

September 21, 2009

**KILMARNOCK TOWN COUNCIL
Monday, September 21, 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
John A. Smith

Barbara Robertson
Rebecca Nunn
Howard Straughan

Members Absent:
Gary Anderson

Staff Present:
Tom Saunders, Town Mgr.
Marshall Sebra, Town Planner/Asst. Town Mgr.
Paul C. Stamm, Jr., Town Attorney
Susan Cockrell, Comm. 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.

2. Acceptance and Approval of Agenda

ACTION: Vice-Mayor Jones made a motion to accept the agenda for the September 21, 2009 Town Council meeting as presented, seconded by Councilmember Smith; and carried unanimously.

3. Minutes: Approve, Correct, or Amend Minutes of the Regular Town Council Meeting held August 17, 2009.

September 21, 2009

Councilmember Nunn requested a correction on page 19 in paragraph 8 to have the statement there read “the poor souls who had lost their jobs and were out on the street”.

ACTION: Councilmember Smith made a motion to approve the August 17, 2009 Regular Town Council Meeting Minutes with the above correction, seconded by Councilmember Straughan; 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

There were no public comments.

B. Presentations

Planning Commission Report: Town Planner/Asst. Town Mgr. Sebra

Town Planner Sebra reported that at their September meeting the Planning Commission passed a resolution requesting that the Kilmarnock Post Office amend their hours of operation. Mr. Sebra advised that they also discussed the second chapter of the Comprehensive Plan and its revision.

Mayor Smith stated that he attended the Planning Commission meeting and that Mr. Steve Bonner had asked him to speak with Council about possibly putting surveillance cameras in Town due to larcenies and other crimes. Mayor Smith said that the Planning Commission also discussed the need for additional handicap parking areas on Main Street.

Councilmember Straughan asked if the Town was having a lot of vandalism occurring.

Chief Bedell responded by saying that he was not aware of any.

5. Public Hearing

There were no public hearings held.

September 21, 2009

6. Committee Reports

A. Water/Sewer Committee: Councilmember Anderson, Chair

Report from September 2, 2009 Meeting: Town Manager Saunders

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

Town Manager Saunders reported that the issue with the lift station at Springwood (Mr. Jones Felvey's development) has been resolved, and the plans have been administratively approved. The lift station will have the capacity to cover Mr. Felvey's development plus 9 lots on Black Stump Road. Mr. Saunders stated that the staff position at the WWTP had been filled and that the new employee seemed to be doing well. Mr. Saunders said that Mr. Donahue had received three bids for the entertainment center's water line connection to the Town's system and that he would be meeting with Mr. Donahue and his contractor to reach a final decision on placement. Mr. Saunders advised that the hospital well project was moving forward and that a fair amount of progress had been made. Mr. Saunders said that he hoped the project would be completed by the end of October. Mr. Saunders finalized by saying that the WWTP had received their broadband connection.

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

1) Report from September 3, 2009 Meeting.

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

Councilmember Nunn reported that Town Manager Saunders and Mr. Bill Rosenbaum had met with Sean Trapani about the Town's desire to place a sidewalk along Town Centre Drive. Mr. Trapani suggested that the Town consider having a six foot wide "multi-use bike/walking" path next to the existing pavement which would be less expensive to install and would be maintained by VDOT. Mrs. Nunn said that they had also discussed having a path going behind the real estate office on the corner of the Town lot for the benefit of children.

Town Manager Saunders advised that when Mr. Donahue finished widening his entrance, there would not be enough room for a sidewalk on that side of the street. Therefore, VDOT suggested the idea of going behind Middle Bay Realty on the Town Centre lot to get to Main Street. Mr. Saunders stated that he had a preliminary sketch of VDOT's suggestion if Council wanted to view it.

September 21, 2009

Councilmember Nunn reported that Mr. Ray Roberts had resigned from his position with the Town and would no longer be taking care of Steptoe's.

Town Manager Saunders stated that Mr. Roberts' resignation had left an opening in the Public Works Department but that he was considering making the position a seasonal one as opposed to year round.

Councilmember Nunn advised that several people had expressed indignation and anger at being sent certified letters giving them five days to mow their grass; however, Mrs. Nunn said that the committee had discussed it and decided that they were not going to change the policy.

