

# Town of Lovettsville

## Town Council Minutes of Regular Meeting October 23, 2008

Mayor Elaine Walker called the regular monthly meeting of the Lovettsville Town Council to order at 8:00 P.M. on Thursday, October 23, 2008.

### Present at Meeting

- Mayor Elaine Walker
- Council Members Charlotte Coleman, Scott Dockum, Michael Senate, Shaun Staley, Robert Zoldos
- Town Manager Keith Markel
- Town Attorney Liz Whiting
- Zoning Administrator Steve McGregor
- Town Clerk Judy L. Kromholz
- Treasurer Lance Gladstone

### Absent

- Council Member Richard Efthim

### Audience

Among those present were Tracey Senate (*Brunswick Citizen*), Howard Williamson (Lovettsville Business Association), Amanda Staley, Dean Settle, Robert Danner, Carol Danner, Bonnie Hawker, and other members of the public.

### Call to Order/Welcome/Pledge of Allegiance/Invocation

Mayor Walker led the assembled in the Pledge of Allegiance.

### Loudoun County Sheriff's Office

Loudoun County Deputy Sheriff Lambert was unable to attend due to training. Manager Markel presented Sheriff Lambert's monthly report to the Mayor and Council.

### Lovettsville Volunteer Fire and Rescue Company

No member of the Company was present.

### Lovettsville Business Association

President Howard Williamson reported that the LBA will be electing their board members for next two years at their next meeting. He stated that the rumors that Total Basket Cases is closing are not true; instead, they have opened a second operation in Winchester. The LBA has sent a letter to the Town stating that they would like to assist in this year's Christmas tree lighting ceremony, including providing a tent and refreshments at the event.

### Comments from the Public

Bonnie Hawker, the owner of Bonnie's Restaurant commented on the letter she received concerning her internally lit 'Open' sign. She stated that the letter stated that she had ten days to remove the sign before a \$200 fine would be imposed and is requesting that the Town Council suspend enforcement until the new Sign Ordinance is approved. She believes that will be in approximately eight months. She noted that it would be legal for her to paint an "open" sign in her window and that the existing sign does not blink and is not bright. It draws business in from Berlin Pike. She stated that other local towns allow these signs. She requested a copy of the proposed Sign Ordinance.

Manager Markel responded that Administrator McGregor had been acting as an agent of the Town and had been directed to enforce the current ordinances. He noted that these ordinances are not new, nor were they enacted by the current Council. Internally illuminated signs are not allowed under the current ordinance and noted that turning off the sign would put the business in compliance. Town staff does not know if this sign will be allowed under the new ordinance. Manager Markel explained that the Planning Commission will review the proposed ordinance and that public hearings will be held when it is ready. Ms Hawker requested a moratorium on enforcing the existing ordinance while the new ordinance is being developed.

Council member Zoldos asked how long the sign ordinance has been in effect and Administrator McGregor responded that it dates from 1987. Council member Zoldos asked Ms Hawker and other business owners in the audience if they will abide by the new sign ordinance when it is enacted. Ms. Hawker replied that she believes the new ordinance will allow her "Open" sign. Council member Dockum asked her if she will follow the new ordinance, no matter what the particulars and Ms Hawker replied that she would. Council member Staley asked what the likelihood is that the new ordinance will be enacted within eight months. Manager Markel stated that this target is feasible if all of the involved parties work consistently and keep moving the process forward.

Robert Danner, co-owner of the Loudoun Street Mini-Mart noted that there had been an error in the letter received by his business but that Administrator McGregor has since acknowledged the error and corrected it. Mr. Danner noted that his store is dark and off the beaten path and that they are trying to provide a service to the Town. They would like to be permitted to keep their current signage until the new ordinance is enacted. He also noted that without the appropriate signage, they will probably not keep selling the Lottery in the store. He questioned the Town's consistency in enforcing other ordinances, citing un-decaled vehicles and the dead shrubbery around the elementary school. Council member Dockum asked Mr. Danner if he would support the new ordinance once it has been passed and Mr. Danner stated he would not if it does not meet the needs of his business.

