

Town of Lovettsville

Town Council Minutes of Regular Meeting July 23, 2009

Mayor Elaine Walker called the regular monthly meeting of the Lovettsville Town Council to order at 8:02 P.M. on Thursday, July 23, 2009.

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
- Town Treasurer Lance Gladstone {arrived at 8:15 PM}
- Project Manager Karin Fellers

Absent

- Council Member DiJon Jones

Audience

Among those present in the audience were Tracey Senate (*Brunswick Citizen*), John Broman (Lovettsville Business Association), Frank Kromholz, Amanda Staley, Tiffany Carder, and Bing Lam

Call to Order/Welcome/Pledge of Allegiance/Invocation

Mayor Walker led the assembled in the Pledge of Allegiance.

Comments from the Public (Attachment I: Speaker Sign up Sheet)

Tiffany Carder spoke in favor of a Town newsletter and an improved Town website. She stated that she believed the minutes should be kept up to date on the Town's website.

Bing Lam stated that he is concerned about parking in driveways in Lovettsville Town Center. He stated that the rear end of cars parked in driveways will hang over onto the sidewalk and he is concerned about the safety of children and other pedestrians. He questioned how a child on a bicycle would get through. He stated that the fact that VDOT approved the street design is not a solution.

Loudoun County Sheriff's Office

Loudoun County Deputy Sheriff Davis filled in for Deputy Mertz-Myers. He will refer the concerns about parking at Lovettsville Town Center to Deputy Mertz-Myers and asked Mr. Lam to provide her with the information so that she can follow up.

Lovettsville Volunteer Fire and Rescue Company

No member of the Company was present. Councilman Senate reported that the new ambulance will go into service by October 1st and that fund raisers will begin on August 1st. Councilman Zoldos asked Councilman Senate why the Company officers do not attend Council meetings. Councilman Senate stated that he was unsure, but noted that both Chiefs are on duty on Thursday evenings and that may interfere with their ability to attend Council meetings.

Lovettsville Business Association

Vice-President John Broman stated that the Association's August meeting will probably be a mixer with the Brunswick Chamber of Commerce. He reported that the LBA will be sponsoring the musical entertainment in the tent at Oktoberfest.

Additions/Deletions/Modifications to the Agenda

Manager Markel removed consideration of placing a temporary banner for the SCC Public Hearing from the agenda because the applicant had not submitted a completed application or a sketch of the banner.

Presentations

No presentations were scheduled.

Approval of Town Council Minutes

A. Town Council Regular Monthly Meeting – January 22, 2009

Councilman Zoldos requested that these minutes be tabled and the Council agreed.

B. Town Council Public Hearing – January 29, 2009 (Revised)

Motion: To approve the minutes of the January 29, 2009 Town Council Public Hearing as revised.
By: Council Member Dockum
Second: Council Member Coleman
Aye: Council Members Coleman, Dockum, Senate, Zoldos
Nay: None
Abstain: Council Member Staley
Absent: Council Member Jones

C. Town Council Reconvened Monthly Meeting – January 29, 2009

Motion: To approve the minutes of the January 29, 2009 Town Council Meeting as presented.
By: Council Member Senate
Second: Council Member Coleman
Aye: Council Members Coleman, Dockum, Senate, Zoldos
Nay: None
Abstain: Council Member Staley
Absent: Council Member Jones

D. Town Council Regular Monthly Minutes – February 26, 2009

Motion: To approve the minutes of the February 26, 2009 Town Council Meeting as revised.
By: Council Member Staley
Second: Council Member Senate
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

E. Town Council Reconvened Regular Meeting – March 19, 2009

Motion: To approve the minutes of the March 19, 2009 Town Council Meeting as revised.
By: Council Member Senate
Second: Council Member Dockum
Aye: Council Members Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: Council Member Coleman
Absent: Council Member Jones

Report from the Treasurer

A. Financial Report – April 2009

Treasurer Gladstone presented his report for April 2009. The Council had no questions on the General Fund. Councilman Dockum asked why it was so expensive to replace hoses on the generator. Treasurer Gladstone noted that the amount included labor costs and Manager Markel stated that he will research the time involved. Councilman Dockum asked if the new Fats, Oil and Grease Ordinance will lower costs on repairing/replacing the sludge pump. Manager Markel stated that in this instance the pump was old and had worn out.