Councilmember Nunn stated that the committee also discussed seasonal holiday decorations and purchasing an artificial tree. Mrs. Nunn asked Comm. Dev. Strategist, Susan Cockrell, to comment on the type of tree the committee wanted to purchase.

Ms. Cockrell advised that it would be a commercial grade artificial tree that was designed in modules of tubular steel and constructed in sections. Ms. Cockrell said that the sections would allow the Town to add to the size of the tree over time if they wished to do so. Ms. Cockrell said that the tree would be pre-lit with LED lights so there would be no worry of vandalism or broken glass bulbs.

Mayor Smith asked where the committee had planned to place the tree.

Councilmember Nunn replied that the committee had discussed displaying the tree at the playground since it would have LED lights that were unbreakable. Mrs. Nunn advised that the master gardeners were also going to do plantings at the playground and that she and the Town Manager had chosen the location for the water cooler, which would be handicap accessible. Mrs. Nunn said that the committee hoped to have a tree lighting ceremony on Thanksgiving night to kick off the holiday season. Ms. Nunn noted that Ms. Cockrell had found \$26,000 in the budget to purchase seasonal decorations so the committee would be making a recommendation to Council to purchase the tree. Mrs. Nunn also advised that 21 banners had been purchased as the result of the Holiday Memorial Program. Mrs. Nunn described the banners as being green with a wreath in the center displaying the words "Holiday Greetings" and said that they would be hung in the Steptoe's area. Mrs. Nunn stated that a book listing the names of those honored and the donors would be kept at the Kilmarnock Museum and would be read out loud as part of the tree lighting ceremony. Mrs. Nunn said that she would also like to get all of the memorial plaques to the playground.

September 21, 2009

Mayor stated for future reference that any discussion of decorations, parties, etc., should be referred to as seasonal and not Christmas. Mayor Smith said that VML discouraged Towns against using the word Christmas and encouraged them to use seasonal instead.

Councilmember Straughan stated that he objected to that.

Mayor Smith said that he did too but that was the way it had to be.

Vice-Mayor Jones stated that he knew firsthand how difficult it was to get what was needed in the way of seasonal decorations and wanted to allot the committee \$10,000 instead of the \$7,650 that they had requested.

2) Committee Recommendations to Council: Councilmember Nunn

a. Recommend that Council approve the transfer of \$10,000 from the Seasonal Decoration savings account to the active budget to cover the purchase of the holiday tree, lights, and bows needed for this season's decoration plan.

ACTION: Councilmember Nunn made a motion to transfer \$10,000 from the Seasonal Decoration savings account to the active budget to cover the cost of the holiday tree, lights, and bows needed for this season's decoration plan, seconded by Councilmember Robertson; and carried unanimously.

b. Recommend that Council advise VDOT to leave the "No Outlet" sign on Clifton Avenue.

Councilmember Nunn reported that the committee had received several complaints about the "No Outlet" sign located at the end of Clifton Avenue. Mrs. Nunn advised that VDOT had placed the sign there and would remove it if the Town asked but stated that the committee did not want to have it removed.

ACTION: Councilmember Nunn made a motion to advise VDOT to leave the "No Outlet" sign on Clifton Avenue as is, seconded by Councilmember Robertson; and carried unanimously.

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

September 21, 2009

Report from September 14, 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.

Mayor Smith asked Chief Bedell to meet with Mr. Steve Bonner regarding his request for surveillance cameras on Main Street and report back to Council at the next meeting.

D. Emergency Preparedness Committee: Councilmember Anderson, Chair

No report. September 14, 2009 meeting was cancelled.

E. Economic Development Committee: Councilmember Smith, Chair

No report. September 9, 2009 meeting was cancelled.

F. Town Centre Committee: Mayor Smith, Chair

No report. September 9, 2009 meeting was cancelled.

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

1) Report from September 4, 2009 meeting.

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

2) Committee Recommendations to Council

Recommend that Council approve the disbursements from August 17, 2009 thru September 21, 2009.

ACTION: Vice-Mayor Jones made a motion to approve the disbursements from August 17, 2009 thru September 21, 2009, seconded by Councilmember Straughan; and carried unanimously.

7. Administrative Comments and Reports: Town Manager Saunders

A. Work has commenced at the Well #3 site.

September 21, 2009

Discussed earlier during the meeting.

B. Springwood Pump Station

Town Manager Saunders reported that the Town had accepted the plans for the Springwood sewer pump station as was discussed earlier during the meeting.

