost there.

Councilmember Nunn asked Mr. Felvey if he and Mr. Self had worked out their situation.

Mr. Felvey replied that he had not seen Mr. Self for six or seven months.

Attorney Martin advised Council that Attorney Jim Breeden was representing Mr. Self. Mr. Martin said that Mr. Breeden told him to speak with Mr. Self directly. When he did, Mr. Self wanted approximately \$140,000 to \$160,000 from Mr. Felvey for the right to use the force main sewer line, which Mr. Felvey declined to pay.

Councilmember Nunn replied that Mr. Felvey owned 934 feet.

Attorney Martin stated that the line was put on Mr. Felvey's property without his consent but noted that Mr. Felvey was not objecting to it, he just wanted to be able to use it. Mr. Martin said that one of their objections to paying Mr. Self was that he had an agreement with the Town whereas he got half of his hook-up fees back in a rebate. Mr. Martin stated that in actuality Mr. Self wanted to get money from Mr. Felvey plus his hook up fee rebates and to have Mr. Felvey build a pumping station for his lots.

Councilmember Nunn asked if the rebates were in a signed agreement with Mr. Self.

Town Attorney Stamm replied that they were.

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Councilmember Nunn indicated she was surprised.

Town Attorney Stamm stated that Council was the one who passed it.

Councilmember Nunn said that she didn't pass it because she wasn't even on Council then. Mrs. Nunn stated that she would have never passed it.

Town Attorney Stamm asked Town Clerk Blencowe to review the record because to the best of his knowledge all of Council was present and the Mayor had signed it. Town Attorney Stamm corrected himself and said that the Mayor hadn't signed it as of yet but that Council had passed it.

Councilmember Nunn asked when this was done.

Town Attorney Stamm said that Mr. Self signed it and it was brought before Council.

Town Clerk Blencowe asked if it was during the May Council meeting.

Town Attorney Stamm said that he could not remember the exact month. Mr. Stamm asked Councilmember Nunn wasn't she in attendance at the Water/Sewer Committee meeting when he handed out the copies of that agreement.

Councilmember Nunn advised that she was told when she came on the Water/Sewer Committee that this agreement had been made with Hills Quarters and Mr. Self.

Town Attorney Stamm replied that was correct and that it was made by the previous Town Manager.

Councilmember Nunn said that it was a done deal by the time she began serving on Council.

Town Attorney Stamm looked confused and asked if she was saying that she voted against it.

Councilmember Nunn replied that she was against it.

Town Attorney Stamm said that he was asking if she voted against it when it came up before Council. Mr. Stamm asked if any of the other Councilmembers recalled approving the agreement.

Mayor Smith said that he didn't recall voting on it.

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Town Attorney Stamm shook his head and retorted that maybe he didn't give the Mayor copies either.

Mayor Smith stated that he never signed or authorized it.

Attorney Martin interjected that Our Northern Neck was not objecting to any agreements that the Town had with Mr. Self or Hills Quarters. Mr. Martin said that when they met with former Town Manager Burleson, she informed them that this particular policy was no longer being followed and that Mr. Felvey would have to pay the full amount. Mr. Martin advised that their objection was to having Mr. Felvey's non-profit corporation build a pumping station for Mr. Self. Mr. Martin said that all they were asking for was what Ms. Burleson had promised them in regards to the capacity of the pumping station that they were responsible for.

Mayor Smith asked Mr. Martin if he had any of Ms. Burleson's comments in writing.

Mr. Martin replied that he had been dealing with the Town for over twenty years and never had to get anything in writing before but stated that maybe he should start. To answer the Mayor's question, Mr. Martin said that he did not receive anything in writing from Ms. Burleson.

Councilmember Nunn advised Mr. Martin that she did not know if Ms. Burleson was ever given the authority to tell them that was what the Council wanted.

Attorney Martin replied that they were just there to see what Council wanted of them in the way of a pumping station so Mr. Felvey could continue with his project.

Mayor Smith advised that the Town went through a similar issue with Wal-Mart because they wanted to put in a smaller pumping station than what the Town wanted. Mayor Smith said that they both finally agreed on the bigger pumping station because eventually that whole area would be developed and the Town wanted to have everything in place for the future.

Councilmember Anderson stated that he knew he was getting older by the minute but thought that at the last Council meeting they had talked about this issue and realized that part of what was going on was an argument between two lawyers and two land owners. Mr. Anderson said that what the Town was obligated to do was to provide professional services at a reasonable cost and charge back to the people that it serviced. Mr. Anderson said that the situation that Mr. Felvey had was a situation that was not yet extremely clear in his mind which was that he got 970+ feet of stuff that he didn't pay for. Mr. Anderson continued by asking how much it was actually worth and then answering that he

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couldn't really say. Mr. Anderson said that anything in regards to deals made in the past was just that, deals made in the past and stuff that was no longer going to go forward. Mr. Anderson stated that what they had was a Gordian Knot, and someone had to figure out who was going to take the sword to cut through all of this. Mr. Anderson said that obviously, according to Mr. Martin, Mr. Self had not been open to compromise. Mr. Anderson asked Town Attorney Stamm if this wasn't still a discussion that should be going on between the attorneys and not Council at this point.

