

November 21, 2011

**MINUTES**

**TOWN OF PENNINGTON GAP**

**COUNCIL MEETING  
November 21, 2011  
MUNICIPAL BUILDING**

**RECORD OF ATTENDANCE:**

**6:00 p.m.**

Mayor: D. R. Carter  
Council: Keith Harless  
Larry W. Holbrook  
Gary McElyea  
Terry K. Pope  
Jimmy V. Smallwood  
  
Town Treasurer: Karen Maggard  
Town Consultant: Paul Spangler  
Town Attorney: Charles Slempp, III  
  
Town Clerk: Angela K. O'Dell  
Marie Jones  
Police Department: Chief Bryan Young – Absent  
  
Vaughn & Melton: Andy Miles  
PG Fire Department: Brian Skidmore  
  
Powell Valley News: Louise Carver  
  
Citizens/Attendees: Phil Hensley

1. Invocation was given by Jessee Griffith.
2. The Pledge of Allegiance was led by Jessee Griffith.
3. Mayor D. R. Carter called the meeting to order at 6:00 p.m.
4. Gary McElyea made a Motion to approve the Agenda and Terry Pope seconded the Motion with vote as follows:  
Mayor D. R. Carter Aye  
Keith Harless Aye

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Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

5. A Motion to approve the Minutes for the 10/17/2011 Council Meeting was made by Larry Holbrook and seconded by Gary McElyea with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

6. Citizen's Recognition

No citizens addressed Council.

7. Police Department

A. Monthly Report – Chief Bryan Young was absent so the report was not presented.

B. Fire Dept. Report – Brian Skidmore presented the report to Council. He said there were 10 calls and the department provided mutual aid twice. They had one business meeting and in-house training. The department presented fire prevention programs at local schools and gave out Halloween candy last month also.

Mayor D. R. Carter asked if the fire department has prepared for the fireworks presentation at the New Years' Eve celebration at Leeman Field Park. Karen Maggard said she would give the dollar amount and order information to Mr. Skidmore so they can order the fireworks. She said she has been checking on additional workers' compensation coverage for the members also.

Mayor Carter suggested the department give out Christmas treats to children this year and get some idea if there is enough interest for future years.

7. Water Plant & Distribution System/Sewer Plant & Collection System/Engineering Projects

A. Project Updates – Andy Miles, Vaughn & Melton/Phil Hensley

1. Lee Theatre Structural Auditorium Design – Phil Hensley advised Council that he received a letter from the Va. Dept. of Historic Resources regarding the Lee Theatre building.

The Town has requested a visit from the Regional Director in order to get his recommendations

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to decide if we should seek historical building status. Mr. Hensley stated that his goal is to have all projects bid out by Spring 2012. There are mandatory government cuts which will take effect in 2013, so the Town needs to use grant funding as soon as possible.

Mayor D. R. Carter asked about the siren in Town. Andy Miles said he has talked with Homeland Security regarding funding for repairs, but thus far has had no response. Mayor Carter said Congressman Griffith may be able to help; he would like to get the siren operational again.

2. DCR – Recreational Trails Program grant – Phil Hensley advised that he has a meeting scheduled with DCR regarding the \$359,757.00 grant. He said the funding agency has requested that Council certify their agreement to abide by a list of 6 items regarding environmental issues.

A Motion was made by Jimmy Smallwood to certify that the Town of Pennington Gap agrees to abide by the 6 items listed by DCR regarding environmental issues in order to receive funding for the Recreational Trail. The Motion was seconded by Gary McElyea with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Mr. Hensley stated that he has reviewed the easements needed for this project and he has determined they are legitimate. If they need to be obtained again, this would take a long time and be very difficult. He advised that he has sent a letter stating that several attorneys have reviewed the easements and determined them to be legitimate. This should take care of the problem.

3. Pennington Gap Greenway – Phil Hensley informed Council that the Town has been granted \$350,000.00 from VDOT for this project. A Motion to accept the funding was made by

Terry Pope and seconded by Gary McElyea. Vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye

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Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

The Town's goal is to bid the project by Spring. The only permit we are waiting for is from the U. S. Army Corp of Engineers.

Mr. Hensley advised Council that he has reviewed paperwork regarding Council action

in 2008 for the sidewalk extension project. According to his understanding, the paperwork states

that if the project is not completed the money (\$27,260.00) would need to be transferred to the Greenway Project. Council discussed whether or not they wish to pursue the sidewalk extension

project. Larry Holbrook made a Motion to direct Phil Hensley to pursue the sidewalk extension

project (to Lee Regional Medical Center) if feasible. The Motion was seconded by Terry Pope

with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Andy Miles reported to Council that he has obtained some preliminary cost figures for

bile solid disposal for the sewer plant. He said a site has been located in Carter's Valley which

would charge \$37.00 per ton plus hauling costs. Mr. Miles said he is still checking on solutions.

9. Administrative Report and Council Action – Mayor D. R. Carter/Karen Maggard

A. November vacancy – Zoning Appeals Board – Mayor D. R. Carter advised that Carole Murphy has agreed to reappointment. A Motion was made by Terry Pope to recommend to the Circuit Court that Carole Murphy be appointed to the Zoning Appeals Board

for an additional 4 year term. Keith Harless seconded the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Attorney Charles Slemph, III, advised that he would make that recommendation to the

Circuit Court.

B. PPTRA Resolution – Larry Holbrook made a Motion to approve the PPTRA Resolution and Jimmy Smallwood seconded the Motion. Vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

C. War of 1812 Bicentennial Resolution – A Motion was made by Larry Holbrook to

approve the War of 1812 Bicentennial Resolution. Keith Harless seconded the Motion with vote

as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

D. Business License Tax – Attorney Slemm informed Council that he has researched the

Business License Tax and the Town is legal in the manner used to collect the tax. He said the

tax can be based upon a figure other than the “gross receipts,” but that is a matter for Council

decision. The actual legislation uses the word “gross receipts,” but the percentage of gross

receipts could be changed.

