

**ROUND HILL TOWN COUNCIL
REGULAR MEETING MINUTES
December 17, 2009**

A regular meeting of the Round Hill Town Council was held in the Town Office, 23 Main Street, Round Hill, Virginia, on Thursday, December 17, 2009.

Council Present

John Heyner, Mayor
Mary Anne Graham, Vice-Mayor
Daniel Botsch
Janet Heston (arrived at 7:39 p.m.)
Mike Hummel
Chris Prack
Scott Ramsey

Staff Present

John Barkley, Town Administrator
Maureen Gilmore, Town Attorney
Patsy Tappan, Recorder

Absent

Others Present

Deputy Matt Bressler, L.C. Sheriff's Dept.
3 Citizens

Attachments

- I. Agenda – December 17, 2009
- II. Town Council Meeting Minutes:
 - a. September 3, 2009 - Public Hearing
- III. Letter from Leslie Carter Silver of Silver, McGowan & Silver Re: Water Account 29 E. Loudoun Street, dated November 17, 2009
- IV. Letter from Kevin Rogers of Oak Hill Properties Re: Water Taps, received December 9, 2009
- V. Town Administrator's Weekly Reports, dated November 23, 2009 - December 14, 2009
- VI. Town Planner/Zoning Administrator Report, dated December 16, 2009
- VII. Utility Operations, Public Facilities & Projects Committee Meeting Notes, dated December 11, 2009
- VIII. Letter from Mark Nelis, P.C. Re: Stoneleigh Golf, dated November 13, 2009
- IX. Re: Western Loudoun Sheriff's Substation:
 - a. Draft Letter to Melissa Poole, LEED of Loudoun County Office of Capital Construction
 - b. Draft Water and Sewer Agreement
- X. Draft Utility Construction Agreement for West Lake
- XI. Letter from Russell Jackson of Peed & Bortz Re: WWTP BNR Upgrade, dated December 17, 2009

IN RE: CALL TO ORDER

Mayor Heyner called the meeting to order at 7:33 p.m.

IN RE: PLEDGE OF ALLEGIANCE

Vice Mayor Graham led Council members and attendees in the Pledge of Allegiance.

IN RE: COMMUNITY POLICING

Deputy Matt Bressler arrived at 7:52 p.m. and apologized for being late to the meeting. He reported that the main topic for the evening was the burglary that had occurred in the Town office building. He complimented the Town on their extensive cleanup effort. He explained that the accounts in the papers were accurate; an individual was very unhappy with the Sheriff's office, and he had broken into Sheriff's vehicles in the parking lot first, and when he was unable to access the weapons in the vehicles, he had entered the rear of the building and started vandalizing the Town's offices. Apparently, he believed that the entire building housed the Sheriff's office, so he proceeded to damage the downstairs portion of the building prior to heading upstairs to the Sheriff's offices. The individual is now in custody, and he was out on probation for a prior offense, so he will be required to serve his "back time" along with any time he is sentenced for this offense.

Councilperson Ramsey asked if the indication was that this individual was directing his anger at the Sheriff's office, rather than at the Town of Round Hill.

Deputy Bressler responded, "Correct. He thought it was just one big building for the Sheriff's office." In addition to the damage done to the Town's offices, the perpetrator damaged the systems in the Communications Closet and left his blood and fingerprints all over the building.

Deputy Bressler noted that biggest issue he faced stemmed from speeding around the area. He asked if the Council members had noted more of a presence in the area with the Smart trailer and the deputies clocking vehicles with radar.

Mayor Heyner responded that the trailer helped, however he felt that residents who saw the trailer every day became "immune" to it.

Councilperson Ramsey suggested that when the trailer was placed again, that they should have it directed at drivers coming into Town, to encourage them to slow down before they reach the Downtown area. He offered to allow the trailer to be parked on the gravel shoulder in front of his house when it comes out of the shop.

Mr. Barkley noted that the Community Policing program was in the County's budget discussions for next year.

Deputy Bressler responded that he had met with the Sheriff and was told that the Community Policing staff was being looked at for cuts. The Sheriff stated that he believed that they were already understaffed, with .75 deputies per 1000 residents. Currently, there were only two deputy positions in western Loudoun, his position and Deputy Vanessa Mertz-Myers' position. The Sheriff will be looking closely at all full time employee positions, but particularly

at DARE, K-9, Accident Reconstruction and SWAT. There were consultants evaluating the overtime numbers, because they do not have enough deputies. He suggested that the Council members send e-mails of support to Mr. Burton.

IN RE: PUBLIC COMMENTS

There were no public comments.

IN RE: APPROVAL OF AGENDA

Vice Mayor Mary Anne Graham moved approval of the agenda as submitted with removal of the November 19, 2009 Regular Meeting Minutes. Councilperson Daniel Botsch seconded the motion.

Motion to approve the agenda as amended was approved by unanimous voice vote of the Council members present, 5-0-0-1 (Councilperson Janet Heston arrived after the vote).

IN RE: BUSINESS

1. Request for Waiver of Outstanding Water and Sewer User Fees: 29 E. Loudoun Street

Mr. Barkley advised the Council that he had invited representatives of the property to attend the meeting, but he did not receive a response.

Ivan Clark of 22 E. Loudoun Street identified himself as the caretaker of 29 E. Loudoun Street. He explained that on October 31, 2009, he was informed by the tenant that the water bill was excessive. He had suggested that she contact the Town of Round Hill, and the tenant had responded that she did contact the Town, and was told to check the commodes for leakage. He asked the tenant if she had checked to see if there was water in the basement, and she checked and advised him that there were 4 inches of water in the basement. Mr. Clark stated that he cut the water off on that Saturday, so the tenant did not have water until the following Monday, when a plumber could come and repair the leak. The tenant told him that the total water usage was almost 35,000 gallons and he was surprised that the Town had not informed her that she was using excessive water.

Councilperson Ramsey commented that the water usage had doubled.

Mr. Clark noted that the cellar was not used, and the water was seeping into the ground, rather than into the sewer system. He stated that the attorneys felt that it was not voluntary usage, and the owners are giving this tenant a discount on the rent because she is "a hard luck case." He stated that they hoped the Town would consider forgiving her for the water.

Councilperson Ramsey asked if the account was current.

Mr. Barkley responded that the account had not been paid, and normally the Town requires full credit on the account prior to consideration of a waiver. The Town was asking for \$510.00, \$340.00 of which was water charges.

Councilperson Ramsey advised Mr. Clark of the Town's policy requiring the account to be current in order for the Council to consider granting a waiver.

Mr. Clark stated that the tenant did not have the money to pay the bill.

Mayor Heyner noted that if the leak resulted from faulty equipment, then he would assume that this would be the landlord's responsibility to pay this amount.

Mr. Clark disagreed and stated that it was the tenant's responsibility to inform the landlord that there was a problem. He noted that even though he was the property manager, he did not go into the house daily to check on it.

Councilperson Ramsey noted that if the tenant did not pay the bill, then the landlord would be responsible.

Mayor Heyner advised Mr. Clark that the bill need to be brought current in order for the Town to consider a waiver, and they would only consider a waiver of the sewer portion of the bill, because the water was used.

Mr. Clark asked for the amount that was currently due.

Mr. Barkley advised him that he would provide a copy of the most recent bill for his records. The outstanding balance on the account is \$1,159.09.

Councilperson Ramsey noted that the account was over 60 days past due.

Councilperson Prack commented that it appeared that there had been a running balance since April, 2009.

Councilperson Ramsey suggested that the tenant may have made arrangements with the Town to make partial payments. They would have to check with Debbie Kreuger, the Utility Billing Administrator, to verify if the arrangements had been made and adhered to.

Mr. Barkley clarified that the letter from Ms. Silver had requested a waiver of the water and sewer charges for the leak period only, which did not jive with the Town's policy of forgiving only the sewer portion of the bill.