Motion: To approve the April 2009 Treasurer's report as presented.
By: Council Member Staley
Second: Council Member Senate
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

Staff Reports

A. Report from the Zoning Administrator

Administrator McGregor presented his written report for June 2009. He noted the increase in development activity. He reported that both the Wall Check Zoning Amendment and the Inoperable Vehicle Zoning Amendment were approved by Council. He stated that the Comprehensive Plan Advisory Committee had decided to meet twice each month. They have discussed the format for community forum next week and he will email Council the agenda for the forum. Council members are urged to attend.

Because of the sign enforcement moratorium, Administrator McGregor reported that he is approving all temporary sign permits through the end of the moratorium as a matter of policy. Councilman Dockum stated that while he was originally against the moratorium because he felt that Council had voted to support a select few businesses that were out of compliance, he supports Administrator's McGregor in this decision.

Administrator McGregor reported that he had sent enforcement to three residents who have unpermitted pools along with a number of other zoning enforcement letters. He reported that there are a small handful of residents who have not responded to his letters and he is asking Council to support him in further enforcement efforts. Manager Markel confirmed that, as far as can be determined; the current resident is responsible for the violation. Councilman Zoldos thanked Administrator McGregor for following up and enforcing the ordinances. The Council and Mayor agreed and directed Administrator McGregor to continue his enforcement efforts.

B. Report from the Town Attorney

Attorney Whiting reported that she has prepared a resolution for closed sessions including possible discussions of potential litigation involved in the design of structures in Lovettsville Town Center and in the design of module three at the Waste Water Treatment Plant. Councilman Dockum asked for a status report on her review of the proposed Sign Ordinance. Attorney Whiting reported that it is her next assignment for the Town but that other issues have intervened and delayed her review. Both Manager Markel and Attorney Whiting stated that in their judgment the other issues have had a higher priority and greater urgency. Council agreed with this evaluation.

C. Report from the Town Manager

Manager Markel reported the following:

1. The water lines in New Town Meadows will be flushed tomorrow morning as part of the final acceptance process to release the Phase I bond.
2. The Comprehensive Plan Advisory Committee Community Forum will be on Wednesday, July 29th at 7:00 PM at the Lovettsville Elementary School. All Council members are urged to attend.
3. National Night Out will be Tuesday, August 4th at the Lovettsville Community Center.
4. Manager Markel reported that he had attended a Grant Workshop on recreational trail funding. This may be applicable to the Community Park and/or the bike trail.
5. Manager Markel reported that a tree in the Town Square had been knocked over in an auto accident two weeks ago. He explained that the tree had not been removed because the insurance adjuster has not yet come to see the damage.

Action Items

A. LVZA 2009-0005 Communications Equipment – Authorize Public Hearing

Administrator McGregor presented this item to the Council

Motion: I move that the Town Council authorize a public hearing on August 13, 2009 for item LVZA 2009-0005 Wireless Communications Equipment—Zoning Ordinance Amendment.
By: Council Member Zoldos
Second: Council Member Coleman
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

B. New Town Meadow's – Sewer Tap Reservation Letter of Credit Release

Manager Markel explained that all of the taps reserved by this Letter of Credit have been purchased.

