

August 13, 2012

**KILMARNOCK PLANNING COMMISSION  
Monday August 13, 2012  
Town Hall  
Kilmarnock, VA**

**Regular Meeting Minutes**

**1. Call to Order**

Vice-Chair Reedy called the regular meeting to order at 6:00 pm with the following members present:

Dave Reedy, Vice-Chair  
Travis Abbott  
Steve Bonner

Shawn Donahue, Council Liaison  
Lindsay Gardner  
Joan Gravatt

Members Absent:  
Jane Ludwig, Chair

Staff Present:  
Marshall Sebra, Zoning Administrator/Planning Director  
Paul C. Stamm, Jr., Town Attorney  
Joan N. Kent, Transcriber

**2. Recognition of Guests:**

Vice-Chair Reedy welcomed Kilmarnock residents, business owners and guests. Vice-Chair Reedy recognized Councilmember Nunn, Councilmember Umphlett, and Mayor Booth who were seated in the audience.

**3. Acceptance of the Agenda**

**ACTION: Planning Commission Member/Council Liaison Donahue made a motion to accept the August 13, 2012 Planning Commission meeting agenda as presented, seconded by Commission Member Bonner; and carried unanimously.**

**4. Public Forum:**

Vice-Chair Reedy opened the public forum by inviting members of the audience to voice their concerns or ideas in regards to planning issues. Each speaker was limited to 3 minutes.

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A. Kilmarnock Mayor Raymond Booth addressed the Planning Commission saying that in recent months he had focused his efforts in mending the political differences in the Town government and among the elected. Mayor Booth stated that he was reluctant to bring this matter into view but as Mayor he had been looked to for clarification and guidance from both the Planning Commission and inquiring citizens regarding the exclusion of the Planning Commission from the Town's budget process. Mayor Booth said that his position on this matter was the same as it had always been. Mayor Booth stated that as Chairman of the Planning Commission for three years before being elected Mayor, they were involved each year and worked extensively on the CIP Budget in order to create and recommend this portion of the budget to Town Council. Mayor Booth continued by saying that the CIP was usually adopted by Council with minor modifications. Mayor Booth advised that during the last two years the Commission had been excluded from traditional participation with regards to that component of the budget. Mayor Booth stated that Town Manager Saunders had said that it was his call this year to exclude the Planning Commission from any role in the project. Mayor Booth advised that despite the repeated requests for involvement by Chairman Ludwig and Senior Planning Commissioner Bonner, various reasons were given by Mr. Saunders and several Councilmembers in an attempt to validate the Planning Commission's exclusion. Mayor Booth said that in his opinion it was completely within the authority of the Planning Commission to recommend the CIP Budget to the Council and he also believed it was a duty of the Planning Commission as enacted by their by-laws stating that the body "shall" prepare the CIP Budget. Mayor Booth stated that it was granted that the work of the Planning Commission was advisory and that they only provided recommendations on matters to Council who could make changes or disregard them but added why would they? Mayor Booth advised that Council should welcome the experience and input of the valuable members of the body whose current members made up was over sixty years of combined experience in serving the Town. Mayor Booth stated that the Planning Commission had provided long range planning for the Town for decades as well as had prepared the CIP Budget for a lengthy period prior to the last two years. Mayor Booth commented that most recognized the fine job that the Planning Commission had done in its capacity over the years. Mayor Booth stated that certainly with the huge CIP Budgets over the last two years which resulted in over one million dollars in an effective projected deficit in FY2012 and FY2013, they needed all of the help that they could get from the experienced group. Mayor Booth said that perhaps the Planning Commission's participation in the process would have yielded more sensible CIP Budgets for the past two years without having to spend deeply out of the Town's reserves as the budget prepared by Town Council and Town staff provided. Mayor Booth stated that out of concern at the attempt to diminish the traditional role of the Planning Commission and government, Commission Member Bonner sought legal opinions and additionally furnished him with opinions from the Virginia Legislative Services and the Virginia Municipal League. Mayor Booth said that the information furnished to him from