Councilperson Ramsey advised Mr. Clark that the Town would only consider reducing the sewer charges to the rate of the typical charges, if the account becomes current. He added that if the account had a payment plan, and the tenant was current based on that plan, then they may be able to consider the waiver even if there were outstanding charges on the account, but they would need to verify that information with Ms. Krueger. He added that if this person was

making a good faith effort to fulfill her obligation on a payment plan, then that would be good enough for him to consider a waiver even if the account had not been paid in full.

Mr. Barkley asked if the Council would consider a conditional waiver, based on Ms. Krueger's feedback regarding the status of the account.

Mayor Heyner responded that they would need the average sewer charges to consider the conditional waiver.

Mr. Barkley advised the Council that this customer's average sewer usage was \$121.66 per month.

Councilperson Scott Ramsey moved to authorize the Town Administrator to waive sewer charges for 29 E. Loudoun Street, up to the typical amount of usage rate prior to the leak, as long as the determination is made that the account is in good standing with the Town as far as a payment plan is concerned. Vice Mayor Mary Anne Graham seconded the motion.

The motion to approve the conditional waiver of partial sewer charges for 29 E. Loudoun Street, passed by a voice vote of Council present, 6-0-0-0, the votes being recorded as shown below:

<u>MEMBER:</u>	<u>VOTE:</u>
Dan Botsch	Aye
Mike Hummel	Aye
Janet Heston	Aye
Mary Anne Graham	Aye
Scott Ramsey	Aye
Chris Prack	Aye

2. Letter from Oak Hill Properties: Annual Sewer Tap Allocation Payments

Mayor Heyner read the letter from Kevin Rogers, President of Oak Hill Properties into the record, which is on file in the Town of Round Hill offices.

Mr. Barkley advised the Council that the Consent Decree for this property was very clear that on January 15th of each year, Oak Hill had to pay for 50 taps. He stated that as far as he was concerned, the second point in the letter "We were granted 333 by agreement." is irrelevant.

Mayor Heyner, the Council members, Ms. Gilmore and Mr. Barkley discussed the contents of the letter and its ramifications. The consensus was Oak Hill was required by the Consent Decree to pay for a minimum of 50 taps per year, but if they paid for more than 50 in any given year, they could credit the overage into future years. There had been a point where Oak Hill had built more houses than they had paid for, and it would be several years before they would reach the point where they would catch up with payment for the number of taps that had been built.

Mr. Barkley distributed a copy of the payment history for Oak Hill Properties to the Council members.

Ms. Gilmore noted that Paragraph 15 of the Consent Decree stated, "...no later than January 15th of each year hereafter, RHI shall pay availability fees for at least 50 additional availability fees. If RHI, in this option, paid more than the required number of availability fees in a year, it may credit the excess fees paid..." Ms. Gilmore confirmed that after the first year, which required payment for 75 availability fees, each year there would be a minimum of 50 taps paid for.

Councilperson Ramsey stated that the letter is claiming that Oak Hill had paid for 48 taps more than the minimum, and asked if the payment history reflected that overage.

Mayor Heyner noted that, according to the payment history, it appeared that Oak Hill had paid for 75 fees in the first year, and 50 fees for each year thereafter. He added that Oak Hill could have built every single home, and they would still be required to pay for 50 taps every year.

Ms. Gilmore concurred and explained that the Consent Decree included a "guaranteed payment paragraph."

Councilperson Hummel asked for the consequences if Oak Hill did not make this payment.

Ms. Gilmore responded that the Town would have to make a demand for payment.

Mr. Barkley asked if there was still a mediator involved in this project.

Ms. Gilmore responded that the Consent Decree also required that "all disagreements shall be first referred to mediation."

The Council members continued to discuss this issue and in conclusion Mayor Heyner asked Mr. Barkley to draft a letter for his review with a copy to Ms. Gilmore. Mayor Heyner also asked for Mr. Barkley to advise Kevin Rogers that they were drafting a response to his letter. The Council members concurred with the suggested plan.

3. Western Loudoun Sheriff's Substation: Draft Water and Sewer Service Agreement

Vice Mayor Graham noted that Ms. Gilmore had drafted the Agreement and the Utility Committee had provided recommended changes, which had been incorporated into the Agreement and the draft transmittal letter.

Councilperson Ramsey noted that since this was a draft Agreement, he did not believe it was necessary for the Council to vote on it, they just needed a consensus.

Mayor Heyner asked if the Council members were in agreement with the transmittal letter.

Vice Mayor Graham noted that they did not want to provide a "will serve" letter.

Ms. Gilmore disagreed, stating that the letter did appear to be a "will serve" letter, because of the wording "intends to provide..."

Councilperson Ramsey noted that the letter states that the Town intends to provide water and sewer service upon execution of a Water and Sewer Agreement. He stated that, in his opinion, this letter allows the applicant to proceed through the Special Exception process.

Ms. Gilmore suggested that they flip the wording of the clause to, ***"Upon execution of the Water and Sewer Agreement and payment of applicable availability fees, the Town of Round Hill intends to provide dedicated water and sewer service to the proposed Western Loudoun Sheriff's Substation."***

Mayor Heyner and the Council members discussed the fact that Loudoun County needed to know if the Town of Round Hill would provide water and sewer services before they proceed through the Special Exception process. It appeared that changing the wording of the previous clause would have the desired effect on the impact of the letter, but they should also have the letter be contingent on the approval of the Special Exception.

Ms. Gilmore advised the Council that once they say "we will serve you" they would be committed to providing that service. Loudoun County may decide not to use those services, but the Town would be saying that it would reserve the capacity for that facility.

Mayor Heyner stated that he was concerned that the letter did not, in any way, approve of the application going through the Special Exception process, because the Town may come out in opposition of the project during the Special Exception process.

Ms. Gilmore suggested that if that was the case, the letter should be changed to read, "...the Town has the capacity to provide..." rather than saying that "...the Town intends to provide..."

Mr. Barkley commented that, from a policy standpoint, the Town Council needed to decide that it would be a good idea to provide water and sewer service prior to forwarding the letter and the Agreement.

Vice Mayor Graham stated that the Utility Committee had raised the question, "If we offer this Agreement and they do not build for 10 years, what happens if we want to give those taps to another developer?"

Ms. Gilmore responded that they could add a clause that limited the amount of time or requiring higher fees if over time the fees increase.

Mayor Heyner and the Council members discussed the issues, including:

- the possibility of the project dragging on
- requiring payment of the applicable fees at the time of the Agreement
- the inference in the letter that the Town is expecting the applicant to upgrade the Route 719 lift station
- clarification of the additional fees
- what classifies default
- one year period or two year period

Mayor Heyner suggested that they send the Agreement back to the Utility Committee.

Councilperson Hummel asked if the Route 719 lift station needed to be upgraded before they could handle this project.

Councilperson Ramsey responded that the Town needed to upgrade the Route 719 lift station to handle several projects on that side of Town, including West Lake and Lakeview Estates. He added that the Town currently had reserve capacity in this area, but if this Substation is built, it would remove that reserve.

Mr. Barkley stated that the fees collected from these projects would pay for the upgrade to the lift station.

Ms. Gilmore stated that she would work with Mr. Barkley to redraft the letter. She stated that she felt there were good points in the letter, but it was not really clear as to what the Town was committing to in the letter and what the County would be responsible for. She added that she had would suggest including language regarding the County being responsible for a proportionate share of the cost of construction of that lift station.

Councilperson Ramsey stated that the County's share would be approximately 1/18th of the total project.

Mr. Barkley added that the percentage equated to approximately \$18,000 of a \$300,000 project.

Councilperson Hummel suggested that they include an explanation of the costs in the letter.

Ms. Gilmore commented that the County was only interested in what they had to do to get service, and what it would cost. She added that the number may be different, depending on when the service is implemented.