He stated that if business is done outside the Town, but the business is actually located in

the corporate limits, the Code of Virginia allows that the total gross receipts be counted for the

license tax amount. There is a maximum amount which can be received, but the Town is well

below that amount. Mayor D. R.. Carter instructed Attorney Slemm to send letters to the 2 local

businessmen who attended a Council meeting regarding this to inform them that the Town’s method

of collection is legal.

E. Leeman Christmas Fantasy – Mayor Carter advised that he would be working at

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Leeman Christmas Fantasy on November 25, 2011 from 6:00 p.m. until 8:00 p.m. He suggested

Council members try to work that night also. The display is open until 10:00 pm.

F. Employee Christmas – After a brief discussion, Gary McElyea made a Motion to give a \$125.00 Christmas bonus to all full-time employees and a \$75.00 bonus to part-time

employees. He included in that Motion that each employee be given a certificate for a turkey or

ham in lieu of a Town Christmas party. Terry Pope seconded the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

10. Town Attorney Reports – Charles H. Slemph, III

A. Reuille property deed – At Attorney Slemph’s recommendation, a Motion was made

by Terry Pope to table action on this item until after closed session. Jimmy Smallwood seconded

the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Charles Slemph, II, expressed his appreciation to Council for all the good wishes and patience with him regarding the birth of his son. He said Collin Prescott Slemph and his big brother are both doing well.

11. Council Member Reports

Keith Harless suggested the Town look into personal property tax relief for Disabled

American Veterans. Attorney Slemph said he would research this and report back to Council.

Larry Holbrook said he would like to do something to recognize the Town of Pennington

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Volunteer Fire Department. He suggested an advertisement or Resolution. A Motion was made

by Larry Holbrook to recognize the Pennington Gap Volunteer Fire Department in the Powell

Valley News and to give members a gift certificate for a ham or turkey for Christmas. The Motion

was seconded by Terry Pope with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Mayor Carter directed the Town Attorney to draft a Resolution to that effect.

Gary McElyea said the Fire Department's turn-out gear which was destroyed during the recent chlorine leak has not yet been replaced. He said the gear would cost \$1400.00 per set.

A Motion was made by Gary McElyea that the Town purchase one set of gear now with EMS funds and consider the purchase of a second set of gear later. Terry Pope seconded the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Jimmy Smallwood expressed his appreciation to the Woman's Club for their help with the Lee Theatre mural and Leeman Christmas Fantasy.

Terry Pope inquired about the Town's Zoning Ordinance. He asked if there is a designated area zoned for industrial purposes. After a brief discussion, Terry Pope made a Motion to research re-zoning in order to declare the Industrial Park and KCG Call Center areas as industrially zoned areas. Jimmy Smallwood seconded the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Mayor D. R. Carter said the Police Dept. has surplus property/equipment which

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needs to

be sold. A Motion was made by Jimmy Smallwood to advertise for sale of the equipment and the

old garbage truck if the Town has owned it long enough. Terry Pope seconded the Motion with

vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Mayor Carter advised that a new garbage truck has been purchased, along with new

Christmas lights throughout Town. The windows in the Municipal Building have been replaced.

He stated that there were several changes he would like to see implemented in the Town's Charter,

and this is something that would take time. He directed the Town Clerk to issue a copy of the

Town's personnel policy to each Council member for review. He asked Council members to

make any recommendations for change at the December 21<sup>st</sup> Council meeting.

12. Jimmy Smallwood made a Motion to approve the bills to be paid (with the exception of The Lane Group) and Larry Holbrook seconded the Motion. Vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

13,14. At 7:35 p.m., Terry Pope made a Motion to go into closed session pursuant to Va.

Va. Code Section 2.2-3711A7 to discuss potential litigation within the locality, and pursuant to Va. Code Section 2.2-3711A1 for assignment, appointment, promotion, salaries,

disciplining, or resignation of employees. The Motion was seconded by Jimmy Smallwood with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye

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Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

At this time a Motion was made by Terry Pope to amend the Agenda in order to include a closed session pursuant to Va. Code Section 2.2-3711A3 for discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. The Motion was seconded by Jimmy Smallwood with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

A Motion was made at 9:30 p.m. by Keith Harless to reconvene regular session. Gary McElyea seconded the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Roll call was taken to verify that nothing was discussed during closed session other than the issue stated:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

A Motion was made by Larry Holbrook to approve the Resolution regarding the Reuille

property donation and authorize the Mayor to sign the Quitclaim Deed. Keith Harless seconded

the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

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Larry Holbrook made a Motion to pursue the vacation of a portion of Forest Avenue and

to advertise the same. Gary McElyea seconded the Motion with vote as follows:

Mayor D. R. Carter	Nay
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

The Motion passed with a vote of 5 - 1.

A Motion was made by Larry Holbrook to approve the payment of the balance of the bill

for Pitts, Lake and Bell, P.C. Gary McElyea seconded the Motion with vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

16. A Motion to adjourn was made by Terry Pope and seconded by Jimmy Smallwood. Vote as follows:

Mayor D. R. Carter	Aye
Keith Harless	Aye
Larry W. Holbrook	Aye
Gary McElyea	Aye
Terry K. Pope	Aye
Jimmy V. Smallwood	Aye

Time of adjournment: 9:38 p.m.

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MAYOR D. R. CARTER

ATTEST:

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ANGELA K. O'DELL, TOWN CLERK

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