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the above sources concur with the original position of other Planning Commission Members and himself that Town Manager Saunders acted without authority in disallowing the Planning Commission's participation. Mayor Booth said that any recommendation of the Planning Commission to the Council was nonbinding and could be fully discharged by Council. Mayor Booth stated that furthermore the Council had never asked for or rejected the Planning Commission's involvement because Town Manager Saunders made it his decision. Mayor Booth stated that the problem with that was that there was no code or state law that afforded the Town Manager any authority to curtail the Planning Commission's actions regarding preparing and amending the budget. Mayor Booth said that that he would not speculate on any motive that he believed existed concerning the exclusion of the Planning Commission from the budget process and stated that Town Manager Saunders might have whole heartedly believed that it was within his authority to do so, but he felt Mr. Saunders was wrong in doing so. Mayor Booth stated that what he believed to be important was that this matter be acknowledged, corrected, and there be a restoration of the traditional role played the Planning Commission with regards to future budgets. Mayor Booth was also concerned by recent efforts to remove the most experienced people from the Town's government. Mayor Booth said that by doing so didn't make those who remained any more knowledgeable noting that skills and experience were often lost when long serving members of government bodies were replaced for political reasons. Mayor Booth continued by saying that after initiating discussion along with another Councilmember regarding not renewing the Town Attorney's contract after twenty years of service and without additional support, Councilmember Nunn at last month's Council meeting made a motion to advertise vacancies for the expired terms of Planning Commission Members Reedy and Ludwig. Mayor Booth stated that both had over thirty years of combined experience in serving the Town and both sought and deserved reappointment. Mayor Booth said that Councilmember Nunn publically asked for the removal of Planning Commission Member Abbott at the same meeting. Mayor Booth advised that two of the three Planning Commission Members that Councilmember Nunn was opposing had run against the Nunn slate in the May election. Mayor Booth asked if Councilmember Nunn's opposition was coincidental or was it political in nature. Mayor Booth stated that Councilmember Nunn had on several occasions unfairly accused him and others of having some personal agenda against others in the Town government but unfortunately now seemed to have some personal agenda of her own. Mayor Booth added that while having been a consistent critic of the Planning Commission in recent years, her most recent effort to decimate the makeup of the body seemed to be bullying. In summary, Mayor Booth said that it was his hope that Town Manager Saunders and Council would recognize the right of the Planning Commission to make recommendations regarding the CIP Budget yearly and that no further efforts would be made to inhibit them from doing so. Mayor Booth said that it was also his hope that Council would make appointments, reappointments, and staff decisions in a manner that would wisely keep experienced and talented people in Town government. Mayor Booth stated

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that anything otherwise would and especially if done based upon political motivation penalize every citizen. Mayor Booth complimented the Planning Commission for the fine job that they do. Mayor Booth urged them to take the lead and not follow the lead of staff because in his view others in government sought to diminish or delete some of the Planning Commission's traditional roles. Mayor Booth advised that their job as a body was well defined in state and local code as well as in the Planning Commission By-Laws. Mayor Booth urged the Planning Commission to make a strong endorsement and recommendation to Council to reappoint two very deserving members of the Planning Commission who were up for reappointment.

Planning Commission Member Gravatt advised Mayor Booth that she had no political agenda whatsoever and that it was her, not Councilmember Nunn who questioned Mr. Abbott's right to remain on the Planning Commission. Mrs. Gravatt said that in the by-laws it stated that a member could not miss three consecutive meetings or a total of four within a year. Mrs. Gravatt assured Mr. Abbott that she harbored no ill feelings towards him but reiterated that she was the one who brought it up and not Councilmember Nunn.

Mayor Booth commented that he was not there to be interrogated but only to supply the information that he had. Mayor Booth advised Mrs. Gravatt that if she checked the minutes from the last Council meeting she would find that Mrs. Nunn did call for the resignation of Mr. Abbott which was reported in the newspaper as well.

Planning Commission Member Gravatt replied that Mrs. Nunn may have called for it because she had questioned Councilmember Emerson Gravatt and Councilmember Nunn at the same time about this matter. Mrs. Gravatt stated that it was not something that was instigated by either of them.

Councilmember Nunn stated that Councilmember Gravatt was the person who made the motion at the Town Council meeting for Planning Commission Member Abbott to be removed. Mrs. Nunn stated that she was in agreement based on the by-laws because he had missed three consecutive meetings and a total of four within a year. Mrs. Nunn told Planning Commission Members that she had no problem with them and resented Mayor Booth saying otherwise. Mrs. Nunn advised that Mayor Booth had already said it but she wanted to reiterate that the Planning Commission made recommendations to Council but those recommendations were not binding and didn't necessarily have to be accepted. Mrs. Nunn advised that they were state mandated but were appointed by the Council and served at the pleasure of the Council. Mrs. Nunn stated that the Mayor was very concerned that the Planning Commission was not part of the budgetary process and the CIP for the past two years. Mrs. Nunn said that there were two budget workshops that Mayor Booth didn't attend and neither did any member of the Planning Commission with the exception of Mrs. Gravatt. Mrs. Nunn stated that there were two Admin/Finance Committee meetings where the