Mayor Heyner and the Council members discussed the following issues:

- prevailing rates
- following the Ordinance
- Site Plan approval will come from Loudoun County rather than the Town
- surety
- default clause
- Paragraph 5 of the Agreement - wells and what they provide - dedicate a well location or drill the well and sign it over to the Town
- counter offer - need items to negotiate out
- fairness to the County and to the Town of Round Hill
- the County could drill their own well and use it
- exploration rights would be a fair request

Ms. Gilmore offered to prepare a revised letter in advance of the next Utility Committee meeting, and attend the meeting to answer questions.

Mayor Heyner stated that since he was the signatory, he felt that the County would look at him as a representative of the Town, not as the Chairman of the Board of the Utility. He added that they needed to make it clear that the letter and Agreement were only related to the utility, not the Land Use.

Ms. Gilmore asked if she should include a paragraph regarding the fact that the capacity existed, but that this was not an endorsement, implied or otherwise, of this use on this site.

The Council members agreed to such a clause.

Mayor Heyner suggested that they include this Agreement as an action item on the January 21, 2010 agenda.

Councilperson Hummel suggested that they amend the agenda to move Stoneleigh as the next item.

There were no objections from the Council members.

Councilperson Mike Hummel moved to amend the agenda to move Action Item VI.3 Request for Waiver: Stoneleigh Golf & Country Club to the next item on the agenda. Councilperson Scott Ramsey seconded the motion.

The motion to amend the agenda to move Action Item VI.3 Request for Waiver: Stoneleigh Golf & Country Club to the next item on the agenda, passed by a voice vote of Council present, 6-0-0, the votes being recorded as shown below:

<u>MEMBER:</u>	<u>VOTE:</u>
Dan Botsch	Aye
Mike Hummel	Aye
Janet Heston	Aye
Mary Anne Graham	Aye
Scott Ramsey	Aye
Chris Prack	Aye

Action Item VI.3 Request for Waiver of Outstanding Water and Sewer Fees, Reimbursement of Previous Electricity Payments for Well 12, and Transfer/Ownership of Well 11: Stoneleigh Golf & Country Club

Ms. Gilmore stated that in her research, she had found that the Town records did not reveal any agreement for payment of the electric charges. The Doctrine for Voluntary Payments in Virginia says that if someone voluntarily pays another parties bills, there is no requirement for repayment. She added that the Town had switched over the service and had been paying the bills ever since. Ms. Gilmore noted that, regarding the excess utility charges, the Ordinance addresses possible waivers of sewer charges. The Utility Committee had recommended not to convey Well 11, so there was no need for an easement, and it would eliminate the need to discuss the tap transfer, which she concurred would be problematic and not recommended.

Councilperson Ramsey asked for clarification that her research did not result in any obligation for the Town, since that was what the Council had been waiting to hear about.

Ms. Gilmore responded, "No." She added that she had looked at the land records, and she found that Eric Zimmerman, the previous Town Attorney, had also researched the land records and could not find any agreement.

Mark Nelis, representing Stoneleigh Golf and Country Club, stated that he had attended three previous Utility Committee meetings and he had not heard any discussion about this issue, and stated that he would not have attended the meeting that evening if he knew the Utility Committee had decided to recommend against transfer of Well 11.

Councilperson Ramsey stated that the Utility Committee had discussed the Town's need for future use of this well, and staff members had raised their objections to giving up this well. He added that the discussion at the Utility Committee was limited to whether or not Well 11 was necessary to the system or not.

Mr. Nelis stated that when it was first discovered that Stoneleigh had been inadvertently paying this bill, it was the Town's Chief of Utilities who had suggested the idea of transferring Well 11 to Stoneleigh.

Councilperson Ramsey stated that apparently, Mr. Wolverton had changed his mind about the viability of the well. He added that perhaps, at that time, they had not seen the declining yield in some of the other wells that they had seen in the last few years.

Mr. Nelis stated that he did not want to debate the issue. He and his client understand that there is no statute of limitations for them to pursue this issue. However, it was his understanding that the sale of the water from Well 12 was to be used to pay the electric bill, which his client paid for 12 years. "It just isn't fair." He stated that he was not going to sue the Town, but he asked how the Council members would feel if someone voluntarily paid their bills. He reminded the Council members that the program of having wells on the Stoneleigh property started with a partnership between Stoneleigh and the Town. He added that realized that the Ordinance would not allow the Town Council to forgive the water bill, but he would like to see the Town forgive the \$11,000 water bill in exchange for the electric payments that had been made.

Councilperson Ramsey stated that the issues being presented by Mr. Nelis were separate issues that the Town needed to deal with separately. 1) Well 11: they had explored the possibility of giving the well to the users; 2) Electric bill: they had referred the matter to the Town Attorney; and 3) Water/Sewer Bill: Policy dictates how the Town handles requests for waivers. The Utility Committee only has purview over engineering issues, rather than billing issues. Councilperson Ramsey commented that if the policy could be followed, he would be in favor of granting a waiver for the sewer fees. He added that he felt that the power bill should be discussed separately; that it was not at all related to the water bill.

Mr. Nelis responded that he believed that the sewer fees had already been removed from the bill.

Mayor Heyner stated that if there were going to consider the issues separately, then they had a problem in that only the 2005 electric bills could be presented, and he did not believe they had enough data to know the total amount that had been paid. He added, in fairness, they did not pay invoices that were the Town's responsibility. He wondered if the easy way to deal with the issue was to "call it a wash" and walk away. The request from Mr. Nelis was "as neighbors and out of fairness." He stated that he believed it was a valid request to make these issues "go away" by wiping the slate clean and being done with it.

Mr. Barkley advised the Council that the outstanding water bill was \$11,500.00, which he did not believe included any sewer charges or penalties.

Councilperson Prack stated that they had discussed this issue at the September or October Utility Committee meeting, and it appeared that the Town had requested that the electric service for the well be turned over to them, but the letter went without response.

Mr. Nelis responded that the bill was assigned to Billy Casper Design Management, who paid the bill out of a Stoneleigh Golf Course account.

Councilperson Ramsey asked Mayor Heyner if he would make the argument, out of moral standard, that they should "call it a wash."

Mayor Heyner responded, "That's my argument, but I would like to hear more discussion on it."

Councilperson Botsch asked for clarification that there was no debate that the Town should have been paying the electric bill for the well.

Councilperson Ramsey responded that if the well had been transferred over, then the Town would have been paying the electric bill from the beginning. As Ms. Gilmore summarized for the Council, the Town has no legal obligation, but it may have a moral obligation.

Vice Mayor Graham stated that this had been dragging on forever and she would like to see it resolved.

Mayor John Heyner moved for the Town to waive the water charges that are outstanding in relation to the leak at the Stoneleigh Maintenance Barn, in the amount of \$11,500, as compensation for some unknown amount that the Town should have been paying for electric service after Well 12 was transferred to the Town. Vice Mayor Mary Anne Graham seconded the motion.

Ms. Gilmore and Mr. Barkley suggested language that would require some type of waiver of claim for any additional sums.

Councilperson Scott Ramsey offered a Friendly Amendment to include the following language: upon receipt of a letter from the Stoneleigh Group waiving all future interests in payment of said electric charges for Well 12.

Mayor Heyner and Vice Mayor Graham agreed to the Friendly Amendment. The Amended Motion read: Mayor John Heyner moved for the Town to waive the water charges that are outstanding in relation to the leak at the Stoneleigh Maintenance Barn, in the amount of \$11,500, as compensation for some unknown amount that the Town should have been paying for electric service after Well 12 was transferred to the Town upon receipt of a letter from the Stoneleigh Group waiving all future interests in payment of said electric charges for Well 12. Vice Mayor Mary Anne Graham seconded the motion.