Motion: To Approve Resolution 2009-07-01: Approve Release Of Letter Of Credit - New Town Meadows (Attachment II)
By: Council Member Dockum
Second: Council Member Staley
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

C. Cigarette Tax Ordinance

Manager Markel explained that this Ordinance will become part of the Town Code. Attorney Whiting prepared this ordinance after reviewing similar ordinances in other jurisdictions. No changes have been made since Council discussions of the budget

Motion: To approve Ordinance 2009-07-01: Adopt Ordinance For Administration of Cigarette Tax (Attachment III)
By: Council Member Senate
Second: Council Member Coleman
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

D. Meals Tax Ordinance

Manager Markel presented this item. In response to questions from Council, he explained that temporary vendors will be required to collect this tax unless they are non-profit. Vendors at Oktoberfest will be given appropriate information to facilitate meals tax collection. Attorney Whiting stated that this document was drawn from the Middleburg ordinances and audited against the Commonwealth code to ensure compliance. She is not familiar with enforcement procedures and suggested that Treasurer Gladstone contact Middleburg concerning procedures and forms. Manager Markel assured Council that the forms and instructions will be included in the Oktoberfest packet sent to vendors. He noted that most of the vendors are doing business in the region and are already familiar with the process. He stated that if this ordinance passes tonight, collection will begin on August 1, 2009.

Motion: To approve the Meals Tax Ordinance as presented (Attachment IV)
By: Council Member Coleman
Second: Council Member Dockum
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

E. Dominion Power Issues at Waster Water Treatment Plant

Project Manager Fellers presented this item. She explained that the current facility has 240 delta wye at 400amps which is higher than what Dominion Power typically offers. The engineers believe that some of the problems we have had at the plant have been caused by this power supply. It will be necessary to either convert the existing plant to 208 to bring it into conformance. Some of the current equipment will operate at both voltages; some will need to be modified. A lot of the existing facility equipment cannot be modified because it is older and not as flexible and will have to be replaced. The Town has asked English Construction to prepare an estimate for converting the old motors but we have not yet received the estimate. There will be two separate power supplies and meters until the old equipment can be modified or replaced. Our engineer is re-evaluating to see if their equipment will operate under the 208 voltage. Dominion will have to run a third phase to the new plant which will also be expensive. The Town will have to commit to paying for the new line before Dominion will schedule the work.

Councilman Dockum asked why we were not aware of this situation sooner. Project Manager Fellers said that the Town has two letters the engineers sent to Dominion which included the specifications but Dominion never responded to either letter. The engineer, Malcolm Pirnie, also stated that Dominion made a site visit, but no one can produce documentation that supports that assertion.

Attorney Whiting stated that she has extensive electronic files as the contract was developed and noted that there were situations for which English had retained the right to file change orders. She explained that, in this case, the engineer is employed by the contractor, not the Town. She confirmed Project Manager Feller's statement that English would not have been expected to include the cost for Dominion Power to bring three-phase power to the plant in their expenditures but it should have been included in the estimates for total project costs. Project Manager Fellers explained that the equipment purchased by the Town would have exactly met the stated expectations if we had initially known which power was available because this was part of a turnkey project. Attorney Whiting stated that there are certain things she does not expect the Town will be responsible for and Councilmen Zoldos and Senate confirmed that this was contracted as a turnkey system and English Construction was responsible for knowing what electric service was at the plant. Manager Fellers noted that the engineer involved had designed the original plant and should have been aware that this situation existed. Councilman Staley asked if the plant has the correct amperage and Project Manager Fellers said it does. Councilman Staley asked if the problem would be solved if they installed three phase 480 voltage and Project Manager Fellers said that three phase 480 voltage was not needed. Manager Markel explained that if the old portion of the plant is

