

June 13, 2011

**KILMARNOCK PLANNING COMMISSION  
Monday June 13, 2011  
Town Hall  
Kilmarnock, VA**

**Regular Meeting Minutes**

**1. Call to Order**

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

Denis Bouslough, Vice-Chair  
Steve Bonner

Lindsay Gardner  
Dave Reedy

Members Absent:

Jane Ludwig, Chair  
John Smith, Council Liaison

Resignations:

Sonja Headley

Staff Present:

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

**2. Recognition of Guests:**

Vice-Chair Bouslough welcomed Kilmarnock residents, business owners and guests.

**3. Acceptance of the Agenda**

**ACTION: Commission Member Reedy made a motion to accept the June 13, 2011 Planning Commission meeting agenda as presented, seconded by Commission Member Gardner; and carried unanimously.**

**4. Public Forum:**

Vice-Chair Bouslough 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.

June 13, 2011

There were no participants in the public forum.

**5. Minutes: Approve, Correct or Amend the Minutes for the May 9, 2011 Planning Commission Meeting.**

**ACTION: Commission Member Bonner made a motion to approve the minutes for the May 29, 2011 Planning Commission meeting as presented, seconded by Commission Member Reedy; and carried unanimously.**

**6. Commissioner Comments**

Commission Member Bonner referred to the previous Town Council meeting and stated that he was sorry that Ms. Sonja Headley had resigned from the Planning Commission. Mr. Bonner said that he could not blame her because he would not want to read about himself in a negative way every week like she had to do. Mr. Bonner noted two things said at the April Council meeting. Mr. Bonner advised that Councilmember Nunn stated during that meeting that Mr. Mark Flynn from VML had called her and that she had not called him. Mr. Bonner advised that he had personally spoken with Mr. Flynn before the Council meeting to inquire as to what the Planning Commission's role actually was so that he would be able to summarize it well and thought what Mrs. Nunn had said was strange. Mr. Bonner stated that he called Mr. Flynn again after that meeting and advised him that Mrs. Nunn had brought his name up during the Council meeting and Mr. Flynn jokingly replied that was good and wanted to know if he was going to get paid for it. Mr. Bonner advised that he told Mr. Flynn what Mrs. Nunn had said during the meeting and Mr. Flynn told him that he could just about sign an affidavit stating that he did not call her. Mr. Bonner stated that Mr. Flynn told him that he did call Town Manager Tom Saunders but not Mrs. Nunn. Mr. Bonner surmised that Mr. Flynn had taken it upon himself to do that. Mr. Bonner acknowledged that there was more to the story but stated that he was not going to get into all of it. Mr. Bonner said that Mrs. Nunn also stated during that meeting that Ms. Headley had told her that it was ironic that she was advised that the Planning Commission meetings were held on Monday nights and at that point and time they were not being held then. Mr. Bonner continued by saying that Ms. Headley stated that no one had ever advised her of that so this too was incorrect. Mr. Bonner stated that a comment was made that he and the Mayor had to twist arms in order to get people to serve on the Planning Commission and noted that too was incorrect and was something that was said by the Town Attorney. Mr. Bonner advised that there were scores of errors that went on at that meeting and he just thought it was bad that Council was talking about the Planning Commission and comparing it to roosters, chickens and all that stuff. Mr. Bonner said that he had a conversation the other day with Chair Ludwig who told him that all she wanted to be was a citizen of the Town of Kilmarnock and not a

June 13, 2011

rooster or a chicken. Mr. Bonner stated that he personally felt that as long as the Planning Commission did its job honestly and legally that they had the support of most of the members on Town Council and to him that rendered the others insignificant. Mr. Bonner added that there was so much more that he could go into but he really didn't want to do that at this point. Mr. Bonner felt that it was important that the people in the Town get the true story concerning what goes on and noted that he was not sure that they were getting that all of the time but felt that they could through the minutes. Mr. Bonner advised that with the meeting minutes on line different things could be referenced. Mr. Bonner stated that he was proud of what the Planning Commission did for the Town but added that the past three years had been a little difficult in feeling that they were appreciated by everybody on Council but he did feel that they were appreciated by the people of the Town. Mr. Bonner said that he knew the Planning Commission did the right things, made the right decisions and suggested that they move on and let things take its course. Mr. Bonner commented that both he and Commission Member Gardner were at the Council meeting and jokingly asked Ms. Gardner if she had felt important which generated laughter.