Town Attorney Stamm agreed.

Mr. Jones Felvey stated that he disagreed.

Town Attorney Stamm told Mr. Felvey that was his right. Mr. Stamm said that the Mayor had disagreed that he sat there and discussed this with him and the Council had disagreed that they ever passed it but stated hopefully the Town Clerk would find the minutes relatively soon to show otherwise.

Mayor Smith said that he remembered the discussion but ...

Town Attorney Stamm interrupted by saying that was okay because the Town Clerk would find the minutes and they would show that Council had passed it. Irregardless, Mr. Stamm said that the Town Code was clear in that it was whatever the Water/Sewer Committee and Council wanted in order to supply the area in regards to a pump station. Town Attorney Stamm said that there seemed to have been a lot of misstatements, promises and everything else and noted that he was thankful that he never sat in on any of their conversations with Ms. Burleson.

Councilmember Anderson asked Town Attorney Stamm if in terms of protocol would it be okay for him to call Mr. Self's attorney in order to break the log jam.

Attorney Martin replied that he hoped Mr. Anderson would break the log jam and stated that Mr. Self had denied permission for the Bay Design Group to release the engineering data to Mr. Simmons' company. Mr. Martin said, therefore, Mr. Simmons couldn't design a pump station because he did not know the amount of flow that would come from Mr. Self's property. Mr. Martin felt as if they were being held hostage.

Town Attorney Stamm told Mr. Martin that they could get all of the necessary information from the Town.

Mr. Simmons replied that the Town did not have the needed information because they did not have an engineering or design report in their possession.

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Town Attorney Stamm asked Mr. Simmons if he was implying that the Town did not have Mr. Self's plans that were reviewed by the Planning Commission and then passed by Council.

Mr. Simmons responded by saying that the Town had a set of plans but did not have the engineering design report for the sewer system that should have been with those plans.

Mr. Stamm replied should have, could have, and would have.

Mr. Simmons continued by saying that there was no way to determine what the flow to the force main would be without that design report.

Mayor Smith asked why Council approved something when they didn't have all of the necessary documents.

Mr. Simmons replied that he did not know.

Mr. Felvey asked if there was something else going on. Mr. Felvey said that this was a simple little thing and down the road things were going to change. He asked what was going to happen to Mr. Self's property or as he understood the 434 more connections beyond his 40. Mr. Felvey asked what was going to happen in the future and who would be held responsible for that. Mr. Felvey said that all he was trying to do was to connect to the sewer and provide security for the Town.

Councilmember Nunn asked Mr. Felvey if he built his pump station as he and Ms. Bureson had agreed upon, and the Town agreed that it was okay, then what was the problem. Mrs. Nunn asked Mr. Felvey if he wanted to build a pump station that services 49 homes.

Mr. Felvey replied that he did.

Councilmember Nunn advised that it would have to be done to meet the Town's specifications. Ms. Nunn asked Town Manager Saunders why Mr. Felvey couldn't do that.

Town Manager Saunders replied that was the question before Council. Mr. Saunders said that he had personally met with Mr. Simmons, Mr. Felvey and his associates several times over the past few weeks and they wanted to know if they could be excused from the requirement of building a pump station large enough for that entire area because they have not been able to get the necessary information from Mr. Self.

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Councilmember Nunn said that if Mr. Self did not want to cooperate then he would have to build his own pump station for what he developed and certainly the Town could not ask Mr. Felvey to build a pump station for a PUD that may or may not happen.

Town Manager Saunders said that was exactly what the Town had asked them to do.

Councilmember Nunn replied that she did not agree with that and moved to allow Mr. Felvey to build a pump station for 49 units and to go forward with his project.

ACTION: Councilmember Nunn made a motion to allow Our Northern Neck to build a pump station for 49 units

Town Manager Saunders requested to make a comment before the motion was seconded. Mr. Saunders advised that an agreement had not been reached on the design of the pump station, so he hoped that any motions made by Council would require that it be built to the Town's specifications.

Councilmember Nunn included in her previous motion that the pump station had to be built to the Town's specifications.

Mayor Smith said that he thought that Council shouldn't even entertain a motion at this point. Mayor Smith stated that there needed to be further technical negotiation which may come down to an ultimatum one way or another. Mayor Smith advised Mr. Felvey that Council wanted to work with him and get this done and he had his assurance on that.

Vice-Mayor Jones recommended that the Water/Sewer Committee, landowners and attorneys meet this month and come back with a recommendation next month.