switched out, it will have to be done all at once; therefore it cannot be done until the new facility is on-line. Attorney Whiting recommended that Council approve the Dominion expense because it is an expense that would have occurred in any case. The Town will write a letter saying that we are not assuming total responsibility. Councilman Zoldos asked if the new generator will work with the changed wiring and Project Manager Fellers stated that she has been told that the new generator will need to be converted, so she is fairly sure the older generator will also require updating. Councilwoman Coleman asked if we are sure that the \$24,000 estimate is complete and asked if the estimate includes telephone and cable costs. Project Manager Fellers and Manager Markel confirmed that Dominion will pay those charges and that this is the total charge for running power to the plant. Councilman Staley asked what modifications will be required for the new generator and Project Manager Fellers replied that we do not know, explaining that English has been concentrating on the required changes to the new module and they believe conversion of the new generator will also be required. Councilman Staley confirmed that there are currently two phases going to the plant that are converted to three phase at the plant. Councilman Senate explained that the wires currently going to the plant are not commercial and are being converted to commercial within the plant. He also noted that the Town does not want to be running the plant on two separate power sources, stating that over time that situation would be a disaster. Councilman Dockum asked what staff the Town had when this was all originally developed. Attorney Whiting explained that the Town did not have staff at that time and relied heavily on their engineer to manage the project. Councilman Dockum noted that the Town is in a much better position today because there is qualified staff in place to manage the project for the Town. Mayor Walker stated that we also have an excellent contractor this time and that we need to recognize that English Construction has gone above and beyond in this and other matters. Attorney Whiting confirmed that they are a first class operation. There being no further discussion, Mayor Walker called for a motion.

Motion: To allow the mayor to sign an agreement and authorizes a payment to Dominion Electric of \$24,164.16 to begin installing the new power line to the Waste Water Treatment Plant. (Attachment V: Dominion Power Estimate)
By: Council Member Senate
Second: Council Member Coleman
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

F. Fats, Oil and Grease Ordinance

Project Manager Fellers presented the memo from Olver and summarized their recommendations. She explained that most of the fats, oil and grease come from restaurants and recommended that the plan be kept simple because once it is presented to DEQ they will ensure that the Town adheres to the stated guidelines. The engineers noted that most other municipalities do not include homes, gas stations, or other enterprises in their ordinances. Other issues will be addressed in the pretreatment ordinance.

Motion: I move that Town Council direct Staff to forward the FOG Plan, with Town Council recommended changes, to DEQ for their review. I further move to direct staff to begin drafting needed revisions to the Pretreatment and Water and Sewer Ordinance to accommodate implementation of the FOG Plan.
By: Council Member Zoldos
Second: Council Member Dockum
Aye: Council Members Coleman, Dockum, Senate, Staley, Zoldos
Nay: None
Abstain: None
Absent: Council Member Jones

G. Cost Share of Antenna Reattachment for Elevated Water Tank

Project Manager Fellers explained that the Town will gain economies of scale by using KCI for the entire project. Manager Markel explained that he favors Option B because the Town has had some culpability in the development of the existing configuration. Mayor Walker stated that she supports Option A, primarily because the telecommunications companies are generating a large revenue stream from these installations. Councilman Dockum asked Manager Markel why the Town should participate and Manager Markel noted that the Town did not have the staff to perform due diligence when the original installations were performed and as a result, errors were made. He also stated that the Town's share of \$5,000 buys the Town more standing during the negotiation process. Mayor Walker noted that the Town did have outside experts review the original installations. Councilwoman Coleman stated that if the carriers are using this opportunity to upgrade their equipment there is no reason for the Town to bear any of the cost. Councilman Dockum stated that this is the first time he is reviewing this issue and needs to familiarize himself with the history of the installations before making a decision. Council asked for additional

information about the existing contracts and for possible caps on charges to the carriers before they vote. Project Manager Fellers stated that she is currently working on a spreadsheet containing all of this information and that it should be ready for review before the August 13th Council meeting. The Council agreed to table this item until that meeting.

Information Items

Manager Markel distributed bound copies of the approved 2010 Town Budget to the Council.

Comments from the Mayor and Town Council

Councilman Dockum asked the Council to decide if they want to have a Town booth at Oktoberfest this year and if they would be available to staff the booth.