Commission Member Gardner replied "No comment".

Commission Member Bonner commented that it was bad that the relationship between the two boards didn't seem to be so good but he did not feel that it was the Planning Commission's fault. Mr. Bonner noted that they try to give the best recommendations possible and to do what's right. Mr. Bonner reiterated that when he called Mr. Mark Flynn it was in the interest of what the Planning Commission was supposed to do and what its job was. Mr. Bonner noted that Mr. Flynn told him exactly that and added that if Council wanted to pick someone else other than who they suggest to serve on the Planning Commission than they could. Mr. Bonner advised that he did not have any problem with it because that was how it had been for the past twenty three years. Mr. Bonner felt that the other Planning Commission Member's should try to attend the Council meetings so they too could hear what was going on. Mr. Bonner stated that he felt that there were some people on the Planning Commission who should consider running for Council. Mr. Bonner advised that this was all he had to say and he didn't want to do it in a demeaning manner, he only wanted to express his concern that things being said were not always correct and that his main focus was on Sonja because he felt that she would have been a wonderful addition to the Planning Commission. Mr. Bonner added that things like what happened to her played a part in why it was so difficult to get people to serve because they didn't want to be brought up in all of this and he didn't blame them.

Vice-Chair Bouslough stated that it was regrettable that Ms. Headley resigned under those circumstances.

## 7. Old/Unfinished Business

### A. Sign Ordinance Review

Zoning Administrator/Planning Director Sebra advised that during the last Planning Commission meeting, it was decided to look at examples taken from other localities regarding LED signs, illumination of signs, and lighting of signs in general. Mr. Sebra stated that he included several ordinance quotes from other jurisdictions such as Gloucester, Ashland, West Point, Irvington, Lancaster, and Tappahannock in each Commission Member's packet. Mr. Sebra noted that he also included the Town of Leesburg because it too was a good example. Mr. Sebra said that Commission Member's were supposed to have reviewed the examples to see if there was anything they saw that would benefit the Town's ordinance. Mr. Sebra was also willing to give the Commission his opinion or recommendation if needed. Mr. Sebra advised that it was a good time to review the whole ordinance but for this meeting he would just like to focus on this.

Vice-Chair Bouslough asked Mr. Sebra if there had been any additional calls or comments regarding signage since the last Planning Commission meeting.

Mr. Sebra advised that he had not received any additional calls or comments since then.

Vice-Chair Bouslough asked Mr. Sebra for clarification on that the only calls that he had received were the ones that lead up to the previous Planning Commission meeting prompting him to bring all the material together that was in the packet.

Mr. Sebra replied that was correct.

Vice-Chair Bouslough referred Mr. Sebra to Article 4, Supplementary District Regulations on page 2 of the handout and noted that at the top of the page it read "in the commercial district" and inquired as to what the definition of a commercial district was.

Town Attorney Stamm replied that the commercial district was comprised of Steptoe's, C-1 and C-2.

Vice-Chair Bouslough asked if the Steptoe's District extended beyond where the overhead power lines had been buried.

Zoning Administrator/Planning Director Sebra directed Vice-Chair Bouslough's attention to the zoning map on the wall and noted that the Steptoe's area was outlined in bright green. Mr. Sebra advised that the Steptoe's District

June 13, 2011

started at School Street and continued along Main Street to the Planing Mill as well as a little stretch on Irvington Road and Church Street.

Vice-Chair Bouslough stated that at the last meeting, the Planning Commission had basically discussed the specific issue regarding LED signs and he recalled that the way the discussion was left was that Mr. Sebra would be making a recommendation along those lines. Mr. Bouslough asked Mr. Sebra based on his experience and the number of phone calls that he had received over the years, if he thought that the sign ordinance should be changed.

Mr. Sebra replied that in his opinion he thought that it should be changed to address the use of LED signs as to whether to allow them or not. Mr. Sebra followed up by saying that the Town's Ordinance needed to have some direction on this issue.

Vice-Chair Bouslough asked Mr. Sebra if he thought it should extend to the entire commercial district or just the modernization of the downtown area where all of the power lines were underground.

Mr. Sebra replied that if the Planning Commission was going to designate a certain area to regulate LED, then he thought it should be the Steptoe's Overlay District because it was the most important area in regards to the Town's character but added that LED could also be regulated Town wide if they wanted it to be.

Town Attorney Stamm stated that if they regulated LED Town wide than the ones at the two drug stores would be prohibited.