Councilmember Robertson seconded Councilmember Nunn's previous motion.

Councilmember Anderson stated that the bottom line was that whatever was done had to be done to the Town's standards. Therefore, the Town needed an absolute concurrence on what the pump station should be, what it should look like, and what water capacity it should have. Mr. Anderson noted that all of the Town's other stations had over capacity in them. Mr. Anderson felt that at this point, the Town needed to sit down with its technical staff and determine what they considered to be a perfectly good design. Once that was done, Mr. Anderson said that the Town could meet with them on the basic ground rules.

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Town Attorney Stamm suggested that Council recommend that the two landowners and their two attorneys meet with him and the Town Manager.

Councilmember Nunn said that she wanted the Water/Sewer Committee included in the meeting.

Mr. Jones Felvey said that he did not understand where Mr. Self came into all of this.

Town Attorney Stamm replied it was because Mr. Self owned the land next to his.

Councilmember Nunn argued that Mr. Self was not interested in coming before Council and Mr. Felvey's project was being held up.

Attorney Martin advised that Mr. Breeden had told him that he did not want to be involved in any of the meetings and sent him a letter saying that he was free to speak with Mr. Self, which he did. Mr. Martin said that Mr. Self told him that he had no interest in discussing the matter with him any further because his plans were up in the air. Mr. Martin asked that Council not throw it back on them because they had been trying to get together with Mr. Self to no avail.

Councilmember Anderson advised Mr. Martin that basically the Town Council was putting it back in their laps but it had nothing to do with Mr. Self. Mr. Anderson told Mr. Felvey to come back before Council with a good set of plans to talk about his project and Council would take a look at them.

Councilmember Nunn advised Mr. Felvey to forget about Mr. Self because Council would deal directly with him. **Mrs. Nunn said that she was withdrawing her earlier motion** but told Mr. Felvey that when he had his plans she would put the motion back on the table. Ms. Nunn felt that the problem could be taken care of.

Mayor Smith agreed.

Councilmember Straughan asked when the next Water/Sewer Committee meeting was.

Councilmember Nunn replied that it was September 2nd.

Councilmember Straughan asked if the Committee could meet before then.

Councilmember Nunn replied that they could.

Mr. Felvey said that he would be in Alaska.

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Mayor Smith acknowledged Mr. Simmons who wished to speak.

Mr. Simmons said that early on in the project, there was discussion of having a combined pumping station with Mr. Self located in a bottom that adjoined the two properties. Mr. Simmons said that this was the most natural place to have it. Mr. Simmons stated that he felt that Mr. Self's property needs would fit their property needs; however, there was just no cooperation on his part. Mr. Simmons said that because of that he designed the pumping station which would be placed about 250 feet back from that location and had arranged the gravity sewer so that their station could be taken off line if a larger station was ever built. Mr. Simmons said that the smaller station could be disposed of at very little cost.

Councilmember Nunn asked when could the Town get the final plan and, if necessary, Council could schedule a Special Meeting.

Mr. Simmons said that the Town had their plans in their possession but they required a few minor adjustments. Mr. Simmons said that the Town's engineer and James Seagle had already reviewed them.

Councilmember Straughan suggested that the Water/Sewer Committee meet as soon as possible and arrange for a Special Town Council Meeting.

Vice-Mayor Jones noted that September 2nd was only two weeks away.

Town Manager Saunders said that he needed that much time to be sure that the Town had everything in order.

7. Committee Reports

A. Water/Sewer Committee: Councilmember Anderson, Chair

1) Report from August 5, 2009 Meeting: Town Manager Saunders

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

Town Manager Saunders advised that the position at the WWTP had been filled and noted that the person hired had a Class I Wastewater License and had previously worked at the West Point Paper Mill. Mr. Saunders reported that staff training was underway on the radiometers. Mr. Saunders advised that he met earlier in the morning with Mr. Gammon and his team to start the process of completing Well #3 at the hospital. Mr. Saunders expected on-site construction to begin sometime next week.

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2) Comm. Recommendations to Council: Councilmember Anderson

a. Recommend that Council approve the purchase of a 20HP sewer pump from Sydnor Hydrodynamics for the amount of \$13,320.

ACTION: Councilmember Straughan made a motion to approve the purchase of a 20HP sewer pump from Sydnor Hydrodynamics for the amount of \$13,320, seconded by Councilmember Anderson; and carried unanimously.

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

1) Report from August 6, 2009 Meeting.

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

Councilmember Nunn was happy to report that she had already received orders for memorial Christmas decorations. Mrs. Nunn stated that All Season's Travel had sent the Town a thank-you letter for fixing the parking lot behind Cralle Court and added that many people had expressed their appreciation for having that done. Mrs. Nunn noted that everything had been completed in order to have the median removed from S. Main Street at its intersection with Irvington Road with the exception of the electrical work. Mrs. Nunn commented on how nice the other medians looked with the plantings that were previously done. Mrs. Nunn noted that she continued to get a lot of calls from citizens like Mrs. Betty Jones with unsightly property issues but said that she had come up with a way to fix that and would make a motion during New Business.