The motion to waive the water charges that are outstanding in relation to the leak at the Stoneleigh Maintenance Barn, in the amount of \$11,500, as compensation for some unknown amount that the Town should have been paying for electric service after Well 12 was transferred to the Town upon receipt of a letter from the Stoneleigh Group waiving all future interests in payment of said electric charges for Well 12, passed by a unanimous voice vote of the Council present, 6-0-0-0, the votes being recorded as shown below:

<u>MEMBER:</u>	<u>VOTE:</u>
Dan Botsch	Aye
Mike Hummel	Aye
Janet Heston	Aye
Mary Anne Graham	Aye
Scott Ramsey	Aye
Chris Prack	Aye

Councilperson Botsch stepped out of the room at 9:18 p.m.

4. West Lake Subdivision: Draft Utility Construction Agreement

The draft Agreement was distributed to the Town Council members for their review. Vice Mayor Graham outlined the Agreement, which required RHI to design and construct a Water Treatment Facility with a minimum capacity to treat Wells 7A, 7B and 27A.

Ms. Gilmore complimented the Utility Committee for discussing this Agreement at length, because it had taken on a whole new direction with the Committee's input.

Mayor Heyner asked Ms. Gilmore, since they were going to require RHI to construct this facility, what incentive would RHI have to build it. He asked for clarification of RHI's requirements in the Consent Decree.

Councilperson Ramsey responded that originally, the Agreement called for the Town to handle part of the project and for RHI to handle part of the project, but the Town has since decided that it does not want to get involved at all. He added that they were considering presenting this Agreement, in which the Town "may" and RHI "shall" do several things, and the Town is not bound to do anything at all. Councilperson Ramsey added that RHI might as well stick with the terms of the Consent Decree and not consider any other agreements without some commensurate bindings on the Town.

Vice Mayor Graham stated that the only thing that the Town had committed to was to have its engineers provide all of the plans.

Councilperson Hummel asked if RHI built the facility, if they would also bond it.

Councilperson Ramsey responded that the Consent Decree was relatively vague, and the Agreement will firm up some of the vague issues.

Mayor Heyner suggested that RHI may not want to clarify the issues, and just operate under the ambiguity of the Consent Decree.

Vice Mayor Graham asked Ms. Gilmore if RHI could argue that the Town was under the obligation to design and build this facility.

Ms. Gilmore responded, "No, because we have negotiated the terms of this Agreement over the years and they never came back with agreeing to the terms. You can try, but you take that risk."

Councilperson Ramsey stated that if the Town told RHI that they should construct the facility themselves, and in order to do that, RHI would have to sign the Agreement, he did not feel that RHI would "come rushing with its pen."

Ms. Gilmore noted that it had been stated before that "you can ask," but she asked what the Town expected to achieve with this Agreement, since they had really come "full circle."

Vice Mayor Graham responded that the engineers had advised the Town that they really did not need the facility, except for the projects that RHI is building.

Councilperson Ramsey added that the water could be used around Town.

Ms. Gilmore stated that she felt it would be worth the effort to get an agreement in place, since it was nowhere in the Consent Decree. She added that it would be worth it for the Town to be able to install pipes while the trench is open, if the Town chose to do that.

Councilperson Ramsey suggested that they could send the Agreement to RHI, but felt they may be wasting their time until they start talking about what the Town could do for them in return.

Ms. Gilmore suggested that they see how RHI reacts. She added that during the meeting she attended with RHI, there was an assumption that the Town was going to build this facility.

Councilperson Ramsey responded that it was also his feeling going into that meeting that the Town was still going to try to fix that. It was really only after talking to the engineers did they find out that they really did not need to treat all of the wells, so the treatment plans changed.

Councilperson Botsch returned at 9:28 p.m.

Ms. Gilmore suggested that they could ask, but not to be surprised if RHI said no.

Vice Mayor Graham asked what RHI could do in retaliation when they find out the Town is not willing to commit financially to this project.

Ms. Gilmore responded, "You can't afford it. You cannot spend public money that the Town doesn't have."

Vice Mayor Graham asked, "What if they come back and say you can afford it?"

Mayor Heyner responded that it did not matter, since there was no agreement. The Town tried to enter into an agreement with RHI for years and they did not negotiate in good faith.

Ms. Gilmore stated that she expected that the Town would receive claims that RHI assumed that the Town would build this facility.

Vice Mayor Graham stated that there were two versions of the Utility Agreement "floating around" for a long time.

Councilperson Ramsey added that RHI had ample opportunities over the year to lock into an agreement.

Ms. Gilmore stated, "They do have an obligation, but the Town Council does not."

Mayor Heyner suggested that they look at the Agreement and decide if there is anything that is so onerous that RHI will disregard the Agreement based on that one particular clause.

Ms. Gilmore responded that the Agreement formalizes what RHI knows it has to do.

Mayor Heyner agreed that it would make the agreement legally binding.

Ms. Gilmore added that she felt it was worth it to offer RHI the agreement. She added it would certainly be a lot less expensive for the Town to install pipes while the ground is open. She stated that the final paragraph (7) is binding on their successors and assigns.

Mayor Heyner asked if they should a Memorandum of Understanding instead of the Utility Construction Agreement.

Ms. Gilmore responded that a Memorandum of Understanding, in legal terms, was normally what two governmental agencies would use to enter into an agreement, such as with another Town or municipality.

Mayor Heyner commented that he would like to move forward on this issue, but he did not believe that RHI was going to sign this Agreement, but rather it would infuriate the representatives.

Mayor Heyner and the Council members discussed the ramifications of the Agreement, including the following:

- the number of years the negotiations had gone on
- the reasons why RHI had not entered into an agreement
- sitting down with both parties to discuss all aspects of the Agreement
- if they should include consideration from the Town in exchange for RHI building the facility

Mr. Barkley noted that the Town could merely respond to RHI's letter regarding availability fees, which the Council had discussed in V.2 of the agenda.

Councilperson Ramsey commented that RHI was still going through Site Plan approval for this project, and they may need some cooperation from the Town to have that go forward.

Ms. Gilmore noted that RHI was also responsible for obtaining a number of easements, which they had not done. There was a document that RHI had asked about, and it turned out that the attorney had had it for over a year, and they had not returned the document with signatures.

Councilperson Prack asked if they should table this issue.

Mayor Heyner responded that he did not want to table the matter, because there was another subdivision that this impacted, and he wanted to take that into consideration.

Councilperson Ramsey suggested that presenting the Agreement would open up the possibility of endless rounds of negotiations. He suggested that they should just call RHI that they were not going to build the facility...period.

Vice Mayor Graham suggested that the phone call should be memorialized in a written document.

Ms. Gilmore asked what the basis for abandoning the whole idea of building this facility.

Councilperson Ramsey responded that they no longer needed to treat Town wells with this facility. They may need to leave provisions for the facility in the future, but as of now, they have no plans for treating wells with this facility.

Mayor Heyner added that the Town had to make budgetary decisions regarding projects, and they had decided not to fund this project.

Ms. Gilmore suggested that they offer a letter stating, "...it is our understanding based on our previous discussions..."

Vice Mayor Graham commented that when the Utility Committee had discussed this Agreement, the members were very specific about the responsibilities for design, building, maintenance, etc.

Councilperson Prack asked for the reason behind having this item on the agenda that evening.

Mayor Heyner responded that it was in the best interest of both parties to come to some consensus on the details, and this Agreement would move them closer to that end.

Councilperson Heston asked if there was a timeline for the Consent Decree.

Ms. Gilmore responded that there was a reason for the Consent Decree...

Councilperson Ramsey added that the timeline might have been for RHI to bring wells on-line, and the wells that were supposed to be treated by this facility contributed to their allotment.

Mayor Heyner added that RHI was getting pretty close to its allotment.

Vice Mayor Graham asked if there were objections to having Ms. Gilmore draft a new letter.

Mayor Heyner responded that they were going to have Ms. Gilmore draft a letter that incorporated these ideas in a nicer way.

Councilperson Ramsey suggested that had a moral obligation to tell RHI that they had changed their minds as soon as possible.

Mayor Heyner suggested that Mr. Barkley make contact with RHI and advise them that the Town Council had decided that it was no longer the Town's intention to build this facility, and a letter to make it official, and then leave it at that.