Dean Settle stated that he represented most of the businesses that had received the letter. He suggested that the Council pass the eight month moratorium, including a provision that the new ordinance will supersede the moratorium when it is enacted. Mr. Settle stated that he believes the new ordinance will be more supportive of business. Council member Zoldos asked Mr. Settle if his clients were aware that the Town has already begun work on the new ordinance and asked that his clients become part of the process. Council member Zoldos stated that the Town will have compliance and wants to know if Mr. Settle's clients will support the new ordinance when it is enacted. Mr. Settle suggested that the Town give new businesses a packet containing all the relevant ordinances. Council member Senate noted that most of the people in the audience had been at the Sign Committee meetings and the committee had listened to what they had to say, although the final result may not be exactly what everyone wants. Mayor Walker asked if Mr. Settle represents the people in the room and exactly what other businesses he represents. Ms. Hawker said that she was represented by Mr. Settle. Mr. Danner said that Mr. Settle does not represent him. Mr. Settle listed Lovettsville Pizza and Subs, Andy's, Beauty on Broadway and the 7-Eleven as his clients. Mayor Walker asked Mr. Settle if he had a copy of the Sign Ordinance and he replied that he does not have a copy, he is basing his statements on information received from his clients. LBA President Howard Williamson added that all of the affected LBA members had come to at least one Sign Committee meeting and that the Committee had incorporated their comments.

Manager Markel noted that this issue had been brought to the Town's attention when there was a complaint from another business owner. The Town had to respond to the complaint in an equitable manner.

#### **Additions/Deletions/Modifications to the Agenda**

Council member Zoldos added an action item to consider suspending enforcement of the current Sign Ordinance.

#### **Presentations**

##### **Civil War Historical Signage in Lovettsville**

Jim Morgan gave a presentation concerning Civil War Trails signage in Loudoun County. He noted that the 150<sup>th</sup> anniversary of the Civil War is coming up and explained ways in which Lovettsville can participate. Their website is [www.virginiacivilwar.org](http://www.virginiacivilwar.org). A Civil War trail sign costs \$2600, but there is a matching grant available. If the Town partners with the Commission the Loudoun County Visitors Association will pay \$500. The Town would be responsible for maintenance. Council member Dockum asked for the official dates and Mr. Morgan reported that Virginia events will start in 2009 and go through 2015. Council member Zoldos asked is there a deadline for participating and if the grant money is already in place. Mr. Morgan said that there was no deadline and the matching funds are available. Council member Dockum asked Mr. Morgan to make another presentation on local events that could be commemorated by the Town.

### Approval of Town Council Minutes

#### A. Town Council Meeting – July 24, 2008

**Motion:** To approve the minutes of the July 24, 2008 Town Council Meeting as distributed.  
**By:** Council Member Dockum  
**Second:** Council Member Senate  
**Aye:** Council Members Dockum, Senate, Staley, Zoldos  
**Nay:** None  
**Abstain:** Council Member Coleman  
**Absent:** Council Member Eftim

### Report from the Treasurer

#### A. Financial Report – August 2008

Treasurer Gladstone presented the Financial Report for August 2008. The Council had no questions.

**Motion:** To approve the August 2008 Treasurer's report as presented.  
**By:** Council Member Senate  
**Second:** Council Member Coleman  
**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos  
**Nay:** None  
**Abstain:** None  
**Absent:** Council Member Eftim

### Staff Reports

#### A. Report from the Zoning Administrator

Administrator McGregor presented his written report dated October 1, 2008. He explained that the encroachment at 29 S. Church Street will require a conditional use permit. He proposed a joint public hearing on November 13th followed by a Planning Commission meeting and a Town Council meeting in order to take action as soon as possible. Administrator McGregor reported that other jurisdictions do a wall check which provides a certification once the house walls are set. Other jurisdictions allow the Zoning Administrator to allow variances less than 10% without further review. Administrator McGregor recommended that the Town institute a wall check policy. Attorney Whiting explained that, in this case, the condition will be to allow the encroachment on the front yard. Council member Zoldos said that there is a pattern in Town where citizens applying for variances before the fact are denied permission, but builders who have already completed construction get permission after the fact.