2) Comm. Recommendations to Council: Town Manager Saunders

a. Recommend acceptance for Progress Engineers' proposal to develop construction plans for Town Centre Drive sidewalks for \$5,220, with the understanding that a review by VDOT could generate additional costs.

Town Manager Saunders reported that the original estimate was higher due to Mr. Rosenbaum's taking a worst-case scenario view of things. Mr. Saunders said that if VDOT played hardball and required a lot of profiles then the cost would be higher.

Councilmember Nunn complimented Mr. Saunders on getting the cost estimate down from \$9,000+ to \$5,220.

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ACTION: Councilmember Nunn made a motion to accept Progress Engineers' proposal to develop construction plans for Town Centre Drive sidewalks for the amount of \$5,220, seconded by Councilmember Smith; and carried unanimously.

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

1) Report from August 10, 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.

Mr. Jones stated that he and Chief Bedell had a discussion concerning an abandoned vehicle and noted that a letter would be sent to the owner.

Councilmember Nunn stated that the abandoned vehicle Vice-Mayor Jones was referring to used to be at 44 Claybrook Avenue and was now parked at Eubank Drive.

Town Manager Saunders advised that the letter was sent last Wednesday.

Mayor Smith stated that he understood that there was a disturbance at the KVFD carnival and asked if it had been resolved.

Chief Bedell replied that the subjects were arrested and court action was pending.

D. Emergency Preparedness Committee: Councilmember Anderson, Chair

1) August 10, 2009 meeting cancelled.

Mayor Smith stated that he attended the county emergency preparedness meeting and was pleased that Kilmarnock was so well represented.

E. Economic Development Committee: Councilmember Smith, Chair

1) Report from August 2009 meeting

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

Councilmember Smith reported that VMRC was looking for office space in Kilmarnock and advised that Community Development Strategist, Susan Cockrell, had sent them information on available places. Mr. Smith stated that Ms. Cockrell attended a Virginia Main Street conference in Winchester and obtained some great ideas on how to promote the Town as well as gained numerous useful contacts. Mr. Smith stated that he was in the process of investigating Councilmember Straughan's question as to whether or not the Town could take over Chamber of Commerce duties. Mr. Smith reported that Swank's restaurant and Main Street Gifts had both gone out of business and that Anna's had opened its new restaurant.

Councilmember Robertson asked if any of the other Councilmembers had heard anything about a bakery coming to Town.

Councilmember Nunn replied that she had heard talk about a bakery coming into Town.

Councilmember Straughan stated that he hoped one did come to Town.

Mayor Smith commented that the owners of Main Street Gifts were quite upset about having to close up shop.

Councilmember Robertson asked if there was any word on the bowling alley.

Mayor Smith replied that the bowling alley was moving forward and was expected to be open by the end of March. Mayor Smith said that he ran interference at Kilmarnock Baptist Church on Sunday because the church wanted to have a whole new plat done, which would have further delayed progress. Mayor Smith said that he assured them that he had their best interest at heart and was working on their behalf behind the scene.

Town Manager Saunders stated that he spoke with Mr. Donahue frequently who said that he was okay on the timing of the project because he was waiting on final bids.

F. Town Centre Committee: Mayor Smith, Chair

1) Report from August 12, 2009 meeting.

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

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Mayor Smith advised that the committee met with Mr. Jeff Stodghill and his assistant in regards to the VDOT studies and stated that a number of issues were raised. Mayor Smith said that if the Town used the land at Town Centre Drive to build the Town Hall on, then VDOT wanted Town Centre Drive (formerly First Street) and Church Street widened with a turn lane added. Mayor Smith estimated that it would cost the Town at least a hundred thousand dollars or more to do so. Mayor Smith stated that the problem with that property was that VDOT was making it too expensive to do anything with it. Mayor Smith advised that the committee didn't want to sell that piece of property because it was such an asset to the Town.

Vice-Mayor Jones said that he would like to see the property graded, reseeded and used as a park instead of putting the Town Hall there. Mr. Jones said that the property was now being used for the farmer's market and various other functions. Mr. Jones suggested that the Town put a new building ranging up to 15,000 square feet on the property where the existing Town Hall is. Mr. Jones said that he thought this would be the best solution with the way the economy was and would cut out the expensive issues with VDOT. Mr. Jones stated that the Town needed to build for the future and noted that the existing Town Hall just wasn't serving its purpose any longer. Mr. Jones felt that all of the existing buildings on the lot should be torn down and the front of the lot made into green space with the new Town Hall located further back on the property. Mr. Jones said that the front of the building could be brick with white pillars and the police department could occupy the rear of the building with the police cars kept out of sight.