C. Draft of Updated Town Code

Town Manager Saunders reported that the Town Attorney and Town Clerk had spent what seemed like a hundred hours updating the Town Code and the final draft was being reviewed for completeness and accuracy. Once complete, Mr. Saunders advised that the Town Code would be available on line.

D. Radio-read Water Meter System

Town Manager Saunders advised the system was operational and everything appeared to be working well. Mr. Saunders stated that the system was not a simple one to operate and, therefore, had required a lot of training and hard work on the part of staff. Mr. Saunders said that the system was very sophisticated but that the Town would grow with it because all meters installed in the future would be of this type.

E. House Fire on Clark Lane

Town Manager Saunders reported that during a house fire on Clark Lane one of the hydrants in that area malfunctioned. Mr. Saunders said that the hydrant was in working order in late July when sewer repair was being done in the neighborhood. As a result, the public works operators and the fire department were going to do a comprehensive survey and provide the Town with a status report on the older hydrants. Town Manager Saunders said that the fire chief assured him that the malfunction of the one hydrant did not affect the fire department's ability to fight the fire; however, the fire chief did say that if it had taken them much longer to get the hydrant going then it could have affected the outcome. Mr. Saunders advised that the fire was electrical in nature but the owner escaped without harm. The house was a total loss.

F. Understanding Your Water and Sewer System Pamphlet

Town Manager Saunders reported that the pamphlets that went out to water and sewer customers were excellent and he commended Ms. Susan Cockrell for all of her hard work. Mr. Saunders said that it was an outstanding effort at citizen communication.

G. October Council Meeting

September 21, 2009

Town Manager Saunders reported that the October Town Council meeting would be held on the fourth Monday of the month due to the VML Conference.

H. Topographic Survey

Town Manager Saunders advised that the topographic survey on the Town Centre lot was underway and wrapped in with that was the right of way survey on Town Centre drive for the sidewalk.

I. Town's Backhoe

Town Manager Saunders reported that the Town's 24-year-old backhoe had blown up. Mr. Saunders said that the problem appeared to be with the head gasket and stated that the cost to repair it could possibly turn out to be more than what the piece of equipment was worth.

8. Old Business

A. Request for funds from local non-profits with a suggested policy for evaluation.

Mayor Smith stated that a copy of the suggested policy was included in each Councilmember's packet.

Councilmember Nunn stated that she felt that the Town should just give to the fire department and rescue squad because they were totally volunteer organizations.

Mayor Smith noted a problem with that and said that there were a number of other organizations in Town which were not in the financial shape that the fire department and rescue squad were in. Mayor Smith stated that those two organizations had money, investments and the means to raise money. Mayor Smith said that the Town had to be fair to everyone. Mayor Smith commented that he would like to see the Kilmarnock Museum profit in some way.

Town Manager Saunders advised that the suggested policy was just a starting point for Council to work from.

Mayor Smith requested that further discussion on this issue be tabled until the October Council meeting so that Councilmembers could have some time to review the policy.

B. Reconsideration of items voted on at the May 2009 Council meeting pertaining to water and sewer agreements.

September 21, 2009

Councilmember Nunn stated that it was her understanding that the tape from the May 2009 Council meeting was somewhat confusing in regards to certain water and sewer agreements. Mrs. Nunn commented that in looking at the agreement with Leland Corporation, it had not been signed by the Mayor.

Town Attorney Stamm replied that the Mayor's signature was required after the agreement had been passed by Council and not before.

Town Manager Saunders brought other Councilmembers up to speed on the subject of discussion by saying that a matter concerning water and sewer agreements was brought before Council during the May 2009 meeting and the results of what transpired were somewhat confusing. Mr. Saunders said that the minutes from the meeting regarding the agreements were not really recorded the way that things had happened. Mr. Saunders stated that he would like to clean up the minutes from that meeting in order to get some resolution as to what was actually voted on. Mr. Saunders advised Council that this did not have to be done right then if they wanted time to give the matter more consideration and conduct research. Mr. Saunders said that what he regretted was the inability to let Council hear that section of the tape for themselves. Mr. Saunders advised that he had converted it to a digital file which he could send to them individually. However, Mr. Saunders said, it was very faint and they would almost have to be wearing earphones in order to hear what was being said because the microphones didn't capture all of it.