The Council and staff agreed to the following schedule for this conditional use permit application:

- Advertise the Public Hearing in October 31<sup>st</sup> and November 7<sup>th</sup>
- Hold a Joint Public Hearing on the 13<sup>th</sup>, followed by a Planning Commission meeting to recommend action on the application
- A Town Council meeting to follow the Planning Commission meeting to take action on the Planning Commission recommendation.

The Council discussed the ordinance as to applicable fines, and asked staff to prepare a recommendation on fines.

Administrator McGregor also noted that the Heritage Highlands application concerning proffers has been withdrawn. He notified the Council that approximately 25 letters had been sent concerning inoperable vehicles visible from public or private roads within the Town corporate limits.

#### B. Report from the Town Attorney

The Town Attorney had no formal report.

#### C. Report from the Town Manager

Manager Markel reported the following:

- The RFP is out for the detailed survey work to be done under the Community Development Block Grant.
- The Town is now on the list of localities recommended to be included in the DEQ revolving fund pool.
- 2009 vehicle decals are on sale.
- He attended the VML Conference at which there was a great deal of discussion about financial strains for the state which will drizzle down to us.
- Town Hall has installed a programmable thermostat and a low flush toilet as part of our Green initiative.

### Action Items

#### A. I&I Engineering Firm Selection, I&I Approval of Scope

Manager Markel reported that there was no new information since the Council's work session discussion.

**Motion:** I move that the Town Council approve the scope of services for completion of the I&I Action Plan including the items required by the DEQ Special Order of Consent in the amount of \$51,800 plus a contingency of \$5,000 and authorize the Mayor or Town Manager to sign the contract once it is in a form acceptable to the Town Attorney.

**By:** Council Member Zoldos

**Second:** Council Member Senate

**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos

**Nay:** None

**Abstain:** None

**Absent:** Council Member Eftim

#### B. Town Center Park and Town Square Master Plan Referral to Planning Commission

Manager Markel reported that there was no new information since the Council's work session discussion.

**Motion:** I move that the Town Council forward the Town Center Park and Town Square Master Plan to the Planning Commission for Public Hearing and recommendation.

**By:** Council Member Zoldos

**Second:** Council Member Coleman

**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos

**Nay:** None

**Abstain:** None

**Absent:** Council Member Eftim

#### C. Planning Commission Review Responsibilities

Administrator McGregor confirmed that this will go through a full public hearing process. Manager Markel confirmed that this procedure is in line with other localities in the County.

**Motion:** I move that the staff and Zoning Administrator and the Planning Commission develop a report exploring the possibility that the Town's development process can be streamlined if the Planning Commission is no longer responsible for approving Subdivision Ordinance applications, which are applications under by-right or existing zoning.

**By:** Council Member Zoldos

**Second:** Council Member Staley

**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos

**Nay:** None

**Abstain:** None

**Absent:** Council Member Eftim

#### D. Underground Utilities in Commercial and Industrial Districts

Mayor Walker stated that this would be an immediate text change that could go to public hearing immediately. She requested that Administrator McGregor and Attorney Whiting prepare the text as quickly as possible and schedule the public hearing. They suggested adding this to the Public Hearing already scheduled for November 13<sup>th</sup>.

**Motion:** I move that the staff and Zoning Administrator develop a report that would amend the Zoning Ordinance to require development to provide underground utilities in a manner that pertains to new development.

**By:** Council Member Staley

**Second:** Council Member Coleman

**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos

**Nay:** None

**Abstain:** None

**Absent:** Council Member Eftim

#### E. Water Meter Replacement

Attorney Whiting noted that if the Town is not granted access to a property in order to remove the old meter, the Town's responsibility is mitigated based on the due diligence performed. There will be the possibility of easement expenses and sidewalk repairs – these costs need to be reviewed. Council member Staley noted that even if the Town does go slightly over budget, it would be less than the liability that currently exists if one of the old meters breaks. Council member Senate noted that these are poorly functioning meters in any case.

**Motion:** I move that the Town Council authorize the Town Manager to move forward on the relocation of the five water meters including removal of the existing meters where feasible, in Fox Meadow, using the designated funds in this year's utility budget.