Mayor Smith added that he would like to have a gazebo with electricity on the Town Centre Drive property so there could be more Town events held there.

Councilmember Robertson commented that she would like to see a police officer at the farmer's market events because the traffic was horrendous.

Councilmember Nunn recommended that the Town consider taking at least an acre at the Town Centre Drive property for a fenced in dog park.

Mayor Smith replied that as far as the property went and as conditions changed, the Town could make that property into whatever they wanted. Mayor Smith said that they needed to keep the property in use and keep the Town involved. As far as the new Town Hall went, Mayor Smith said that the committee would like to know what it would cost to build it on the property where the existing Town Hall is. Therefore, the committee was asking to have a set of plans drawn up and presented to VDOT for their ruling.

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Town Attorney Stamm advised that there would not be much change with VDOT because it would be the same flow.

Councilmember Straughan stated that until the water/sewer system was squared away he did not feel that the Town had any business building a new Town Hall.

Councilmember Nunn agreed.

Councilmember Straughan felt that the Town could find itself in deep trouble if the water/sewer system didn't get squared away. Mr. Straughan said that it was a critical element for the Town and that if it wasn't working properly then the whole Town would be in trouble.

Councilmember Nunn agreed by saying that the State would shut them down and then where would they be.

Councilmember Straughan said that there would be a lot of expense involved in what the Mayor was asking for and he didn't feel that the Town had the money to do it with unless they incurred a lot of debt. Mr. Straughan said that he felt the Town should make an addition to the existing Town Hall for the time being.

Vice-Mayor Jones said that he respected Councilmember Straughan and Councilmember Nunn's opinions but noted that the discussion concerning the erection of a new Town Hall had been going on forever, and the Town had been dragging its feet. Vice-Mayor Jones said that the existing Town Hall was in bad shape as well as the Police Department's building and reminded Mr. Straughan that he commented one time that he wouldn't put his worst enemy in that place. Mr. Jones said that in the existing Town Hall the roof was leaking, the floor stayed wet and eventually if the Town didn't do something they were going to have to sink a lot of money into it. Vice-Mayor Jones advised that the Town needed to make a statement with a nice Town Hall instead of what the people had to look at now. Mr. Jones said even with the economy the way it is he felt that the Town needed to move forward and stop dragging its feet. Vice-Mayor Jones said that the sewer problem had been going on for many years.

Councilmember Nunn said the sewer problem had been going on for years because it had been neglected for twenty years and every time something broke a band-aid was put on it. Mrs. Nunn advised that when a banker was telling them that it was not the time to build, then they had better stop and listen. Mrs. Nunn said that she thought the County had lost their minds by going forward with the new courthouse. Mrs. Nunn admitted that she knew the existing Town Hall was in bad shape and that the employees needed more space but commented that if water/sewer shut down then no one would need any space because they wouldn't have a job due to the fact that the Town had shut down.

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Mayor Smith asked Councilmember Straughan if he would be agreeable to an addition to the existing building.

Councilmember Straughan said that he would and noted that he had proposed that a while back.

Vice-Mayor Jones reminded Councilmember Straughan that what he proposed was a little trailer to work out of. Mr. Jones stated that he was against adding on to the existing building and retorted that having a bunch of little trailers sitting around the Town's property would be a beautiful sight for people coming into Town.

Councilmember Nunn replied that it would look a lot better than excrement floating down Main Street.

Councilmember Straughan agreed with Councilmember Nunn's statement.

Councilmember Nunn stated that she didn't agree with the Town putting money into building a gazebo either, especially when staff was in need of more space. Mrs. Nunn said that a lot of people were hurting financially right now.

Councilmember Jones commented that if people were hurting that bad then they would give a good price on building the new Town Hall.

Councilmember Nunn stated that she wasn't referring to companies, but she was talking about the poor souls* who had lost their jobs* and were out on the street. *Corrected by Council 9/21/09

2) Committee Recommendations to Council

a. Authorize engineering including a topographic survey of the Town Centre property to enable a grading plan to be developed, along with locations for a gazebo, associated parking, and electrical service for events. Subsequently develop a site plan that maximizes public use opportunities, adding walking paths, benches, gardens and ornamental plantings that enhance the property and make it a recreational focus of the town.

ACTION: Councilmember Straughan made a motion to authorize the Town Manager to get a cost estimate on grading and reseeding the Town property at Town Centre Drive.

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Town Manager Saunders said he had already asked for quotes for the topographic survey so a motion was not really necessary.

Councilmember Straughan withdrew his motion.

b. Investigate the erection of a new Town Hall of not more than 15,000 square feet which would include space for staff, council meetings and other public meetings, and the police department taking as much advantage as possible of the architectural work that had already been done on the project from a space allocation and layout basis, but in a metal or other lower cost building.

Mayor Smith tabled the recommendation until next Council meeting.