Councilmember Nunn commented that there was something that she did not understand. Mrs. Nunn said that from the time that she was elected to Council she had heard about the two agreements and thought that they had been done and were over with.

Town Attorney Stamm replied that the agreements had already been negotiated, typed up, and were waiting for revision by all parties involved. Mr. Stamm asked Councilmember Nunn if she recalled a Water/Sewer Committee meeting that he attended at which she had said that she didn't like the agreements but since the past town managers had agreed to them and work had already been done with this expectation, then there was nothing that she could do. Mr. Stamm went on to say that Mrs. Nunn also said during that committee meeting that she did not want to see anymore of those types of agreements made in the future. Town Attorney Stamm said that at the May 2009 meeting, he passed out copies of the two agreements and had written them in under the Water/Sewer Committee's recommendations. Mr. Stamm stated that he thought the agreements were passed and was waiting for the Mayor to return from his trip to sign them. Mr. Stamm advised then there was the question of whether the motion was in the minutes and it was not. However, Mr. Stamm said that when the tape was listened to again, he believed that the motion had been made. In summation, Mr. Stamm

September 21, 2009

said that legally both of the agreements had been passed and just required the Mayor's signature.

Mayor Smith said that during the previous Council meeting, he had made the statement that he did not recall voting on the agreements or signing them and he now realized that was because he was in Scotland on Town business when this transpired. Mayor Smith stated that there was some confusion and that Councilmember Anderson and Councilmember Nunn both declared that they were not in favor of the motion and therefore wanted to rescind it. The Mayor continued by saying that Selph and Felvey were now in agreement to settle this matter and noted that part of the problem arose because the two parties would not agree to work together.

Town Attorney Stamm said that Springwood had agreed to put in their own pump station and Leland Corporation would have to do the same.

Councilmember Nunn asked if Mr. Selph was going to build anything.

Town Attorney Stamm replied that he imagined so because Mr. Selph had put a lot of money into the property not to do anything with it.

Councilmember Nunn shook her head in disbelief and reiterated that the agreement with Selph was to give him one half of the hookup fees back.

Town Attorney Stamm replied that was correct, for a limited period of time.

Councilmember Nunn stated that all she was saying was that the agreements were done prior to her getting onto Council.

Town Attorney Stamm replied that was correct and that the agreements were made through prior town managers.

Mayor Smith brought up another agreement with the Hospital Corporation which he said had never been executed.

Town Attorney Stamm said that he and the Town Manager would make a major push to get that off of Council's docket and get it done.

Councilmember Nunn said once again that she was opposed to giving back one half of the hookup fees.

Councilmember Straughan replied that the developers would only get it to the extent of recovering their cost.

September 21, 2009

Councilmember Nunn replied that in other municipalities when a developer went in, he put in the pipes, and then turned them over to the town that had to maintain them, fix the leaks and incur all of the expense.

Town Attorney Stamm replied that there were public/private agreements all over the place; however, there was a new policy for future developers coming in. Mr. Stamm said that the agreements being discussed were old and had been through two town managers and several water/sewer committees.

Councilmember Nunn commented that she thought it was a kickback and didn't think it was legal.

Town Attorney Stamm replied that it was not a kickback and was perfectly legal. Mr. Stamm reiterated that it was a public/private partnership.

Councilmember Straughan intervened by saying that it was a mere means of recovering costs. Mr. Straughan said that the developer had to front the cost of putting in the water and sewer and then got reimbursed for doing so by receiving one half of the hookup fees back for a specific period of time. Mr. Straughan said that he didn't see anything wrong with that.

Town Attorney Stamm replied that was correct.

Councilmember Straughan reiterated that he didn't see anything wrong with it.

Councilmember Nunn commented as to why they should receive any money when they were the ones selling the property and tacking on the expense to the buyer.

Town Attorney Stamm said that the agreements were made way back when the Town had a huge wastewater treatment plant and no new customers hooking on to use it. Mr. Stamm said that during that period, the agreements were done according to policy which had now changed.

Councilmember Nunn asked how long the agreement was for.

Town Attorney Stamm replied the agreement was for seven years per phase and there were three phases. Mr. Stamm said that Grace Hill was one phase of seven years. Mr. Stamm wanted to advise Council that Mr. Felvey had signed over his easement for his property.

Councilmember Nunn advised that in reading through the agreement, she did not see where it stated how long it was for.