5. Wastewater Plant BNR Project: Engineer's Update

Vice Mayor Graham commented that after the last Utility Committee meeting, Peed & Bortz had offered this update to keep the Town apprised of the status of the WWTP schedule. She noted that the engineers were not asking for a vote, they were just looking out for the Town.

Mr. Barkley explained that questions had been raised during the Utility Committee meeting so he had requested information from Mr. Jackson, the e-mail was sent in response to that request, and an excerpt of that e-mail was included in the packet.

Councilperson Ramsey noted that the bids for this project would be going out before the Council met again in January, 2010, so if they had any issues, they needed to deal with them that night.

Mr. Barkley advised the Town Council that the engineers had suggested removing a couple of items from the original design, in order to save approximately \$250,000 to \$275,000, and these items were outlined in the attachment. He added that the timeline for this project required that the advertisement of the bid be posted in December 2009, in order to receive the Certificate to Operate by December 2010.

Councilperson Ramsey commented that they had considered the options of diffused air and surface air; diffused air being the more expensive option, but in many ways, the better option. As Peed & Bortz reworked the bid alternatives, they found that the cost for the two systems was getting closer and closer together, so they recommended not to bid the surface alternative at all. Councilperson Ramsey stated that there were parts of the project, like the sludge presses, that did not need to be installed prior to receipt of the Certificate to Operate. He stated that the Council needed to have a meeting in February, to ensure that this project was started on time.

Vice Mayor Graham commented that she had wanted this item on the agenda for informational purposes only.

Mayor Heyner concluding that no action was required at this time and he called for the next item on the agenda.

IN RE: ACTION ITEMS

1. Approval of Meeting Minutes

a. September 3, 2009, Public Hearing Minutes

Mr. Barkley noted that pages 9, 11 through 13 and page 39 of the September 3, 2009 Public Hearing minutes were corrected and resubmitted by Tracy Potter, Court Reporter.

Vice Mayor Mary Anne Graham moved to approve the September 3, 2009, Public Hearing Minutes as corrected, with Councilperson Janet Heston seconding the motion.

The motion to approve the September 3, 2009, Public Hearing Minutes passed by a voice vote of Council present, 5-0-1-0, the votes being recorded as shown below:

<u>MEMBER:</u>	<u>VOTE:</u>
Dan Botsch	Aye
Mike Hummel	Aye
Janet Heston	Aye
Mary Anne Graham	Aye
Scott Ramsey	Aye
Chris Prack	Abstain

2. Amendment to Personnel Policy: Chapter VIII, "General Policies and Employee Benefit Program, Section 2, Recruitment"

Mr. Barkley distributed the revision of Section VIII, dated December 17, 2009 to the Mayor and Council members for their review.

Councilperson Dan Botsch moved to approve the amended Chapter VIII, General Policies and Employee Benefit Program, including Section 2, the Recruitment and Hiring clause. Councilperson Janet Heston seconded the motion.

The motion to approve the Chapter VIII, General Policies and Employee Benefit Program, including Section 2, the Recruitment and Hiring clause as amended, passed by a voice vote of Council present, 6-0-0-0, the votes being recorded as shown below:

<u>MEMBER:</u>	<u>VOTE:</u>
Dan Botsch	Aye
Mike Hummel	Aye
Janet Heston	Aye
Mary Anne Graham	Aye
Scott Ramsey	Aye
Chris Prack	Aye

3. Request for Waiver of Outstanding Water and Sewer Fees, Reimbursement of Previous Electricity Payments for Well 12, and Transfer/Ownership of Well 11: Stoneleigh Golf & Country Club

This item was heard earlier in the meeting.

4. Re-appointment of Kathleen Luckard to 4 year term: Round Hill Planning Commission 1/10 - 12/13

Councilperson Hummel stated that he had worked closely with Commissioner Luckard on the Planning Commission, and he felt she was a valuable member of the Commission. He added that Ms. Luckard brought a different perspective than some of the others and he felt that "her heart was in the work." Councilperson Hummel highly recommended the re-appointment of Ms. Luckard to the Planning Commission.

Councilperson Mike Hummel moved to re-appoint Kathleen Luckard to a 4 year term on the Round Hill Planning Commission from January 2010 to December 2013. Councilperson Dan Botsch seconded the motion.

The motion to reappoint Kathleen Luckard to a 4 year term on the Round Hill Planning Commission from January 2010 to December 2013 passed by a voice vote of Council present, 6-0-0-0, the votes being recorded as shown below:

<u>MEMBER:</u>	<u>VOTE:</u>
Dan Botsch	Aye
Mike Hummel	Aye
Janet Heston	Aye
Mary Anne Graham	Aye
Scott Ramsey	Aye
Chris Prack	Aye

IN RE: REPORTS

1. Town Administrator's Report

Written weekly reports dated November 23 through December 14, 2009, were included in the Council's packets.

Mr. Barkley reported that the Franklin Park Trail project was apparently moving along in the design process, with Anderson & Associates working on the design elements such as entrances and pedestrian crossings. Loudoun County is apparently considering project improvements on the south side of Loudoun Street, exclusively, rather than on both sides of the street.

Mayor Heyner asked for clarification that the improvements would only be made to one side of the street.

Mr. Barkley responded that was his understanding of the County's position.

Councilperson Ramsey stated that in order to meet the funding guidelines for the grant, there had to be a 10-foot trail, but when it came into Town, they could split the trail into two 5-foot sections, and that would count the same as one 10-foot trail. He suggested that in order to make the improvements to just one side of the street, the County should be required to obtain a waiver for this section of the trail. He added, in any event, the Town wanted the trail on both sides of Loudoun Street, with the curb on one side to catch the water .

Mayor Heyner commented that there were many considerations that would be impacted by this change, including the waiver that was granted to the gas station for sidewalk improvements, since it was going to be constructed by this grant. He asked that staff set up a meeting before the end of the year, or early in January 2010.

Mr. Barkley asked if Mayor Heyner would like to meet with the director.

Mayor Heyner responded, "Yes."

Councilperson Botsch asked why the County would make this type of change.

Councilperson Ramsey suggested that perhaps they were trying to cut costs.

Mayor Heyner responded that, apparently, this portion of the project was funded by grant money, and could not be redirected.

Mr. Barkley commented that Stantec had been working on the preliminary design documents for the Main Street enhancements project. They have submitted a copy of the RFP for engineering for VDOT to review, to ensure that they comply with all of the federal requirements that are attached to the grant.

Mayor Heyner noted that this was another project that was tied to the Franklin Park Trail project, so they needed to resolve this outstanding situation with the County.

Mr. Barkley announced that there would be several "5-star customer service" events, including the Loudoun Places Committee event on February 23rd, the location is yet to be announced. They plan to have a journey to hallowed ground event, roundtable and have various business owners and representatives who will offer advice about achieving 5-star customer service. Mr. Barkley reported that he had attended a meeting in Middleburg, where he learned about several new development projects, but he also learned the Middleburg has the lowest per capita income in Loudoun County.

Councilperson Ramsey asked if Mr. Barkley had heard anything new about the Western Flyer bus system, or the other transit service called 7-7 on 7, which stops in Purcellville. He suggested that the Round Hill residents may be interested in using this service if they extended their stops into Round Hill.

The Council members and Mr. Barkley discussed the possibilities of working to extend the Western Flyer bus service or the 7-7 on 7 bus service into Round Hill.

Mr. Barkley advised the Council that the Western Flyer representative had suggested offering a trial of a midday run for retirees or students. He stated that he would report the results of that trial to the Council at a future meeting so they could consider whether the fee would be worth the potential ridership.

Leslye Edwards of 17090 Flint Farm, Round Hill, commented that the students would be attending Woodgrove High School in September would really benefit from this type of bus service, since there was only one afterschool activity bus provided for the entire area. The students who did not have a parent to pick them up afterschool could not participate in activities because the activity bus had limited stops that it would make. Ms. Edwards stated that she felt the bus service would be an asset and the PTS at Woodgrove High School would be a great partner.