Mr. Sebra replied not necessarily. Mr. Sebra clarified that he was not saying that he wanted LED signs prohibited altogether but was saying that the Town needed to be able to regulate them in some way.

Town Attorney Stamm stated that he was not trying to pick but commented that if the ordinance was re-done just to say that Shawn Donahue could not have that sign in that location then the Planning Commission was just wasting their time because it would be overturned. Mr. Stamm advised that they either had to allow them or not allow them. Mr. Stamm commented that the Town of Irvington did not allow them anywhere in their historical district.

Mr. Sebra replied that the Town could allow them and not worry about what was going to happen or allow businesses to have them with certain regulations such as area, size, etc.

Vice-Chair Bouslough asked other Commission Members what their thoughts were.

June 13, 2011

Commission Member Bonner advised that he did not have any problem with LED signs but thought that the size should be regulated. Mr. Bonner commented that LED was the up and coming thing. Mr. Bonner stated that he did not know how they would be able to restrict them because gas stations and other businesses would be using them.

Town Attorney Stamm asked if the open signs were considered to be LED or message boards.

Mr. Sebra noted that in one of the examples included in the packet, the locality restricted certain types of uses for LED but did not regulate the bank's time, temperature and date signs. Mr. Sebra said that he did not think that an open sign was an LED sign but more of a neon sign with continuous illumination.

Commission Member Bonner commented that Virginia Beach had a problem regarding LED signs which they had worked on for a year and they ended up restricting pictorials such as exploding firecrackers, or someone swinging a golf club and allowed text only. Mr. Bonner added that statistics showed that the LED signs sell the best.

Mr. Sebra advised that Gloucester had also been trying to revise their sign ordinance for years but he thought it was best for the Kilmarnock if the Planning Commission worked on this now before there was an issue.

Commission Member Bonner asked why LED signs couldn't be dealt with under a special use or conditional use permit so that each request would be reviewed on an individual basis. Mr. Bonner was not recommending this method be used forever but only for a period of time before things got out of hand if it was felt that there was a need for some type of control. Mr. Bonner gave the example that if the Rappahannock Record wanted to put up a LED sign scrolling the news then there would be a chance to review the request before it happened.

Vice-Chair Bouslough asked Town Attorney Stamm if that was legal.

Town Attorney Stamm replied that conditional use permits usually dealt with zoning classifications and not signs. Mr. Stamm advised that he had never heard of using them for signs and asked Mr. Sebra if he had.

Mr. Sebra replied that he had not but said using the Steptoe's Overlay District as an example that there were already provisions for signs in that area and the language stating that LED signs required a conditional use permit could be added.

June 13, 2011

Town Attorney Stamm advised that it would be subject to challenge because one individual would complain that someone two doors down was allowed to have an LED sign and he wasn't for whatever reason. Mr. Stamm said that this method would place too much subjective as opposed to objective behavior.

Mr. Sebra stated that conditional use permits generally related to a land use that could be noisy, produce a lot of dust, or anything that was not typical for that zoning use. Mr. Sebra said that they were used when things were a little out of the ordinary and public input was needed. Mr. Sebra added that there was a public hearing so that adjacent property owners could voice their opinions.

Commission Member Bonner commented that there also seemed to be issues with light brightness. Mr. Bonner said that suppose the drugstore and Foxy Clothing Store were apartments and George Noblett put up a flashing sign across the street that shined directly into those apartment windows. Mr. Bonner recalled when Main Street had a lot of neon signs during the 50's and 60's. Mr. Bonner stated that they had them at the car dealerships and People's Drug Store had one. Mr. Bonner said that he felt that they were something that the Town had to allow but wondered how to keep them under control and unison. Mr. Bonner noted that the Planning Commission had accomplished this with placing restrictions on regular signs on buildings by limiting square footage no matter what the the size of the building was.

Mr. Sebra stated that he thought that it was important to recognize the distinction between LED signs, neon signs, and other signs that utilize lights. Mr. Sebra said that there could be regulations for each category.

Vice-Chair Bouslough asked if any other Commission Member had a comment.

Commission Member Gardner stated that she felt that LED signs should be addressed since issues had already arisen. Ms. Gardner agreed that it would be difficult to ban any type of LED lights mainly because incandescent light bulbs were going to be illegal in a year. Ms. Gardner felt that they should concentrate on regulating motion and flashing.

Vice-Chair Bouslough added size as well.