September 21, 2009

Town Attorney Stamm told Councilmember Nunn to look at 4B under the water/sewer agreement.

Mayor Smith stated that with Hills Quarters Subdivision, the Town never really knew what the total investment was. The Mayor asked if there was a specific amount of money that the Town would eventually receive from that.

Town Attorney Stamm replied that the information was given to former Town Manager Capps and where it was now he had no idea. Mr. Stamm said that he could have Mr. Donofrio give the full capitalized cost of his system to the Town which he believed to be almost two million dollars for what was put into the ground.

Town Manager Saunders stated that obviously he was not with the Town when all of this transpired over the years; therefore, he did not have any feel for what kind of commitments were made. Mr. Saunders went on to say that, if indeed, commitments were made then most certainly the Town had to honor them. But if not, Mr. Saunders said, there was no good reason that he could see to enter into an agreement to give back \$800,000 worth of fees to someone who may or may not ever build anything within the Town. Mr. Saunders advised that the Town was charging full fees to folks like Mr. Felvey who was out there doing work now and noted that his project would actually be finished before Mr. Selph ever got started. Mr. Saunders also noted that Mr. Felvey had to pay full connection fees for his moderate-income development. Mr. Saunders said that once again if the Town was really committed then they were, but if not they needed to think long and hard before honoring the agreements.

Town Attorney Stamm replied that the background on commitment was that both of the parties detrimentally relied on what they were told would happen with this agreement. Mr. Stamm said that both put infrastructure in which under the law was detrimental reliance on statements and pre-contractual agreements with the Town of Kilmarnock.

Town Manager Saunders asked if they put in any infrastructure that they wouldn't have had to put in anyway. Mr. Saunders rephrased his question and asked what had they done that they wouldn't have had to do anyway.

Town Attorney Stamm replied any of it.

Town Manager Saunders asked Town Attorney Stamm what he meant by that statement. Mr. Saunders wanted to know if Mr. Stamm was saying that Grace Hill Subdivision would have never gotten started without the agreement.

Town Attorney Stamm replied probably not. Mr. Stamm said that the agreement was factored into their budget and banking.

September 21, 2009

Councilmember Nunn said that Grace Hill Subdivision had not put in their lift station.

Town Attorney Stamm replied that he knew that but stated that they had not completed their project. Mr. Stamm said that the Town wanted the deed to the infrastructure somewhere along the line and that the agreements were a package deal unless the Town wanted them to own their infrastructure and let it pour into the Town's sewer system. Mr. Stamm stated that Mr. Felvey's stuff would be flowing through Mr. Selph's lines and the Town would have to depend on Mr. Selph to maintain them when they got there because the Town wouldn't have a deed to them.

Councilmember Nunn stated that she thought Mr. Selph had given Mr. Stamm the deed.

Town Attorney Stamm replied the deed in agreement had to be signed by the Mayor. Mr. Stamm said that Mr. Felvey had given him the deed for his easement.

Councilmember Smith asked if Council could have until the next meeting to make a decision on this.

Town Attorney Stamm replied that he could tell the attorneys whatever Council wanted him to and then the attorneys and their clients could do whatever they felt was necessary within that thirty days.

Councilmember Nunn asked who negotiated the agreements.

Town Attorney Stamm advised that former Town Manager Lee Capps was the one who started it all. Mr. Stamm said that Mr. Capps put this out there because at the time there was very little development or growth. Mr. Stamm said that Mike Christopher was on the Water/Sewer Committee at that time. Mr. Stamm advised that the agreements were made in an attempt to lure residential building to Town in order to increase revenue as well as to use more of the capacity of the WWTP in order to help pay for its upgrades.

Councilmember Nunn remarked so they signed a fifty-year agreement.

Town Attorney Stamm replied that they certainly did.

Mayor Smith advised that this was done under Mayor Robertson.

Councilmember Nunn said that she just didn't know whether or not the Town was obligated to stand by the agreements.

September 21, 2009

Town Manager Saunders replied that the only way to find out would be inside of a courtroom.

Town Attorney Stamm agreed but said that if a judge did say that the Town was bound by the agreements then the Town would be responsible to reimburse the developer for everything. Mr. Stamm stated when the developer showed up with his plans that had already been approved then the Town would have to put the infrastructure in without the developer having to pay the money and the interest.

Councilmember Nunn asked Ms. Pat Lawler, who was seated in the audience and is affiliated with Grace Hill Subdivision, if she was aware of the agreement with the Town in regards to water and sewer.