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budget was discussed and noted that not one of them were there. Mrs. Nunn advised the Planning Commission if they had a problem with the budget and what was or was not done with it then maybe they should have attended the meetings and given their input then instead of after the fact. Mrs. Nunn said that if the Mayor had wanted the Planning Commission to be involved in the CIP and budgetary process, he could have proposed that to the Council. Mrs. Nunn advised that he did not do that instead he was mute and added that six million Jews died in Germany because people kept their mouths shut. Mrs. Nunn stated that Mayor Booth was misquoting the code. Mrs. Nunn advised that the code said that the Planning Commission “may” at the discretion and direction of the Council and then it said that if they do it at Council’s direction then they “shall” look into the CIP.

Planning Commissioner Bonner told Mrs. Nunn that she was wrong.

Councilmember Nunn said that was what the code said because she had seen it with her own eyes.

Mr. Bonner told Mrs. Nunn that VML disagreed with her and so did the Virginia Legislative Services.

Mrs. Nunn replied that unfortunately VML was just a league and didn’t have any legal standing.

Mr. Bonner told Mrs. Nunn that she didn’t have any legal standing either.

Mrs. Nunn advised Mr. Bonner that she had more than he did because she was on the Council and he wasn’t.

Vice-Chair Reedy called for order and asked if there was anyone else who wished to speak. Vice-Chair Reedy closed public comment session when no one else came forward.

**5. Minutes: Approve, Correct or Amend the Minutes for the June 11, 2012 Planning Commission Meeting.**

**ACTION: Commission Member Gravatt made a motion to approve the minutes for the June 11, 2012 Planning Commission meeting as presented, seconded by Commission Member Gardner, and carried unanimously.**

**6. Commissioner Comments**

Planning Commission Member Bonner said that he wanted to comment on the Planning Commission not being involved in the CIP Budget. Mr. Bonner

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stated that he consulted with a group of advisors to members of the Senate and the House of Representatives who told him that the Planning Commission should have been involved in the CIP. Mr. Bonner said that furthermore they told him that they could not imagine why the Planning Commission wasn't asked to be involved. Mr. Bonner stated that his interpretation was that the Planning Commission "may" which gave them permission, comma, and at direction of Council "shall". Mr. Bonner said that it was in their by-laws and what Mrs. Nunn had said was completely wrong. Mr. Bonner advised that the Planning Commission was supposed to be involved in the CIP every year. Mr. Bonner said that there was another area where the Town was wrong too and that was when they did a subdivision administratively which VML said was wrong. Mr. Bonner advised that all subdivisions were to come before the Planning Commission. Mr. Bonner stated that he didn't mean that the Town had to go back and correct that particular one. Mr. Bonner said that the Planning Commission was being criticized for not having meetings but added that if the Council and Town Manager had let them be involved in the CIP it would have accounted for maybe three or four meetings and the subdivision would have accounted for another one. Mr. Bonner advised that he had heard four different reasons why the Planning Commission was not having regular meetings and neither reason was correct. Mr. Bonner said that was why he sought advice from an attorney and the group he spoke of earlier as well as VML. Mr. Bonner stated that by law the Planning Commission was supposed to be involved in the CIP and by not doing so, the Town was breaking the law. Mr. Bonner said that the Planning Commission Members didn't have to attend any budget meetings because the information was supposed to be brought to them. Mr. Bonner stated that he would also like to address the number of complaints received concerning the playground in Town. Mr. Bonner said that he didn't know what Council intended to do but people were very tired of going by there and hearing all of the cursing. Mr. Bonner advised that citizens had people running through there yards at night and stealing things out of their yards. Mr. Bonner said that he thought the playground was in the wrong place and added that it belonged on the Town Centre lot with a fence around it so it could be opened at 8 am and closed at 8 pm. Mr. Bonner stated that the Town, state and county law enforcement officers all worked together anyway and they should be allowed to enforce some rules. Mr. Bonner said that they brought the subject of shallow wells up several years ago and adding that Council still had not gotten to that. Mr. Bonner said that the people in Town should be able to have a shallow well for their yards and gardens. Mr. Bonner stated that it needed to go before Town Council and they needed to decide whether they wanted it or didn't. Mr. Bonner said that the main thing he wanted to address was the CIP.

Councilmember Nunn advised Planning Commission Bonner that shallow wells was passed two years ago by Council.