Commission Member Gardner agreed but said that the Planning Commission should not concentrate on a particular material because it would be difficult to do.

June 13, 2011

Vice-Chair Bouslough advised that it seemed to be the consensus of the Planning Commission to be proactive since one issue had already occurred and there was a chance for re-occurrence.

Town Attorney Stamm asked what about the motion LED lights that the Town used for holiday decorating.

Mr. Sebra asked Mr. Stamm when a string of lights on a bush defined a sign.

Town Attorney Stamm replied when they spelled Merry Christmas.

Mr. Sebra advised that the other side of the table always had to be considered when revising ordinances. Mr. Sebra said that he felt that it would be a good idea for them to define the different types of possibilities but he also felt that the flashing or motion was more of a distraction for drivers. Mr. Sebra said that the restriction should be geared more toward movement, with just texting, no fireworks, etc. Mr. Sebra stated that they also had to deal with the illumination of signs when light was projected into a public place including the highway or a private place.

Town Attorney Stamm advised that a nuisance ordinance was in place that would take care of someone shining a spotlight into a neighbor's window just to be annoying.

Vice-Chair Bouslough suggested that Mr. Sebra draft language on the topic so that the Planning Commission could wordsmith it and then see where they needed to go from there.

Mr. Sebra replied that would be the next step but asked if they wanted him to focus on the entire Town or a specific zoning district first.

Commission Member Gardner referred to Leesburg's ordinance and read that in the historical district the Board of Architectural Review may approve neon signage for buildings where the use of historically documented neon was previously used and shall be based upon design guidelines. Ms. Gardner asked if there were design guidelines for the Steptoe's area.

Mr. Sebra said that the Town did not because they did not have an Architectural Review Board.

Town Attorney Stamm suggested that the Planning Commission zone in on the Steptoe's area for now.

Vice-Chair Bouslough agreed.

June 13, 2011

Town Attorney Stamm stated that they could start by defining LED and Neon lights and then go into their use in Steptoe's District and what would be historically permitted like for the banks but they could also limit LED or neon lights so that they had to be constant and not scroll in that area.

Commission Member Gardner stated that she thought that Leesburg's ordinance would be a good place for them to start. Ms. Gardner advised that however they prohibited electronic sign boards in their historic district whereas she would be more inclined to allow them but limit them to none scrolling or flashing. Ms. Gardner said that she felt that they had to move away from saying LED and towards electronic message board because that way it didn't matter what the actual light was. Ms. Gardner said that scrolling didn't bother her as much as the flashing and animation did.

Town Attorney Stamm advised that a lot of people had said that scrolling was distracting drivers and causing the fatal accidents.

Commission Member Gardner asked if they were referring to signs like CVS and Walgreens had.

Zoning Administrator/Planning Director Sebra said that he would be happy to get started on this.

#### B. Revision of By-Laws

Zoning Administrator/Planning Director Sebra advised that he just wanted to include in the agenda that the by-laws had been revised and that each Commission Member had received a copy of those revisions.

### **8. New Business**

#### A. Advertise for New Commission Member

Zoning Administrator/Planning Director Sebra stated that he set the deadline for letters of interest to be received by July 6<sup>th</sup>. Mr. Sebra stated that he would include those letters in the next Planning Commission packet for review and then at the next meeting Commission Members make their recommendations.

Commission Member Bonner stated that at a previous meeting they recommended Commission Member Gardner for reappointment in September per the advice of the Town Attorney. Mr. Bonner said that since that recommendation had already been made he did not feel that her position should be advertised.

June 13, 2011

Mr. Sebra replied that the advertisement would only deal with vacancies but noted that Council had not taken any action on the motion that the Planning Commission had made in reference to Ms. Gardner's reappointment.

Town Attorney Stamm advised Planning Commission Members that they might want to send that recommendation to Council again.

Mr. Sebra advised that the Planning Commission had already done what they had to do and he would make sure that it was done at the Council level.

Commission Member Bonner said that it passed at the last meeting with a two- two vote and the Mayor broke the tie.

Town Attorney Stamm replied that was for advertising.

Commission Member Bonner asked Town Attorney Stamm what he had suggested to be brought up at the next Council meeting.

Town Attorney Stamm replied the fact that the Planning Commission had nominated Ms. Gardner for reappointment and that Council had not taken action.

Commission Member Bonner asked if Council was supposed to take action that far in advance.