Ms. Lawler responded by saying that she had not seen any agreement and was only aware that Grace Hill had an understanding with the Town for water and sewer service.

Mayor Smith advised that he was aware of the Grace Hill agreement because they were going to give the Town a well site. Mayor Smith asked if Council was going to direct him to sign the agreements.

Town Attorney Stamm replied that Council had already directed him to sign the agreements during the May meeting.

Councilmember Nunn read a portion of the Grace Hill agreement regarding the erection of a pumping station and stated that they had not done so; therefore, they were not in compliance with the agreement.

Town Attorney Stamm replied that he was not implying that Grace Hill would get anything because they were in default with the agreement. Mr. Stamm advised that the Town had to have an agreement and a deed of easement to get the infrastructure into the name of the Town of Kilmarnock.

Mayor Smith asked Mr. Stamm how Mr. Selph had put a force main across Mr. Felvey's property without permission.

Town Attorney Stamm replied that Mr. Selph's surveyor did not know that Mr. Felvey's property went to the center of the highway and noted that this was a battle that the Town didn't need to get involved in.

Councilmember Nunn clarified by saying that Mr. Selph went to VDOT who thought they had the right of way and gave him permission to put in the force main. Mrs. Nunn said that Mr. Selph later learned it was actually Mr. Felvey's property.

September 21, 2009

Town Attorney advised that it was his assessment that Council had already passed the agreements and that they were now in need of the Mayor's signature.

Town Manager Saunders said that he disagreed with Mr. Stamm's assessment in that there was no record of Council passing the agreements in the May minutes. Mr. Saunders said that if Council indeed did pass it then the May minutes needed to be corrected to show it or Council should entertain the motion again. Mr. Saunders said that if it was not in the record then it did not exist.

Mayor Smith said that it was his opinion, since he was privy to some of the negotiations entered into by the Town, that oral agreements were made with these parties. Mayor Smith asked Vice-Mayor Jones who chaired the May meeting if he recalled whether or not Council had passed the agreements.

Vice-Mayor Jones replied that he believed that they did.

Councilmember Nunn stated that she was against it.

Mayor Smith advised that he knew she was and stated that he respected her opinion.

Town Attorney Stamm said that he would give Councilmember Nunn credit because she said that night that she was against it.

Councilmember Straughan said that somewhere along the way the Town Council indicated that this agreement was acceptable. Mr. Straughan said that he did not know how or when, but they did. Mr. Straughan stated that he did not think the contractor was wrong and noted that although one person might try to get something over on Council he did not think that two would and that they both were saying the same thing. Mr. Straughan felt that the Town should honor the agreements. Mr. Straughan said that the way he viewed it was that the Town was reimbursing these people for the infrastructure that they had built and the Town would own.

Councilmember Nunn asked why should these people be reimbursed when they were the ones developing it, selling it, and passing it on to the buyers.

Mayor Smith said that there was another situation coming up with the Hospital Corporation where they had put in half a million dollars worth of infrastructure to the YMCA building and down to the fitness center which still wasn't straight yet. Mayor Smith said that agreement was about 7 years old now.

Councilmember Robertson felt that the Town needed to stand by its word. Ms. Robertson said that the Town had agreed to it and now was not the time to back out of it.

September 21, 2009

Councilmember Nunn commented that Council had not agreed to it as of yet and that was the whole point of the discussion.

Councilmember Straughan said that Council had not officially agreed to it, but he was inclined to think that informally they had.

Mayor Smith said that there was another informal agreement made with Mr. Donahue to foot the bill for half of the water/sewer line that went to his property because the Town needed the extension to go to the Main Street property. Mayor Smith stated that there had been many verbal agreements made over the years that an incoming Councilmember might not agree to and would have every right to do so.

Vice-Mayor Jones said that he felt they were between a rock and a hard spot and had to honor the agreement.

Councilmember Smith said that he felt the same way as Vice-Mayor Jones and Councilmember Straughan.