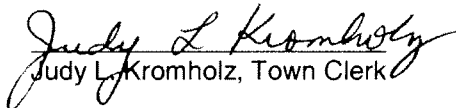
Mayor Walker reported on the following:

- The Movie in the Park was great fun and attendance continues to increase.
- Along with Manager Markel, she has been meeting with Comcast to renegotiate the franchise agreement. Comcast wants to remove the 20% discount for senior citizens.
- She attended the meeting with VDOT on the Broad Way project.
- Along with Councilwoman Coleman, she attended the Oktoberfest meeting with Terra Lynn Hollern from the Loudoun County Department of Emergency Services – Office of Special Events.
- National Night Out will be celebrated at the Lovettsville Community Center on August 4, 2009 between 6:30 and 9:00 PM.
- On August 5, 2009 there will be a public hearing on PATH in Purcellville. Mayor Walker reported that she had met with Governor Kaine a few weeks ago and both the Governor and Congressman Wolf are still monitoring this issue.
- The next Lovettsville Movie in the Park will be *Black Stallion* on August 14th.

Closed Session

The Council moved to go into closed session at 10:25 PM (Attachment V)

Respectfully submitted,


Judy L. Kromholz, Town Clerk

Date Approved: December 10, 2009

Attachment I: Completed Speaker Sign-Up Sheet

Attachment II: Resolution 2009-07-01: Approve Release of Letter Of Credit - New Town Meadows

Attachment III: Ordinance 2009-07-01: Adopt Ordinance for Administration of Cigarette Tax

Attachment IV: Meals Tax Ordinance

Attachment IV: Dominion Power cost quote for upgrade to WWTP Power Supply

Attachment V: Recordation of Closed Session

**Resolution 2009-07-01: APPROVE RELEASE OF LETTER OF CREDIT
NEW TOWN MEADOWS**

MOTION:

SECOND:

WHEREAS, Lovettsville Development Partners, LLC, succeeded to rights to purchase sewer taps for up to 54 residential dwelling units under an agreement dated December 16, 1999, and in accordance with the terms thereof, provided letter of credit No. 419 dated February 26, 2004 and issued by Virginia Commerce Bank in the amount of \$321,300.00; and

WHEREAS, Lovettsville Development Partners, LLC, by the terms of the said agreement is entitled to a reduction in the amount of the letter of credit proportionate to the number of taps purchased and placed into service not more frequently than once each 12 months; and

WHEREAS, Lovettsville Development Partners, LLC, has asked that the Town release the letter of credit in full inasmuch as all sewer taps subject to the agreement have been purchased and paid in full.

NOW, THEREFORE, BE IT RESOLVED that the Lovettsville Town Council hereby acknowledges that the obligations of Lovettsville Development Partners, LLC under the said agreement have been fully executed and the Mayor is hereby authorized to release letter of credit No. 419 issued by Virginia Commerce Bank, referenced above to Lovettsville Development Partners, LLC.

VOTE:

Ayes:

Nays:

Abstentions:

Absent for vote:

Approved: July 23, 2009

Elaine Walker, Mayor

CERTIFIED:

Judy L. Kromholz, Town Clerk

Town of Lovettsville

Ordinance 2009-07-01 : ADOPT ORDINANCE FOR ADMINISTRATION OF CIGARETTE TAX

MOTION:

SECOND:

WHEREAS, the Town Council annually reviews its schedule of taxes, fees and rate charges to establish practicable and equitable sources of revenues to fund the general fund budget; and

WHEREAS, in setting the levies in connection with the 2010 Fiscal Year, the Town Council advertised a new tax to be levied upon the sale of cigarettes within the Town; and

WHEREAS, notice of the said proposed tax increase by levy of a new tax on sale of cigarettes within the Town and of the proposed FY 2010 budget has been give in accordance with the requirements of Va. Code sections 15.2-2506 and 58.1-3007and public hearings were conducted June 2, 2009 and the FY 2010 budget was adopted on June 16, 2009, including the cigarette tax as advertised.