Councilperson Heston asked if economic stimulus funds had been used for Hayman Lane.

Mr. Barkley responded that a grant had been received.

Councilperson Ramsey commented that he had received a letter saying that the money was now coming from stimulus money.

Mr. Barkley responded that the grant money was coming from a pool of funds that had received stimulus funding.

2. Town Planner/Zoning Administrator's Report

The Town Planner/Zoning Administrator's report dated December 16, 2009, was included in the Council's packets. Mr. Kinsley was not present.

Mr. Barkley noted that the Town had received some phone calls about the United Methodist Church Expansion Special Exception, and he had indicated that the Planning Commission recommendation had been delayed.

Councilperson Hummel noted that the Planning Commission had set a tentative date for a special meeting for January 26, 2010.

3. Mayor's Report

Mayor Heyner stated that he had nothing to report.

4. Utility Operations, Public Facilities and Projects Committee

The Council members received Committee meeting notes from December 11, 2009, in their packets.

Vice Mayor Graham noted that representatives from Stanley Martin had attended the meeting.

5. Administration and Communications Committee

Councilperson Botsch stated that he had nothing to report.

6. Land Use Committee

The Land Use Committee did not meet this month.

IN RE: COUNCIL COMMENTS

Vice Mayor Graham noted that the Planning Commissioners have disclosures at the beginning of their meetings and asked Ms. Gilmore if the Town Council should consider adding disclosures to the agenda.

Ms. Gilmore responded that she believed it was a good idea. She explained that there was not a requirement to have disclosures on a regular basis, but it is necessary under the Conflict of Interest Act to make a statement if you have a conflict with a certain issue. She added that Loudoun County had implemented disclosures for its Planning Commission, and other Towns are considering including the process before their meetings begin. She suggested that it would be best to make a statement such as, "I was contacted by so and so regarding a certain issue..." since they would be under FOIA requirements whenever two or more members meet, and it would put their peers and colleagues on notice that they had been contacted.

Councilperson Ramsey clarified that it would go beyond revealing a conflict of interest, in that any contact with parties in a case, for example if Mark Nelis had talked to any of them about Stoneleigh, they would be required to disclose that contact.

Ms. Gilmore responded that it is not a requirement, but she felt it was a good policy to adopt because local governments are supposed to encourage transparency.

Public Comments

Leslye Edwards of 17090 Flint Farm stated, "My name is Leslye Edwards and I live in Round Hill and incidentally, it's the property that Comstock had, and Mary Anne was not so off the wall, she's not so naive just asking for the well...that well has a dollar value as a donation to BB&T bank to raise taxes. You would not be out of line. A lot of municipalities are acquiring properties in the real estate downturn, just because of flooky things like that. I did, at one time, represent a client that owned a property on Williams Gap Road, and he had a piece of the water

line, the one that got dug up several years ago. He's since sold the property, and the next guy, even though he had not been involved, would want to be considered if you were ever going to use that line, or if it was abandoned, because it goes under his driveway. Just like where they did that Oak Hill, where the little, tiny easement contains the piece of dirt that has the easement on it. You should go after it, I would think. Also, on your sidewalk...the trail from Franklin Park...that \$508,000 TEA grant, remember, that you had to ask about every year or we would lose it. There were so many project managers for all of the projects in Western Loudoun, that they didn't even know about this project. They don't know."

Mayor Heyner commented, "The folks that are working on it now have been there for awhile."

Ms. Edwards continued, "It's too bad because we get so close and it doesn't happen. Remember, somebody was killed...a bicyclist was hit by a car on that stretch about 15 years ago, and it was her husband who informed the Loudoun Chapter Mothers Against Drunk Drivers. It is a very dangerous stretch of road from Franklin Park to our town. The reason I came tonight, though, had to do with a meeting I attended a week or so ago, that had to do with a 64 lot alternative planned development for western Loudoun, and it was here in this building and there were two or three Planning Commissioners here. There are no minutes...there was no record...it was very confusing, not just for me who attends a lot of these meetings and does understand how they work. I could not go to the Town website and find any minutes from the Town Council or from the Planning Commission for the past three months...there's nothing posted on the website. Your own minutes over the years have shown that you've asked for this repeatedly...to be done in a timely manner... and those minutes, as they are approved...please have them mounted up on the website so the public can understand and know what's going on. That's probably why folks have so many questions about the United Methodist Church. I was very disappointed in the whole meeting...it was quite confusing. I hear a 41 lot subdivision being presented as a by-right...it's this or that...it's really misleading and confusing. There was a large contingent of folks here, six or eight people, senior citizens who I've never seen before in a similar setting here, talking about potential new construction of Richmond American Homes up here, and great excitement about having a great adult community or housing for seniors. Whether they were just talking about that type of floor plan or that affordability, there is a lot of interest here in our community and there has been for at least the 10 years that I've been following housing trends here. So I thought that those people were not being given a fair representation of what, potentially, that could mean. Initially, they were not representing anything...that is why there weren't any minutes."

Mayor Heyner stated, "That was not a Town meeting."

Ms. Edwards stated, "But it was in the Town Hall."

Mayor Heyner stated, "We offer the space up for any public meeting."

Councilperson Ramsey stated, "This is a community space...anyone can use it for no-Town meetings and that was the case."

Ms. Edwards asked, "Does that happen with any other meetings with the other developers?"

Mayor Heyner responded, "Not recently, but the space is always available to whoever wants to use it for a public meeting."

Councilperson Ramsey stated, "It was not a Town meeting."

Ms. Edwards stated, "I really think a lot of those folks who were here thought they were...one good thing that did come out of it, though, was much concern about the potential traffic. I own a property on High Street that I'm hoping to move back into real estate and my property would be seriously impacted by that. I did not understand a planned housing development and how that would all work."

Councilperson Ramsey stated, "I was not at the meeting but it was conducted by people who have an interest in that property and I think they were just trying to engage the public about their ideas for the property. It was not anything to do with the Town Council or the Planning Commission, it was the developer trying to engage the public."

Mayor Heyner added, "We encourage people who want to develop properties to reach out to the public. What we are hearing is that it was confusing and that there were issues with it, yet if you don't do that and then, you know, something just appears without any discussion with the public, then we hear, "How come we never heard about this?" So it's like we're damned if we do and we're damned if we don't. I think the lesson we can take away from this is that if we are going to have a meeting here that is not a Town meeting, we need to be very clear (maybe post it on the door) that this is a meeting being held by the developer and it's not a Town meeting so that anyone coming in would see that. But clearly, this is something that we want to encourage of anybody...to get their plans out in public and discuss them before they come to apply."

Ms. Edward stated, "There was no opportunity or offer...when suggestions came from the floor...I'm the one who had the concern about traffic, but anytime anybody had a concern...what would the traffic impact of that be, apparently there would be two openings of that street onto High Street, they said "don't worry, it will be old people and they won't be driving cars." The fact that Mr. Hummel, who is a Councilman was here and that was not fully disclosed. Transparency is really lacking. Then, not to have minutes to reflect it...there was like an underground posting of the approval to find out what people have said at these Town meetings, even though the minutes were not posted."

Mayor Heyner stated, "As I said, this was not a Town meeting."

Ms. Edwards stated, "At a previous Town meeting, the Council had instructed them about something and used the word Charrette and had encouraged the developer to meet with the public about that. But it's too bad that you can't go and read those minutes."

Mayor Heyner stated, "They are available here, we just haven't posted them to the website yet. That is a problem, and as you saw, we've been trying to resolve."

Ms. Edwards stated, "For several years!"

Mayor Heyner stated, "Mr. Barkley is going to do better with that, aren't you, Mr. Barkley?"

Mr. Barkley responded, "Yes, sir."