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

1) Report from August 7, 2009 meeting.

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

Vice-Mayor Jones said that the committee discussed the need for Town Manager Saunders to receive additional training on the Bright System. The committee also discussed having a priority list for non-profit organizations receiving donations from the Town. Vice-Mayor Jones stated that previously donations were made on a first-come, first-serve basis with which he disagreed. Mr. Jones said that this would be discussed further under New Business.

2) Committee Recommendations to Council

a. Recommend that Council approve the disbursements from July 20, 2009 to August 17, 2009.

ACTION: Vice-Mayor Jones made a motion to approve the disbursements from July 20, 2009 to August 17, 2009, seconded by Councilmember Anderson; and carried unanimously.

b. Recommend that Council approve the fiscal year-end amendments, transfers, and supplemental appropriations as submitted by staff.

ACTION: Councilmember Nunn made a motion to approve the fiscal year-end amendments, transfers, and supplemental appropriations as

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**submitted by staff, seconded by
Councilmember Straughan; and carried
unanimously.**

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

A. Repair of Cralle Court Parking Lot

Discussed earlier during the meeting.

B. Demolition of Accessory Building on Town Property

Town Manager Saunders reported that the building had been demolished and the debris removed for a total cost of \$5,300.

C. Review of the Town's VML Insurance Coverage

Town Manager Saunders said that a statement from VML Insurance was included in each Councilmember's packet so that they could be aware of the cost. Mr. Saunders noted that workman's compensation was not cheap by any means.

Councilmember Nunn commented that Anthony Smith was getting workman's compensation.

Town Manager Saunders replied that Anthony Smith was getting unemployment not workman's compensation.

Vice-Mayor Jones asked Town Manager Saunders if he was correct in hearing him say that Anthony Smith was drawing unemployment.

Councilmember Nunn advised Vice-Mayor Jones that the State had approved unemployment for Mr. Smith and that the information was in the packet. Mrs. Nunn said that the Town needed to take steps to reverse the decision.

Town Attorney Stamm replied that it was probably too late.

Councilmember Nunn stated that the former Town Manager should have written Smith up for previous violations because he had a history of this type of behavior. Mrs. Nunn said that one thing that got to her was when the pump went down he said that he did not call the Chief Operator because she was out of Town. Mrs. Nunn advised that Pat Chenoweth always made herself available by way of cell phone.

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Town Attorney Stamm asked Councilmember Nunn to refrain from any further discussion in regards to personnel issues until Closed Session.

D. Electrical Repairs Required before Main Street Median is removed.

Town Manager Saunders advised that the median to be removed was the central electrical connection for all of the others. Mr. Saunders stated that he had contacted an electrician.

E. Pre-construction meeting for Well #3 Completion Project scheduled for August 17, 2009

Town Manager Saunders made no comment concerning the meeting other than it had been held earlier in the day.

F. WWTP in compliance for July; ammonia levels within limits.

Town Manager Saunders said that the WWTP was back in compliance in regards to ammonia levels. Mr. Saunders said that Ms. Chenoweth was working hard and the results were showing.

9. Old Business

A. Request for sewer system approval for Springwood Subdivision on Black Stump Road.

Discussed earlier during the meeting.

B. Buzzell Lawsuit Update

Town Attorney Stamm advised that the Buzzell's lawsuit against the Town of Kilmarnock and individually named persons had been appealed. Mr. Stamm said that he felt that the appeal would fail.

C. Deihl Lawsuit Update

Town Attorney Stamm advised that the Deihl lawsuit against the Town was scheduled for sometime in December 2009. He did not have an exact date in front of him.

Mayor Smith asked what the parties hoped to achieve.

Town Attorney Stamm said that he had no clue.

Mayor Smith asked when the Town should start considering a counter-suit because all of this was becoming a nuisance.

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Town Attorney Stamm replied that didn't happen in Virginia.

Councilmember Nunn replied that she felt the lawsuits were based on the principle of who was right and who was wrong.

Town Attorney Stamm asked Councilmember Nunn who was right and who was wrong.

Councilmember Nunn replied that she did not know because she was not a judge. However, Mrs. Nunn felt that was the reason behind Ms. Deihl's perseverance against the Town was because she thought she was right.

Town Attorney Stamm asked Councilmember Nunn what Ms. Deihl thought she was right about..

Councilmember Nunn replied that Ms. Deihl felt that the zoning was improperly done.

Town Attorney Stamm replied that the property fell within the Steptoe's District and was handled properly by staff.

Councilmember Nunn said that the plat showed Joe Adams' property as R-2.

Town Attorney Stamm replied but the history of Mr. Adams' property was that it was C-1

Mayor Smith commented that it was a moot point.

10. New Business

A. Committee Appointments: Mayor Smith

Mayor Smith stated that Councilmember Straughan would serve as Chairman for Administration/Finance Committee and all other committee appointments would be deferred until the September meeting.