NOW, THEREFORE, BE IT ORDAINED that the Lovettsville Town Council does hereby adopt an ordinance providing for the administration of the tax upon sale of cigarettes within the Town, attached hereto, and authorizes the Mayor to execute an agreement, approved in form by the Town Attorney, with the Northern Virginia Cigarette Tax Board, both with the effective date of July 1, 2009

VOTE:

AYES:

NAYS:

ABSTENTIONS:

ABSENT FOR VOTE:

Adopted this ___ day of ___, 2009

Elaine Walker, Mayor

Attest:

Judy L. Kromholz, Town Clerk

Meals Tax

§ 1. Definitions.

The following words and phrases, when used in this Article, shall have, for the purpose of this Article, the following respective meanings except where the context clearly indicates a different meaning:

CATER - The furnishing of food or beverages, or both, on the premises of another, for compensation.

COLLECTOR - The Town Treasurer of Lovettsville or designee.

TREASURER - The Treasurer and any duly designated deputies, assistants, inspectors or other employees.

FOOD - All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

FOOD ESTABLISHMENT - Any place in or from which food or food products are prepared, packaged, sold or distributed in the town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, caterer's kitchen or premises, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

MEAL - shall mean any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Town - The Town of Lovettsville.

§ 2. Imposition of tax.

There is hereby imposed and levied by the town on each person a tax at the rate of three (3) percent on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not and whether consumed on the premises or not. There shall be no tax if the total amount paid is fifty cents (\$0.50) or less; on larger amounts a fractional cent of tax due shall be rounded to the next higher cent.

§ 3. Collection of tax by seller.

Every person receiving any payment for a meal with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this Article from the person on whom the same is levied or from the person paying for such food at the time such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on the property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

§ 4. Exemptions; limits on application.

- (a) The tax imposed under this Article shall not be levied on the following items when served exclusively for off-premises consumption:
- (1) Factory prepackaged candy, gum, nuts and other items of essentially the same nature.
 - (2) Factory-prepackaged donuts, ice cream, crackers, nabs, chips, cookies and items of essentially the same nature;
 - (3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); provided however, that a bulk sale shall not be deemed to include any meal or meals catered or delivered by a food establishment for off-premises consumption.
 - (4) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
 - (5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts, issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.

- (6) Any food or food product purchased for human consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. §2012, as amended except for hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs (c) (3), (4) and (5) hereinbelow.
- (b) A grocery store, supermarket or convenience store shall not be subject to the tax except sales from a delicatessen or other area designated for the sale of prepared foods and beverages.
- (c) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:
- (1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
 - (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
 - (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
 - (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
 - (5) Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
 - (6) Food and beverages sold on an occasional basis by non-profit educational, charitable or benevolent organization church, or religious body as a fundraising activity, the gross proceeds of

which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.

- (7) Food and beverages sold through vending machines.

§ 5. Gratuities and service charges.

If a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this Article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

An amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of the food and beverages by the seller, and required to be paid by the purchaser, shall be deemed a part of the selling price of the food and beverages and shall be subject to the tax imposed by this Article, but only to the extent that such gratuity, tip or service charge exceeds 20% of the sales price.

§ 6. Payment or absorption of tax by seller.

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of the tax imposed under this Article will be paid or absorbed by the seller.

§ 7. Reporting of taxes collected; remittance; preservation of records.

It shall be the duty of every person required by this Article to collect the taxes imposed by this Article to make a report thereof setting forth such information as the Treasurer may prescribe and require, including all purchases taxable under this Article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Article. Such reports shall be made and the taxes required to be collected by section 3 shall be remitted to the Treasurer within ten (10) days of the conclusion of each calendar quarter. All records related to the calculation and imposition of the tax shall be kept and preserved for a period of five (5) years. The Treasurer or his/her duly authorized agents shall be entitled to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this Article, and to make copies of all or any parts thereof.

§ 8. Procedure upon cessation of business.

Whenever any person required to collect and pay to the town a tax imposed by this Article shall cease to operate, go out of business or otherwise dispose of his business, any tax then payable to the town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the town.