ACTION: Councilmember Straughan made a motion to honor the Water/Sewer Agreement and the Agreement, and Deed of Easement made between the Town of Kilmarnock and Grace Hill Development , LLC as well as the Water/ Sewer Agreement, and Agreement, and Deed of Easement made between the Town of Kilmarnock and Leland Corporation as presented and to authorize the Mayor of Kilmarnock to sign them as presented. Motion was seconded by Councilmember Smith; and carried with a 4 to 1 vote in favor of. (Councilmember Nunn was opposed)

9. New Business

A. Resignation of Councilmember Gary Anderson

Mayor Smith announced that Councilmember Anderson was moving to Florida and had submitted his letter of resignation. Mayor Smith advised that Mr. Anderson's term did not expire until June 30, 2010; therefore, the vacant seat would be advertised in the local newspaper so that Kilmarnock residents could submit their letters of interest to the Town Manager by October 9, 2009. Mayor Smith noted that state law required Council to fill the vacancy within 45 days so the appointment would have to be made during the next Council meeting.

September 21, 2009

ACTION: Vice-Mayor Jones made a motion to accept Councilmember Anderson's resignation, seconded by Councilmember Smith; and carried unanimously.

B. Town Council meeting to be moved to October 26, 2009.

Vice-Mayor Jones said that the date of the October Town Council meeting had been changed to avoid conflict with the VML Conference. Mr. Jones said that Council would meet on October 26, 2009.

ACTION: Vice-Mayor Jones made a motion to schedule the October Town Council meeting for October 26, 2009 to avoid conflict with the VML Conference, seconded by Councilmember Smith; and carried unanimously.

C. Committee Appointments: Mayor Smith

Mayor Smith announced the following committee appointments:

1. Administration and Finance: Councilmember Straughan, Chair, and Vice-Mayor Jones.
2. Streets, Sidewalks and Playgrounds: Councilmember Robertson, Chair, and the person filling the open seat to be appointed at the October Council meeting.
3. Water and Sewer: Councilmember Smith, Chair, and the person filling the open seat to be appointed at the October Council meeting. Councilmember Nunn will serve as alternate.
4. Economic Development/Enterprise Zone: Councilmember Nunn, Chair, and Councilmember Straughan.
5. Police and Public Safety: Vice-Mayor Jones, Chair, and Councilmember Robertson.
6. Town Centre/Government Center: Councilmember Nunn, Chair, Mayor Smith and the person filling the open seat to be appointed at the October Council meeting.
7. Planning Commission Liaison: Councilmember Nunn with Councilmember Smith serving as alternate.

September 21, 2009

D. Proposed revision to Town's trash control ordinance.

Two versions of the proposed ordinance were provided to each Councilmember.

Town Manager Saunders stated that Council's mission at this time was to decide on which language they preferred so that the Planning Commission could hold a public hearing.

Councilmember Nunn stated that the Planning Commission had concerns about making a violation a misdemeanor.

Town Attorney Stamm advised that a resident would not be charged with a misdemeanor on a single violation but would be with a series of three violations regarding separate trash piles, etc.

Mayor Smith said that he read in the minutes that the Town of White Stone had a similar ordinance and asked if it had ever been tested in court.

Town Attorney Stamm replied that it had not because the property owners were resolving the issues before it got that far. Mr. Stamm said that he hoped the same would be true for Kilmarnock.

Councilmember Nunn read the version of the ordinance that she preferred. (See Attachment) When finished, Mrs. Nunn stated that the revision was much needed because the current ordinance only made people cut their grass and move or cover their junk cars. Mrs. Nunn said that there were some totally despicable yards in Town and people had been complaining for twenty-five years with nothing being done.

There was a general consensus amongst Councilmembers to present the version read by Councilmember Nunn to the Planning Commission for public hearing.

10. Council Comments

There were no comments made by Council.

Mayor Smith called for a recess at 8:15 pm.
Council called back into Regular Session at 8:22 pm.

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

ACTION: Vice-Mayor Jones made a motion to enter into Closed Session as allowed by

September 21, 2009

**FOIA 2.2-3711(A) Para (1) Personnel,
seconded by Councilmember Straughan;
and carried unanimously.**

Council entered into Closed Session at 8:22 pm.
Regular Meeting reconvened at 8:36 pm.

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

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

Paul S. Jones – yes
Nunn, Rebecca T. - yes
Robertson, Barbara – yes
Smith, John A. – yes
Straughan, Howard – yes
Smith, Curtis H. - yes

13. Adjournment

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

Meeting adjourned at 8:37 pm.

Prepared by:

Joan N. Kent

Dr. Curtis H. Smith, Mayor

Jacqueline L. Blencowe, Clerk