B. Non-Profit Funding Request Process

A copy of the suggested policy for non-profit funding requests was provided to each Councilmember.

Town Manager Saunders gave a brief history of what donations were given by the Town in the past and noted that none had been made in 2009. In looking forward into 2010, Mr. Saunders needed to know what to do with the

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requests that were coming in. Mr. Saunders said that he had some citizens to come up to him on an individual basis with a request. Mr. Saunders said that the total number of requests to date was \$13,450 and none of the traditional groups such as the fire department, etc., had put in a request probably because the Town did not give them anything during the previous year and they thought that all hope was lost.

Councilmember Nunn stated that she did not think that the Town should make donations until the economy turned around.

Town Manager Saunders replied that would certainly be the Council's prerogative.

Vice-Mayor Jones stated that he thought that funds had been set aside in the budget for this purpose.

Councilmember Straughan advised that he could not recall if they did set aside any funds or not. Mr. Straughan did recall that the Admin/Finance Committee eliminated the money given to individual Councilmembers, with the exception of the Mayor, which was being used for contributions. Mr. Straughan stated that he liked the policy suggested by the Town Manager and felt that the Town should support organizations in the order that he suggested. Mr. Straughan stated that Council needed to establish how much money they wanted to set aside for this type of thing and everyone needed to remember that it wasn't their money being spent, it was the Town's. Mr. Straughan stated that the list established by the Town Manager appeared to show the appropriate beneficiaries for whatever the Town could give. Mr. Straughan stated that the Town definitely needed to support the hospital, fire department and the rescue squad. Mr. Straughan advised that those organizations served the people of this community no matter who they were with little or no compensation whatsoever. Mr. Straughan stated that they deserved the Town's support. Mr. Straughan advised the Mayor that he should give thought to setting up a Contribution Committee which could review requests and make recommendations to Council on how much funding should go to which organization.

Mayor Smith agreed to consider that.

C. Review of policies regarding "outlier" water bills

Mayor Smith advised that what stimulated this discussion was that Mr. Evans who owned the bowling alley appealed to him that he felt abused by the Town because of a faulty water meter. Mayor Smith said that the meter was replaced; however, Mr. Evans had received a huge water bill which Town staff attributed to a possible leak under the foundation of his building. Mayor Smith said that even with the replacement meter, his bill was falling within the same price range as before. Mayor Smith said that during all of this, Mr. Evans paid a \$300+

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water bill that he claimed he did not owe but was forced to pay so he would not lose service and have to shut his business down. Mayor Smith said that Mr. Evans claimed that he paid the bill under duress and wanted the money back.

Town Attorney Stamm asked if the meter was bad.

Councilmember Anderson replied that the meter was not bad.

Councilmember Nunn said that it had not happened since the meter had been replaced.

Councilmember Anderson said that the meter was tested prior to being put in and tested after being removed. Mr. Anderson advised that the meters were not designed to work to the disadvantage of the customer but to the disadvantage of the supplier, which was the Town. Mr. Anderson stated that the meter was not broken, and he had experts that testified to that. Mr. Anderson said that Mr. Evans did not have a leg to stand on.

Mayor Smith said that the other issue brought up by Mr. Evans was that he accused the Town staff of not reading the meter.

Councilmember Anderson asked if Mr. Evans had any proof of that.

Mayor Smith said that Mr. Evans claimed that the meter was overgrown with weeds and that it looked to both him and Councilmember Nunn that it had never been touched. Mayor Smith said that there was something odd about this whole situation and it smelled.

Councilmember Anderson said that what smelled was called a leaking toilet. Mr. Anderson said that Mr. Evans denied staff access to the building to help determine what the problem was.

Councilmember Nunn stated that was after everything had already happened. Mrs. Nunn said that Mr. Evans' wife called her and she went to look at the meter. Mrs. Nunn stated that she took pictures with her cell phone and there was moss over the edges, weeds, rocks, etc., and then the next time it was read, 17,000 gallons of water had gone through there.

Councilmember Anderson said that was not unusual in the case of a leaking toilet but since they were now insinuating that it was a personnel issue, any further discussion would have to be done during Closed Session because they were challenging members of staff.

Town Manager Saunders stated that he did not think that anything was wrong with the meter at the bowling alley and wondered why Mr. Evans would not allow Town staff to come in and try to identify the problem. Mr. Saunders

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stated that the question was did the Town have a policy in place that would accommodate the once in a lifetime mistake, whether it was a leaking toilet or whatever. Mr. Saunders said that Town Clerk Blencowe was uneasy about this issue because she had been dealing with the water bills for a long time and said that once the Town started making exceptions then people would always be looking for an exception. But at the same time, Mr. Saunders said that he applied his grandmother rule, which was "how would he want his grandmother to be treated if she had made a mistake and left her garden hose on for three days?". Mr. Saunders asked if she should have to pay a \$1,000 water bill. Mr. Saunders advised that one customer that he knew of did actually have to pay a \$1,000 water bill because of a leaking toilet.