Town Attorney Stamm replied that they didn't have to.

Commission Member Gardner asked theoretically why her position would not have to be advertised when her term ended.

Town Attorney Stamm said that because she would only have to be sworn back in when her term expired. Mr. Stamm added that was the point.

Commission Member Reedy jokingly advised Ms. Gardner that she was stuck with them so leave it alone for now.

Commission Member Gardner said that if her position was advertised, she would reapply and if there was someone else who was better than her, fantastic, and if not than she would be back on.

Town Attorney Stamm advised that Mr. Sebra had said that he would get it on Council's agenda.

#### B. Watershed Study Grant Application Submitted

June 13, 2011

Vice-Chair Bouslough stated that Zoning Administrator/Planning Director Sebra had put all of the information together for the grant and he thanked him for all of the work that it entailed. Mr. Bouslough noted that the grant was going to the National Fish and Wildlife Foundation and asked if this grant would be state money.

Mr. Sebra replied that it was actually federal money.

Mr. Bouslough asked where the matching contributions would come from.

Mr. Sebra replied that it came from several different arenas because the Town had partnered with The Friends of Rappahannock and The Center for Watershed Protection who had ways of producing matching funding even though it was not necessarily in cash such as volunteer hours. Mr. Sebra advised that if the Town did get the funding there would have to be quite a few people on the ground doing stream assessments and locating potential dangerous situations to the environment which would take a lot of hours. Mr. Sebra said that the volunteers would tag a dollar figure to their hours which could be counted as part of the matching funds.

Vice-Chair Bouslough stated that there would be a combination of volunteer work and some money.

Mr. Sebra said that was correct and noted that there were some things that the Town was doing regarding the Tech Park expansion that could be counted towards this as well such as surveys. Mr. Sebra advised that The Friends of the Rappahannock had sources of funding available through what they call the Livable Neighborhood Program which could be used. Mr. Sebra noted that there would also be a volunteer clean-up event held.

Vice-Chair Bouslough asked what type of time line was the Town looking at in regards to the success of it.

Mr. Sebra replied that he expected to hear something by October in regards to whether or not the Town was rewarded the grant. Mr. Sebra stated that in his conversations with the Center for Watershed Protection was that because of the volume of applications that they receive and in order to try to spread the rewards out as much as they could, they would usually cut the application amounts. Mr. Sebra said that even though the Town had applied for \$100,000, they would not get that much.

Vice-Chair Bouslough stated that it was a job well done.

Commission Member Reedy agreed.

June 13, 2011

Commission Member Bonner asked Mr. Sebra when he thought the Steptoe's District would be extended again.

Mr. Sebra stated that if Mr. Bonner was asking in regards to improvement work, he did not know because he had not been involved in any conversations that were specific. Mr. Sebra said that it had come up at Council Committee level a while back at a time when the grant was running out and the Town had the opportunity to reapply for more money to extend the area but the decision was not to do that right then for obvious reasons.

Commission Member Gardner asked Mr. Sebra out of curiosity what type of reporting did he have to do for a federal grant.

Mr. Sebra replied that this was a planning grant so there were not a whole lot of testing results involved but it was more like here are our goals and here is what has been accomplished. Mr. Sebra advised that there was some recording that had to be done but it was not extensive. Mr. Sebra stated that regarding this project, the Town did not have to put out any real cash. Mr. Sebra said that in the whole downtown area, in the Steptoe's District, he could count on one hand how many best management practices there were because it was so old. Mr. Sebra noted that when it was developed there was no requirement to do storm water management but it was a requirement now in redevelopment. Mr. Sebra advised that there were new practices coming and a lot of vying going on about the best way to do this which was gearing towards low impact development. Mr. Sebra said that this project was a great opportunity with the Friends of the Rappahannock because they were trying to focus some of their energy on this portion of the Rappahannock River as well as in the Fredericksburg area.

Vice-Chair Bouslough thought it was a great package and hoped that something would come of it and noted that it would be a feather in Mr. Sebra's cap if it did.

Commission Member Gardner said that it was a great partnership and said that she applauded Mr. Sebra for taking it on.

Vice-Chair Bouslough commented that it was well done.

### C. Zoning Log Report

A copy of the zoning log report was included in each Commission Member's packet.

## **9. Adjournment**

June 13, 2011

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

Meeting adjourned at 6:40 PM

Prepared by:

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Joan N. Kent

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Denis Bouslough, Vice-Chair