Ms. Edwards stated, "I think the problem is...because I've watched these cases, it's when there seems to be an issue or a contentious point, and I could certainly go through several years worth and point out exact situations where this has happened, where they let it ride and ride, and after three months or so something's got to happen, and it's a good way to, you know, sweep something under the rug."

Councilperson Ramsey stated, "Even if they are not approved, they are always available here. We cannot post them on the web until they have been approved; posting them on the web is a service that we do and we do the best that we can. The minutes are always available here."

Ms. Edwards stated, "O.K., well, I'll just make a point to come here and view them. It would have been helpful if the folks at the information session had a real good understanding of what the Council had thought was going to happen at that meeting and what kind of input people really did have, and what kind of information they really got."

Councilperson Ramsey stated, "Again, we can't take responsibility for anything that happens in a meeting that we don't conduct. I don't feel at all responsible for what people who attend a meeting that we don't put on, are told or not told. If they were confused, it was unfortunate, and I'm glad you brought it to our attention, but it's not the Town's responsibility to conduct these meetings. We conduct our meetings and put out our minutes, you know, that's our job, but if somebody else conducts a meeting in our space...I don't like the implication that the Town is somehow responsible for what went on during this meeting. I would dispute that implication."

Ms. Edwards stated, "I didn't mean to imply that the Town of Round Hill people that were here..."

Councilperson Ramsey stated, "I just want to make it perfectly clear that it was not our meeting, but the Town does encourage meetings of this sort to occur. I'm glad it occurred, but if there was confusion, I think overall, the outlay of information for a project like this, was useful. I hope that future meetings can occur between the public and anyone who is trying develop land, so that by the time that it comes to the Council, there is at least some information out there, so we don't have to get the ball rolling late in the game."

Mayor Heyner stated, "We encourage there be an exchange like this so that the public does have an impact on how the project comes to us, but that doesn't mean...we can't be responsible for that. We encourage the exchange, but if the party that is doing the meeting isn't open to that exchange, that is there prerogative. They are probably not going to be as well

informed when they come to us, and it will probably slow things up for them. We'll continue to encourage exchanges with the public for all of these types of projects."

Ms. Edwards stated, "Some of the questions that folks had there...well traffic, that's always everybody's concern. Gary was saying that people drive 60 miles an hour past his house, and then the subject of the sign came up from the Sheriff's Department, and I don't know who, but then somebody said "we'll go after that" and it is now in front of Gary's house, which is a really good thing. Too bad. I was wondering if they collected data showing if people really drive 60 miles an hour past his house. Well, there are real numbers...when people ask what the traffic impact, and we have information, then it really does need to be shared with the public and it's good faith to ask questions of that. That was a concern."

Councilperson Ramsey stated, "There is no active application for this property right now. If the Town had an active application, then certainly, everything we know about it would be turned into a staff report and shared with the public, but right now, there is no active application."

Ms. Edwards stated, "Well, I know, but we all know, that Mr. Burton uses this all the time. Ten car trips per day for residential use, and they were talking about how many driveways would be on that street, so that means. Mr. Hummel's a Councilperson..."

Mayor Heyner stated, "He is also a member of the public and it was an open meeting. He is a member of the community. Are you going to say that because he is on the Town Council that negates his right to attend a public meeting?"

Ms. Edwards responded, "No. I think it does hold him to a standard where he does need to be up front with people when they ask him a direct question about the project."

Councilperson Ramsey asked, "Do you have a specific complaint to make about a Town Council member? You are certainly trying to imply one. I'd rather you get it out in the open if you are going to make a complaint."

Ms. Edwards responded, "I think that there's...even the Town Attorney has probably...I asked Mr. Hummel at that meeting, "Don't you think this is rather awkward for you to be the Planning Commission representative...and on the Town Council, and you've been on all these others...Land Use Committee, Utility Committee and all of that. He said, well, at the recommendation of the Town Attorney, we have to step off..."

Councilperson Hummel stated, "Before the application would ever be filed I will not be a member of any those bodies. That was my exact answer to you and those were my exact words."

Mayor Heyner stated, "But he's not obligated remove himself from any of those bodies, his only obligation is to recuse himself from the sessions. The law is very clear in the State of Virginia and there are many, many instances where members of the community are also in the building industry, or in the development industry, and they sit on Town Boards and Town Councils. All he has to do is recuse himself from the discussion on that case. This was not a

Town meeting. Once again, this was not a Town meeting. Mr. Hummel had every right to involved in that meeting and he didn't have to recuse himself from any of the discussions. It was an open meeting."

Councilperson Hummel stated, "I spent the first five minutes of that meeting describing my roll with the Town and made sure everyone in that room knew. I don't think you were there at the beginning, but I spent five minutes making sure everybody understood the format of the meeting and where things stood."

Councilperson Ramsey stated, "Since there is no active application in question, there's just somebody that's got an interest in the property and they're trying to figure out what to do with it, but there is no active application. There is no issue before the Town yet, so...there's not even a reason for him to recuse himself from other Town things...there's nothing even related to this. This is a non-issue as far as I'm concerned. When the time comes that there's an active application related to this property, then we'll go to any Commissioner or Council member who has an interest in that application to recuse themselves. If Mike chooses to resign to remove all doubt, then that's up to him. He'll go above and beyond if he does that, and it'll be a loss to the Town the day he resigns. It'll be a loss to the Planning Commission, the day he resigns, because he's an excellent Commissioner and he's an excellent Town Councilman and he brings a lot of expertise to all topics and we will all suffer, the day he actually resigns. But that day may come and we'll have to move on."

Ms. Edwards asked, "How could he remain on the Council?"

Councilperson Ramsey responded, "Well, he would have to recuse himself from all matters. It doesn't mean he can't help us with our utilities and other things."

Mayor Heyner stated, "You are on the verge of making accusations against one of our Council members and we do not take that lightly. Nothing has been done wrong. Mr. Hummel is very, very well aware of the regulations with respect to conflict of interest and I appreciate you coming here and expressing your concern, but be very, very careful about making accusations that are false."

Ms. Edwards stated, "I'm not making any accusations that are false and I am very careful and clear that the only reason I am here is sheerly by accident. I had the misfortune of trying to do a boundary line adjustment on a property that my husband and I own and there's a piece of it on the W&OD trail. It was a 1.06 acre parcel we acquired maybe 10 years ago. About five years ago, Mr. Wolford was here and the taxes started going up, we were trying to decide what could be done with it by-right. We bought a parcel and the taxes got too high and we wanted to divide it by doing a boundary line adjustment, and it came before the Planning Commission and um, Mr. Hummel had a real problem with...I don't know what, but for some reason, even though it didn't require that we go before the Planning Commission...I should have just been able to do the boundary line adjustment...I own the property...I owned the other property. So, then I get to the second meeting of the Planning Commission we went to and Mr. Hummel was there with his application at the same time. We were told that we couldn't, even though we had come to the Planning Commission once before, we couldn't speak because we weren't on the agenda. When I

said, what recourse do I have, well you can do what the other applicants are doing and stand up at public comment and ask to be put on the agenda. O.k., so my husband and sit down to do that. The other applicant is Mr. Hummel, with something to do with his property and some variation. I had never met the gentleman...he doesn't know me...I don't know him. As the meeting progresses, immediately following the meeting, we requested the transcript of the tape because we thought if it did any good. So, during the meeting, Mr. Hummel recuses himself at his portion of it and comes around and sits down, but before he does a typewritten motion is passed out to the person next to him...not to him, because he knows how the property is going, but a typewritten motion was passed out. He came and he sat down and when it was his turn to speak, he told the Commission that they really needed to approve this because he needed to get his refinance and they approved it and Jenny read his motion and it was approved. Then it was our turn to come along...and much havoc and confusion...I don't know if Mrs. Heston you were there at that time on the Commission...part of the problem seemed to be that there was misinformation about whether the original subdivision of our neighbor had been properly handled. There was no record...no file...and the tape came before the Commission that clearly has people saying...Mary Ruth had asked a question, she said, "we have no record of this, we've gone through the file, there's no engineering, there's no this, that or the other." The Planning Commission is having a problem with your request, apparently, because of...which was not true, because I do have an Administrator's report for that date, which shows that we got engineering and everything else. We also found out later that Carter Morrow took my file from the Town Administrator...took it from his office and he freely admits this and he was looking for some precedent for his property. So, that's how I first met Mr. Hummel and that's how I first became really concerned about Mr. Hummel and his colleague, and why are they so involved in every aspect of all these things going on in Town, so that a regular citizen, trying to do the business they are entitled to do...page 1 of the Ordinance says it's our right to own this land and it's our right to subdivide it by-right. Many months go by and the minutes are not published...they're just not on-line...they're not anywhere...they're not approved, there's much confusion...finally at the end of six months, it comes out that our subdivision was approved, when it never was at all, because we stood up that evening and picked up our application off the table with our blueprints and left, because of all of the confusion amongst the Planning Commissioners. One of the Commissioners said, "can we put a restriction on this sale."