§ 9. Penalty and interest upon failure to report or remit tax.

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by this Article within the time and in the amount required, there shall be added to the tax by the Treasurer a penalty in the amount of ten percent (10%) of the tax, and interest thereon at the rate of ten percent (10%) per annum, which shall be computed upon the tax and penalty from the date such were due and payable.

§ 10. Violations and penalties.

- (a) Any person willfully failing or refusing to file a report or make payment as required under this Article shall, upon conviction thereof, be guilty of a class I misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is \$1,000.00 or less. Any person violating or failing to comply with any other provision of this Article shall be guilty of a class I misdemeanor.
- (b) Except as provided in subsection (a) above, any corporate or partnership officer, as defined in Virginia Code §58-1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this Article, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class I misdemeanor.
- (c) Each violation of or failure to comply with this Article shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this Article.

§ 11. Regulations for administration and enforcement.

The Treasurer may issue regulations for the administration and enforcement of this Article.



Reply to Customer Service Request and Agreement for Underground Service

Dominion Virginia Power

H. Myers
K. Markle
K.Fellers

Date: 7/2/2009

Thank you for your request for underground service made through your inquiry shown at right. The work request number which has been assigned to your installation is shown at right and should be referenced when contacting Dominion Virginia Power about your service.

Inquiry Date
Work Request # 7228771

The underground service is to be furnished as follows. Customer Town of Lovettsville
Location 39183 Irish Corner Road
Work Description: Extend 3rd phase and install bank of transformers for new commercial service

The service characteristics will be approximately those shown below:

Service Panel Size 1300 Amps 120/208 Volts 3 Phase 4 Wire,
Delta X Wye, 60 Hertz A.C.

The available fault current at the service panel will be: 8,775 (Approximately Amperes symmetrical). Applicable regulations and ordinances require the installation of a suitably rated service panel to interrupt this fault current. It is the Applicant's responsibility to advise Applicant's contractor of the characteristics of the electricity to be provided so that proper equipment may be installed.

Dominion Virginia Power will furnish such service in accordance with applicable terms and conditions of service filed with, and authorized by, the State Corporation Commission of Virginia. It is the Applicant's responsibility to adhere to the requirements of Dominion Virginia Power's published information and Requirements for Electric Service applicable in Virginia (the "Blue Book"). The Blue Book is available at a local Dominion Virginia Power office or on-line at www.dom.com.

The underground service charge to install such underground service will be:

Table with 2 columns: Description and Amount. Rows include: For your residence, For your subdivision/development, representing lots/units @ each, To remove adequate overhead facilities, To install underground facilities, \$24,116.14 For non-residential service, Other (Explain), \$24,116.14 Total, No charge required (Explain)

The above cost has been estimated in good faith; however should unforeseen circumstances or Applicant change orders modify the magnitude of the project, Dominion Virginia Power reserves the right to stop construction and/or amend the service cost. For such project changes, additional construction charges, not to exceed \$500 for residential customers or \$1000 for non-residential customers, will be billed to Applicant upon completion of the work.

The applicant is responsible for the following items: removing, chipping, or otherwise disposing of debris produced by right-of-way clearing; reseedling; resodding; landscaping; erosion control; and sedimentation control. Therefore, the above charges do not include these services unless otherwise specified in this Agreement.

The necessary engineering and construction work is being scheduled to provide for connection of your service by the date shown at right. This completion date may vary slightly in the event of inclement weather or emergencies. Date TBD

In order to install the underground facilities by the scheduled completion date, it will be necessary for you to complete the items below by the date shown at right.

Date TBD

Check as many as apply with "X"

- Install Company provided conduit for all street crossings within the area contracted for hereunder (install pull string in conduit where applicable). Conduits ends are to be clearly marked.
- Locate and mark any privately-owned underground facilities which may be in the vicinity of Dominion Virginia Power's proposed facilities route as shown on the attached sketch.
- Cut and clear right-of-way as shown on the attached sketch.
- Execute and return the Company's easement for electrical facilities.
- Install meter base and customer's conductors.
- Identify property line control points.
- Obtain electrical inspection.
- Grade site to be at final elevation.
- Execute an agreement for the Purchase of Electricity prior to the delivery of service.
- Execute an agreement for the Purchase of Electricity prior to the construction of facilities.
- Other P.O.