Mr. Bonner replied that he was not aware of that.

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Planning Commission Member Gravatt asked Mr. Bonner who was responsible for getting them together for the CIP budget.

Commission Member Bonner asked Mrs. Gravatt why she was there tonight. Mr. Bonner said that when the Planning Commission had things to do they were notified. Mr. Bonner said that it was the Town Manager or Town staff's duty to contact them. Mr. Bonner stated that the Planning Commission acted when they were called to act. Mr. Bonner said that if there was a zoning request, the staff notified them and they came and did what they were called to do.

Planning Commission Member/Council Liaison Donahue said that he would be the person who would have to report back to Council. Mr. Donahue noted that the Planning Commission was established 48 years ago and wanted to know the feelings of current members regarding their involvement in the CIP Budget. Mr. Donahue wanted to know what they wanted him to tell the Council after the meeting.

Commission Member Abbott stated that he thought the Planning Commission should be invited to participate. Mr. Abbott said that since he was appointed to serve, they had not had many meetings for lack of business and he was in favor of it.

Commission Member Gravatt stated that she had mixed feelings and was on the fence. Mrs. Gravatt said that her husband had pulled up a bunch of stuff on the computer about this and all she could say was to be careful what you ask for. Mrs. Gravatt advised that the Planning Commission in Orange was meeting once a week and sometimes twice. Mrs. Gravatt reiterated that she was on the fence and could fall either way.

Vice-Chair Reedy stated that it was his opinion that the Planning Commission was appointed by the Council and should only act at the request of Council.

Commission Member Bonner had already made his feelings known but added that maybe a combined sixty years of experience on the board would help the Town. Mr. Bonner stated that it was not a battle between the Town Council and the Planning Commission. Mr. Bonner added that personally he hated meetings but it was a service that they did. Mr. Bonner said that the Planning Commission was another entity that people could come to. Mr. Bonner stated that sidewalks needed to be put down on First Street because it led to the dog park and Town Centre and without them it created a very dangerous atmosphere. Mr. Bonner said that he didn't realize it but found out that the Planning Commission could hold public hearings on anything that was in the best interest of the Town like moving the playground but added that was Council's job and they were getting paid to do it even though they weren't getting paid very

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much. Mr. Bonner said that he thought Council did a good job but felt that everyone just needed to get along and solve problems for the Town.

Planning Commission Member Gardner advised that she had not been a part of the CIP process because she had only been serving for two years. Ms. Gardner stated that the Planning Commission was presented with the CIP plan in May which was before the budget was approved adding that they did have a chance to make comments on it at that time. Ms. Gardner said that she did not feel qualified to make decisions about the water and sewer which seemed to be the bulk of the CIP and trusted that committee to do the research on that. Ms. Gardner felt that some of the general fund things such as Tech Park and the Town Hall could be argued as land use and they should have had input on that. Ms. Gardner stated that for the vast majority she felt they should trust staff and committee recommendations.

Planning Commission Member Bonner felt that they should be involved in the construction of the Town Hall. Mr. Bonner recalled when the Planning Commission went down to the treatment plant for a tour and to see how it was operated. Mr. Bonner advised that the Planning Commission was there to help adding that the Town put a three thousand dollar sign on the Town lot with a ten cent receptacle hook-up.

Council Liaison Donahue replied that it cost a little more than ten cents.

Mr. Bonner said that it looked like it cost ten cents. Mr. Bonner noted that Kilmarnock had a water tower and nobody but Les Spivey knew that the Town's name was on it. Mr. Bonner said that with a little bit of planning things could be made better and there would be fewer mistakes.

Council Liaison Donahue asked Vice-Chair Reedy if Mr. Spivey who was present in the audience and had applied for a seat on the Planning Commission could speak.

Vice-Chair Reedy replied that he could speak if he wanted to.

Mr. Donahue asked Mr. Spivey what he thought about the Planning Commission's involvement in the CIP.

Mr. Spivey stated that Planning Commission Member Gravatt had a very good point when she said to be careful what you ask for. Mr. Spivey said that if the Planning Commission believed something should be dealt with or they should have input then they needed to develop that information and send it to Council whether it was requested or not. Mr. Spivey gave the synopses that just because somebody doesn't ask a person to eat dinner didn't mean that the person couldn't eat. Mr. Spivey said that the Planning Commission needed to take its own initiative.

## 7. Old/Unfinished Business

Planning Commission Member Bonner asked Councilmember Nunn what was involved in obtaining a shallow well.