Councilmember Robertson said that the same thing had happened to a couple in Hills Quarters who went away for two months and their toilet was leaking. Ms. Robertson said that the same thing had happened to her but she did not get a break.

Councilmember Nunn said that she had told Mr. Evans not to pay his water bill until she was able to get something resolved. Mrs. Nunn said that she was going to get with James Seagle and see if Mr. Evans would let the two of them into his building. Mrs. Nunn told him not to pay his water bill until she could do this. Mrs. Nunn said that she went out of Town and that was when Mr. Evans received the bill saying that the Town was going to cut off his water if he did not pay. Mrs. Nunn said that this action undermined everything that she had tried to do.

Councilmember Anderson said that James Seagle had told him that in the past when something like this happened and the owner allowed Town staff into the building to verify what was going on then it was reported back to the Town Office.

Councilmember Nunn stated that Town Manager Saunders had prepared some policy modifications for Council to consider and they were in the packet.

Town Clerk Blencowe advised that currently if someone left their water hose running for three days, they would call the Town Office and Town staff was sent to verify what happened. Then their sewer charge is adjusted to the average sewer use for the last six billing cycles.

Mayor Smith questioned whether that was being done unauthorized.

Town Attorney Stamm said that had been authorized forever.

Town Clerk Blencowe said that the only thing not adjusted was leaking toilets because the water went into the sewer and had to be processed.

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Councilmember Robertson asked if she adjusted the water bill.

Town Clerk Blencowe stated that she did not touch the water bill.

Councilmember Nunn said if it was a leaking toilet then it was clear water.

Vice-Mayor Jones advised that it was still going into the sewer and asked if Council was going to beat this issue to death all night.

Mayor Smith said that the Town Manager should have the discretion to make decisions in this matter.

Town Manager Saunders proposed making an amendment to #1 so that it read to “authorize the Town Manager to reduce a water/sewer bill to no more than twice the average of the previous six billing cycles” instead of three billing cycles.

ACTION: Councilmember Nunn made a motion to accept the policy modifications as presented by Town Manager Saunders with the amendment and to allow him full discretion under Policy 1, seconded by Councilmember Robertson and carried with a 4 to 2 vote in favor of. (Councilmember Anderson and Vice-Mayor Jones were opposed)

New Policy As Adopted by Town Council: *Policy effective bills mailed after 9/1/09*

Authorize the Town Manager to reduce a water/sewer bill to no more than twice the average of the previous six billing cycles if he or she accepts evidence that an unusual and excessive water bill was caused by leaks or other causes unknown to and beyond the control of the customer and that the customer acted promptly and responsibly to correct the cause of the leak as soon as they were made aware of the excessive water usage; such reduction may be allowed no more than once in two years per utility account.

D. Revision of the Unsightly Property Ordinance

Councilmember Nunn stated that as she had previously said during the meeting, she wanted to revise the Town Ordinance.

Mayor Smith asked Town Attorney Stamm what the proper procedure was.

Town Attorney Stamm said that Councilmember Nunn needed to present her amendment to the ordinance to the Town Manager who would forward

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it to the Town Attorney for review and then it would be taken before the Planning Commission for a public hearing and then brought before Council for a public hearing.

11. Council Comments

There were no comments made by Council.

Mayor Smith called for a recess at 8:45 pm.
Council called back into Regular Session at 8:55 pm

12. Enter into Closed Session as allowed by FOIA 2.2-3711(A) Para (1) Personnel

ACTION: Councilmember Anderson made a motion to enter into Closed Session as allowed by FOIA 2.2- 3711(A) Para (1) Personnel, seconded by Councilmember Straughan; and carried unanimously.

Council entered into Closed Session at 8:55 pm.

Councilmember Jones recused himself and left the meeting due to a possible conflict of interest.

Regular Meeting reconvened at 9:34 pm.

13. Certify Closed Session held IAW FOIA 2.2-3711(A) Para (1) Personnel

ACTION: Councilmember Robertson made a motion to certify that the Closed Session was held IAW FOIA 2.2-3711(A) Para (1) Personnel, seconded by Councilmember Anderson; and carried unanimously by roll call.

Anderson, Gary L. – yes
Nunn, Rebecca T. - yes
Robertson, Barbara – yes
Smith, John A. – yes
Straughan, Howard – yes
Smith, Curtis H. - yes

13. Adjournment

ACTION: Councilmember Straughan made a motion to adjourn, seconded by Councilmember

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Smith; and carried unanimously.

Meeting adjourned at 9:35 pm.

Prepared by:

Joan N. Kent

Dr. Curtis H. Smith, Mayor

Jacqueline L. Blencowe, Clerk