Applicant shall also be responsible for locating and marking any privately owned underground facilities which may be in the vicinity of Company's proposed cable route as shown on the attached sketch. Dominion Virginia Power will not be responsible for damage done to customer's underground facilities if their location is not marked.

If Applicant's schedule will permit completion of these items before the required date, please contact the Dominion Virginia Power representative identified below. In the event that the Applicant has not completed these items by the required date, connection of the Applicant's service will be rescheduled and Applicant will be notified of the new scheduled completion date.

Dominion Virginia Power Representative Bill Pearce Telephone 703-779-5172

After the service cables have been installed, it shall be the Applicant's responsibility to adequately waterseal all cable and conduit entrances (Including spares) in accordance with the latest edition of the National Electrical Code. The watersealing compound must be compatible with the crosslinked polyethylene insulation on the service cables. An electrical inspection will also be required before Applicant's electric service facilities are energized.

If any of the following occur before the installation of the electric facilities required to provide one or more of the services contracted for herein, this Agreement will terminate as to any service contracted for and for which electric facilities have not been installed.

- 1 An electrical permit or similar required authorization from a government entity is not received within six (6) months of the date of this Agreement.
- 2 The electric service plan under which the charges or conditions for service of this Agreement having been established is terminated by the State Corporation Commission of Virginia, a new service plan containing different charges or conditions of service is approved, the Company has provided written notice of termination and thirty (30) days have elapsed since the Company gave such notice.
- 3 The Company has not received Applicant's payment and authorization within sixty (60) days from the date of this Agreement. In this case, Applicant's request for service will automatically be cancelled without notice to Applicant.

In the event of termination of this Agreement for facilities not installed as outlined above, Dominion Virginia Power will provide such electric service facilities as required under the provisions of a new agreement in accordance with Company's then applicable electric service plan and charges as filed with the Virginia State Corporation Commission.

If you agree to the foregoing, enclose the payment shown at right and return this signed Agreement in the enclosed return envelope. If we have not received your payment and authorization within 60 days from the date of this Agreement, your request for service will be canceled.

Payment
Amount \$24,116.14

Virginia Electric and Power Company d/b/a Dominion Virginia Power

Accepted this _____
(Date)

By: _____

Signed By: _____
(Builder, Developer or Customer)

Enclosed is the payment of the service charge shown above for work request #

7228771

Please note: The signing of this form constitutes an agreement for the installation of underground facilities only and is not a formal application for electric service. Please contact our Customer Service Center at 1-888-667-3000 to apply and have the electric service turned on and placed in your name. If you have any questions, please contact me at the provided telephone number. If you are excavating, REMEMBER to call Miss Utility before you dig at 811.

Town of Lovettsville

Motion to Convene a Closed Session

Date and Time: July 23, 2009 - 10:25

Motion: That the Lovettsville Town Council convene in Closed Session pursuant to Va. Code section 2.2-3711 A 1 for the purpose of discussing the performance of particular public officers, appointees or employees, and thereafter reconvene in open session for action as appropriate.

Made By: Charlotta Coleman

Seconded By: Mike Senate

Aye: B. Zoldas, S. Dockum, S. Staley, M. Senate, C. Coleman

Nay: None

Abstain: None

Absent: D. Jones

Vote Recorded by: Spine Walker

End of Closed Session

Date and Time: July 24, 2009; 12:17 AM

When polled as to whether (i) only public matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting, the following members stated "Aye:"

List Council members stating "Aye":

Scott Dockum, S. Staley, C. Coleman, B. Zoldas

Statement
Recorded by:

[Signature]