Councilmember Nunn advised that citizens could have a shallow well but it could not be connected to their house. Mrs. Nunn said that the citizen had to notify the Town that they wanted to put in a shallow well, once it was done it was inspected by the Health Department.

## 8. New Business:

### A. Expiration of Dave Reedy's Term

Zoning Administrator/Planning Director Sebra advised that during the time he was preparing the Planning Commission Member's packets he had not received any response to the advertisement in the newspaper that was directed by Council. Mr. Sebra advised that since that time, he had received three letters of interest which he had provided everyone with copies of. Mr. Sebra stated that Vice-Chair Reedy's term expired next month and that the only thing left for them to do was to make a formal motion of recommendation to Council.

**ACTION: Planning Commission Member Bonner made a motion to recommend to Council that Mr. Dave Reedy be reappointed to serve another term, seconded by Planning Commission Member Gravatt; and carried unanimously.**

### B. Zoning Log Report

Zoning Administrator/Planning Director Sebra advised that a copy of the Zoning Log Report was included in each member's packet. Mr. Sebra noted that there was not a lot of activity currently and no major developments.

Planning Commission Bonner asked how far along were they on the Comprehensive Plan and if Mr. Sebra had anything for them yet.

Mr. Sebra replied that he had hoped to print out a copy for everyone earlier in the day but just didn't get around to it.

Mr. Bonner asked Mr. Sebra if he could email it.

Mr. Sebra replied that he thought that would be hard to do. Mr. Sebra stated that it was his plan to print out a draft copy with a list of changes

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made which they would have to have prior to a public hearing anyway. Mr. Sebra felt that if he emailed it there would be confusion and he had simplified things with a list.

Planning Commission Bonner advised that the VML Conference was being held in Williamsburg this year and they were usually invited. Mr. Bonner asked Mr. Sebra if he could get that information out to Planning Commission Members.

Mr. Sebra replied that he didn't have that information but would definitely try to get it for them.

Planning Commission Member/Council Liaison Donahue commented that he thought it was on September 23<sup>rd</sup> and 24<sup>th</sup>. Mr. Donahue advised Mr. Bonner that on his earlier comment regarding the subdivision he was referring to, the Crowther building at 45 Main Street was a single adjustment. Mr. Donahue asked Mr. Sebra if that was correct.

Mr. Sebra replied that to the best of his recollection it was only one parcel which was cut into three businesses.

Mr. Donahue advised that the code said that they could only do a single lot line adjustment on a commercial property.

Mr. Sebra replied if so then the Town had been operating illegally for many years adding that the way he was handling it was the way it was explained to him. Mr. Sebra advised to his knowledge anything three lots or under was administrative and anything over that went to the Subdivision Committee.

Mr. Donahue asked Town Attorney Stamm for his opinion.

Town Attorney Stamm replied that he didn't see that one so he couldn't comment on it.

Planning Commission Member Gravatt asked if it was one building with three different things going on there.

Mr. Donahue replied that was correct. Mr. Donahue said that it had been subdivided three times but was a commercial building which could only be divided twice. Mr. Donahue said that he didn't know what to do about it after the fact but he felt they needed clarification on subdivisions.

Mr. Sebra replied he would give the Planning Commission something to do next month which generated laughter.

Mrs. Gravatt asked what they needed to do about it.

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Mr. Donahue replied that it was already done.

Mrs. Gravatt asked if it was grandfathered.

Mr. Donahue replied that it was. Mr. Donahue stated that he was saying that it should have gone before the Planning Commission instead of being decided on by administrative staff.

Mr. Bonner said that it was under state law 15.2-22.

Town Attorney Stamm advised Planning Commission Members that when they were throwing codes around, it might help them if they read the Town Code as well. Mr. Stamm said that the Town's Code didn't allow anything that the State didn't allow and it had been reviewed by many. Mr. Stamm commented that the Town did have its own code.

Mr. Donahue said that he felt it was important that things like these be handled by the Planning Commission and the burden not be left on administration.

Mr. Bonner added that the Planning Commission was really just a safe guard.

Vice-Chair Reedy advised that the Planning Commission was not brought into that because they were not requested to get involved, therefore it was not their problem. Mr. Reedy also said that whoever took the Planning Commission seats next month at the table needed to all work together and forget what has happened in the past.

## 10. Adjournment

**ACTION: Commission Member Gravatt made the motion to adjourn, seconded by Commission Member Gardner; and carried unanimously.**

Meeting adjourned at 6:45 PM

Prepared by:

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Joan N. Kent

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Dave Reedy, Vice- Chair

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