**By:** Council Member Zoldos

**Second:** Council Member Coleman

Mayor Walker called for additional discussion. Council member Zoldos stated that while he is concerned about the overall cost, he believes that the Town will recoup some of the expense through more accurate meter readings. Manager Markel stated that he will come back to Council when he has more accurate cost estimates. Mayor Walker estimated that there are over 20 meters like this throughout Town, but that these are the most at-risk locations. There being no further discussion, Mayor Walker called the vote.

**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos  
**Nay:** None  
**Abstain:** None  
**Absent:** Council Member Eftim

**F. Regional Water Supply Planning Support**

Manager Markel noted that this is an affirmation of what the town has already committed to. This will be completed in 2011, it is a multi-year project.

**Motion:** I move that the Town Council affirm its support for the Town's participation in the Regional Water Supply Plan and direct the Mayor to sign the Memorandum of Agreement as provided by the Northern Virginia Regional Commission along with a letter of intent to the DEQ Office of Surface and Ground Water Supply Planning.

**By:** Council Member Dockum  
**Second:** Council Member Senate

Mayor Walker called for discussion. Council member Staley asked if there was a dedicated budget line item for this expense and was informed that this will come from Utility Funds and will probably be paid in a series of payments. A timeline for this expense was never provided. Manager Markel noted that there is a certain amount of fixed expense that does not vary by the size of the community. There being no further discussion, Mayor Walker called for the vote.

**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos  
**Nay:** None  
**Abstain:** None  
**Absent:** Council Member Eftim

**G. FY 2008 Donation to Lovettsville Volunteer Fire and Rescue Company**

Manager Markel had no new information since the work session discussion.

**Motion:** I move that the Town Council allocate the remaining balance from the \$4,000 in the "Donations" line item in the FY 2008 budget as the Town's annual donation to the Lovettsville Volunteer Fire and Rescue Company.

**By:** Council Member Zoldos  
**Second:** Council Member Coleman  
**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos  
**Nay:** None  
**Abstain:** None  
**Absent:** Council Member Eftim

Council member Senate said that the donation would be used to purchase the first new extrication equipment in 21 years.

**H. Moratorium on Enforcement of Sign Ordinance**

Council member Zoldos stated that this is not a 'grandfather' situation; most businesses in Town with the possible exception of Bonnie's were created under this existing legislation.

**Motion:** I move that the Council direct the Zoning Administrator to cease enforcement of existing infractions of article 7 of the Sign Ordinance until this article is revised or to report back to the Council by July 1, 2009 if amendments have not been enacted.

**By:** Council Member Zoldos  
**Second:** Council Member Senate

Mayor Walker called for discussion. Council member Senate agreed that most businesses were formed since this ordinance went into effect, but the Town historically did not enforce the ordinance, and that is our fault. He stated that much of the existing ordinance is contradictory and believes that it is preferable not to pursue enforcing these particular violations until the new ordinance is enacted. Council member Staley agreed, although he stated that it is new business' responsibility to know the local ordinances. He supported the preparation of a new business packet. He stated that because the Town is in a transition period on this matter, the moratorium is justified. However, he is concerned that it will take years to revise the ordinance. Council member Zoldos stated that he believes the Town is on track to complete the process within eight or nine months. Attorney Whiting agreed with setting an end date for the moratorium and revisiting the matter if necessary. She said that by and large the town has a clean slate to come up with what it wants. Her review is unlikely to stumble over technical constraints. Council member Dockum stated that the Town will not be able to meet everybody's goals for these signs. Council member Staley stated that the Town does want to be business friendly, but is not considering businesses that did follow

the law and possibly sacrificed business as a result. Council member Dockum agreed that the majority of conforming businesses are never looked at and he asked how the compliant businesses will feel about this moratorium. Administrator McGregor pointed out that when he cited Andy's they removed the sign and that the Lovettsville Pizza open sign was approved by the Town at the time it was installed. Council member Zoldos stated that if a business installs an internally lit sign tomorrow, the Town will have to enforce the current Ordinance. Additionally, he stated that when the new ordinance is passed, the Town must insist on 100% compliance. Council member Staley asked if there are other non-conforming signs and Administrator McGregor replied that there are but this particular enforcement effort dealt with internally illuminated signs. There being no further discussion, Mayor Walker called the vote.