Mayor Heyner said, "Can you get to the point? You're going on and on and you're not really establishing a point."

Ms. Edwards stated, "Yeah, there is, and I don't know if everyone considers the same thing, but I think that the fact that he could write his own motion about that, to approve that subdivision. And then, I believe it was a later conflict and as I go through the minutes, find out that was not properly handled at all. I feel like I saw the same thing happening here again. It's not...the rules and the Ordinances are written for all of us and they need to be followed the same for rules for everybody, not a separate set of rules..."

Mayor Heyner stated, "I'm curious...if you feel that there was a violation of whatever's happened. If you thought there was a violation, or if you felt you were aggrieved, why did you not make some claim immediately?"

Ms. Edwards responded, "Oh, I did. Immediately, the next day, I met with Frank Etro, the Mayor, and he said..."

Councilperson Prack asked, "How long ago was that? Two years ago, three years ago?"

Ms. Edwards responded, "Two years ago."

Councilperson Prack stated, "I don't understand what the point of bringing this up tonight is."

Ms. Edwards stated, "Because it's the same thing happening again, where somebody is manipulating..."

Councilperson Prack stated, "That was just a public meeting that was held in the Town office, which is a public facility. Just like a library is a public facility. We have no control over what goes on. As long as it's not illegal...as long as somebody is a citizen of the Town and you want to have a meeting here, just like what you're discussing right now."

Ms. Edwards stated, "It's not the meeting, it's the idea that..."

Councilperson Prack stated, "But this has got nothing to do with that. I want to make a couple of points here. Public comment, according to this (referring to the agenda) was at 7:00 this evening. It's now almost 11:00 and the meeting was concluded and I encourage adjournment so that we can go home. If you would like to bring this up, I suggest that you show up at the next Town Council meeting at 7:00 p.m. and you can state whatever you want to state then."

Mayor Heyner stated, "The meeting starts at 7:30 p.m."

Councilperson Prack stated, "Whatever time is posted out front. This is not the time or the place for it. We all have other things to do."

Ms. Edwards stated, "I'm sorry for intruding on your time, I thought we had five minutes at the end."

Councilperson Prack stated, "I want to go."

Mayor Heyner stated, "The real key here is that...your points are well received. If you do have a concern, I am glad we had the opportunity to straighten out your understanding of what this meeting was."

Ms. Edwards stated, "I'm not confused about that meeting."

Mayor Heyner continued, "I think you are confused a little bit about where somebody who sits on the Town Council can participate and where they can't."

Ms. Edwards stated, "I realize that everyone wants to go home, but I would really welcome the opportunity to meet and talk to anybody, again, about my concerns about the conflict of interest. I really, clearly, understand what a conflict of interest is."

Mayor Heyner stated, "I would be happy to meet with you. I would encourage you, though, if we're going to meet, I would like you to bring a specific instance of a conflict of interest for that discussion. If you don't have a specific instance, there's no point in me meeting with you. We all understand what a conflict of interest is. If there's no specific instance of a conflict of interest, then there's no point in meeting with me. Do you understand what I'm saying?"

Councilperson Prack stated, "It needs to be something that you can prove, it's not just, well, so and so says this or that. If you have minutes, if you have a document, if you have a handful of people who witnessed it, bring them with you. But just to say, well, I think he did this, or I think he did that, then all of the sudden...that's not really enough."

Mayor Heyner stated, "At that point it's a conspiracy theory."

Ms. Edwards stated, "Oh, no, I understand the difference. I can go back several years of Town Council or Commission minutes and actually put your...misinformation"

Councilperson Prack stated, "Then do so and bring them in."

Ms. Edwards continued, "And it's the money and that's what these additional house lots are. When people circumvent the Ordinance, waive down..."

Mayor Heyner stated, "This is an idea...nothing but an idea, and anyone can make a comment on an idea. Until this becomes an actual application to the Town, then nobody is restricted from speaking, including members of this body. Our attorney's here and she'll verify that. Isn't that true?"

Ms. Gilmore stated, "That is true."

Mayor Heyner stated, "So, there is no problem...there is not conflict of interest. There is a perception of a conflict of interest, which I hope we've dissuaded tonight. If you have an instance of a real conflict of interest, and you want to talk about it, I am very, very much all ears, because it's a serious accusation and I want to know about it."

Councilperson Prack stated, "As do I."

Councilperson Ramsey stated, "What I want to avoid is serious insinuations. I find serious insinuations to be very difficult to refute. If you say, it seemed very fishy that so and so was at this meeting and something happened at that meeting, it was all very icky. That's an insinuation. What I would prefer to have you do is to say, so and so did this act, or I witnessed this statement, or I witnessed this act, and this what I thought was improper. To say that somebody's presence was...somehow felt wrong or inappropriate..."

Ms. Edwards stated, "I don't think I said...like I said, I welcome meeting with any of you and I think we could confine all the discussion to just the minutes. Just the minutes. Just turn the pages of the minutes."

Councilperson Prack stated, "Then highlight the portions that you have issues with, notate them, make your notes, make a formal presentation, bring it in and I'm sure everybody sitting here will be glad to go down through the whole thing and you can show us...here's where so and so said this. The minutes are certified. They are legal documents. If you have a problem with that, you can go to this page and highlight the words and go through the whole entire thing and have something in writing, as opposed to talking for 25 minutes about...I just think there needs to be some substance to the discussion."

Vice Mayor Graham stated, "I would have attended that meeting, but we were out of Town. I was curious about it."

Councilperson Ramsey asked, "With this meeting here with the developer?"

Vice Mayor Graham responded, "Yes."

Mayor Heyner stated, "If you have concerns about our business, whether it be Town Council or Planning Commission, and clearly you do, and clearly you are monitoring what's going on. As Councilman Prack said, if you have a specific instance where it appears that there is a clear violation of some conflict of interest laws or any laws, really, that needs to be brought to our attention. Not only because, you know, it's a serious matter, but also because, it may be that we're just doing something that we're not aware of and it's something that we can correct. I can assure you that there is nobody that sits on this body who has the intention of using their position on this body to sway the rest of the body to do anything. People may get on this body for a reason...because they have a particular interest in Town, but nobody uses their position to sway any application or whatever. We come and meet for the public hearings and do all this stuff on our own time. This is volunteer, unpaid time. It's people serving their community. If you have specific thing, then let's talk about it."

Ms. Edwards stated, "I understand. I have the utmost respect for this Council, the Planning Commission and a hundred years of people who have served this Town and it's not o.k. for somebody to use their position for personal gain."

Mayor Heyner stated, "Well, I think we all agree with that, so if there are specific instances where you think that has..."

Ms. Edwards stated, "Sadly, there are, or I would not have come here."

Councilperson Prack stated, "Bring something, highlighter, post-it notes, circles, crayons or something on a legal document that we can see."

ADJOURNMENT

There being no further business, the meeting was adjourned at 11:02 p.m.

John Heyner, Mayor

Patsy J. Tappan, Recorder