**Aye:** Council Members Coleman, Senate, Staley, Zoldos

**Nay:** Council Member Dockum

**Abstain:** None

**Absent:** Council Member Eftim

Mayor Walker said that during the last rewrite of the Sign Ordinance the Town took photographs of all signs that would be grandfathered in. She asked if this motion would apply to future violations or if Administrator McGregor was going to take an inventory tonight of existing internally lit signs. Administrator McGregor and the Council agreed that this motion only applied to businesses that had received a violation letter. Mayor Walker stated that she had worked with the owners when Talk of the Town, Total Basket Cases, and Greater Goods were being developed and they all had attractive signs for their establishments that complied with the existing ordinance. She stated that it is her opinion that the Town is penalizing people who complied and catering to people who did not comply.

#### **Discussion Items**

No discussion items were presented.

#### **Information Items**

No information items were presented.

#### **Comments from the Mayor and Town Council**

Council member Dockum welcomed Council member Coleman to the Council.

Council member Staley stated that he is not pleased with the sign situation even though he voted in favor of the moratorium. He expressed his concern over the economic situation and stated that the Town needs to consider how its expenditures impact the average household.

Council member Zoldos reminded everyone that the first Movie on the Green will be tomorrow night. The festivities will begin at 6:00 PM and the movie will start at 7:00 PM. In the event of rain, the event will move to the Lovettsville Community Center.

Mayor Walker reported the following:

1. She has met with Administrator McGregor, Manager Markel and the Town's engineers regarding Lovettsville Town Center. She announced that construction will not begin this fall.
2. Loudoun Transit announced that bus service will not start in October, but may begin in January.
3. She reported that Oktoberfest was wonderful.
4. She attended a meeting with the English construction group on the new Wastewater Treatment plant module.
5. The Town audit went well.
6. The Loudoun Health Council is working on Lyme's Disease and the West Nile Virus outbreaks.
7. She attended the Loudoun County Planning Commission Public Hearing on HCA 's application.
8. The VML conference was great and she attended many interesting sessions.
9. She suggested that the Town schedule a retreat every three to six months.
10. The Lovettsville Community Center will hold an Archeological Dig on November 1<sup>st</sup>.
11. She reminded everyone present that Election Day is November 4<sup>th</sup>.
12. On Veteran's Day, November 11<sup>th</sup> there will be a ceremony at the Lovettsville Town Square in cooperation with the Ruritan Club. Council member Coleman is working on the plans with the Mayor.
13. The week of November 17<sup>th</sup> is American Education Week and the Council will be meeting at the Elementary School and presenting a resolution on November 20<sup>th</sup>.

14. She reported that the Lovettsville German Society is planning to hold a Christkindlmarkt at the Lovettsville Game Club in December. She has met with them and explained that the Town did not budget any funds for this event. They are applying for their tax exempt status and are asking for donations. Council member Zoldos added that the Town has asked the Society for a proposal for what they want from the Town; right now it is very nebulous.

**Comments from the Public**

Katherine Buck reported that there is a brush pile on private property on Loudoun Street that is presenting a hazard to the community. Council member Dockum stated that he has already spoken with Mr. Keena about the problem, as has Town staff. Manager Markel will pursue the matter.

**Adjournment**

There being no further business before the Council, Mayor Walker asked for a motion.

**Motion:** To recess the October 23, 2008 monthly meeting of the Lovettsville Town Council until November 13, 2008 at 8:00 PM

**By:** Council Member Coleman

**Second:** Council Member Dockum

**Aye:** Council Members Coleman, Dockum, Senate, Staley, Zoldos

**Nay:** None

**Abstain:** None

**Absent:** Council member Eftim

The meeting was recessed at 12:15 AM

Respectfully submitted,

  
Judy L. Kromholz, Town Clerk

Date Approved: February 26, 2009

No Attachments