

Town of Lovettsville

Town Council Minutes of Regular Meeting August 12, 2010

Mayor Elaine Walker called the regular meeting of the Lovettsville Town Council to order at 8:14 PM on Thursday, August 12, 2010.

Present at Meeting

- Mayor Elaine Walker
- Vice Mayor Robert Zoldos II *{arrived at 9:25 PM during Action Item A discussion}*
- Council Members Tiffaney Carder, Scott Dockum, Michael Senate, Shaun Staley
- Town Manager Keith Markel
- Town Attorney Elizabeth Whiting
- Zoning Administrator Steve McGregor
- Project Manager Karin Fellers *{arrived at 8:45 PM during the minutes review}*
- Town Clerk Judy L. Kromholz

Absent

- Council Member Charlotte Coleman

Audience

Among those present in the audience were Ed Spannaus, Fred George, Anne Fletcher, and Amanda Staley *{arrived about 9:00 PM}*.

Call to Order/Welcome/Pledge of Allegiance/Invocation

Mayor Walker informed those present that Robbie Jones, the son of Steven and Carol Miller and grandson of Fran Wire is a patient at Bethesda Naval Hospital, having lost both legs in Afghanistan. She asked for a moment of silence to honor his service and ask for his speedy recovery before the Pledge of Allegiance. After a moment of silence, the Mayor led the assembled in the Pledge of Allegiance.

Comments from the Public

Mr. Fred George reported on continuing problems in Town with the skateboarders. He stated that the situation is getting worse and that they have harassed patrons of Lovettsville Pizza and Subs. He has run them off his property when he can. He reported that there have been a number of near misses by vehicles harassed by the skateboarders. Mr. Ed Spannaus reported that the kids had thrown rocks at his home.

Mayor Walker reminded Mr. George that the Sheriff's Deputy had strongly recommended putting up No Skateboarding and No Trespassing signs on private property. Mr. George asked if sign permits would be required for these signs. Manager Markel stated that public notification signs such as these are outside the Town's Advertising Sign Ordinance and do not require permitting. The Council all confirmed that business owners should be encouraged to post these signs. Councilman Dockum stated that the Town needs to consider providing alternative activities for these kids and Attorney Whiting reported that the Town of Leesburg provided a loan to a group to fund a skateboard park and the loan was repaid within a year. Councilman Senate noted that it is only a small subset of the skateboarders that are creating the trouble.

Community Presentations

A. Oktoberfest Committee Update

Councilman Dockum gave a brief status report.

Additions/Deletions/Modifications to the Agenda

There were none.

Presentations

No presentations were scheduled.

Approval of Town Council Minutes

A. Town Council Regular Meeting – April 22, 2010

Motion: To approve the minutes of the April 22, 2010 Town Council Meeting as corrected.

By: Councilman Staley

Second: Councilman Senate

Aye: Council Members Dockum, Senate, Staley

Nay: None

Abstain: Councilwoman Carder

Absent: Council Members Coleman, Zoldos

B. Town Council Budget Meeting – April 29, 2010

Motion: To approve the minutes of the April 29, 2010 Town Council Budget Meeting as corrected.

By: Councilman Senate

Second: Councilman Staley

Aye: Council Members Dockum, Senate, Staley

Nay: None

Abstain: Councilwoman Carder

Absent: Council Members Coleman, Zoldos

C. Town Council Budget Public Hearing – May 13, 2010

Motion: To approve the minutes of the May 13, 2010 Town Council Budget Public Hearing as corrected.

By: Councilman Senate

Second: Councilman Dockum

Aye: Council Members Carder, Dockum, Senate, Staley

Nay: None

Abstain: None

Absent: Council Members Coleman, Zoldos

D. Town Council Public Hearings and Regular Meeting – May 20, 2010

Tabled.

Report from the Treasurer

No report was presented.

Staff Reports

A. Report from the Zoning Administrator

Administrator McGregor presented his written report for July 2010. There were no questions.

B. Report from the Town Attorney

The Town Attorney had no formal report.

C. Report from the Town Manager

Manager Markel reported the following items:

1. He distributed a draft agenda for the Council retreat on Saturday, August 15th.
2. The Movie in the Park tomorrow night will be *Raiders of the Lost Ark*.
3. He thanked Councilman Senate and others who had installed the water theft warnings rings on all of the hydrants in Town.

Consent Agenda

There were no items on the consent agenda.

Action/Discussion Items

A. Conversion of Use Zoning Certificate - 2 East Pennsylvania Avenue

Zoning Administrator McGregor presented this item. He is seeking direction from Council on how to advance to completion the conversion of use zoning certificate process that was initiated in 2005 for the property at 2 Pennsylvania Avenue, owned by Mr. Fred George and Ms. Anne Fletcher. Administrator McGregor explained that the Zoning Administrator at the time tried to work with the applicant and requested site plan information. Her attempt to get a clear site plan from the applicant with all the necessary dimensions, calculations and distances was not fully successful and she herself did some of the calculations and draw up part of the site plan. In May-June 2005 the matter was brought to the Town Council by the Zoning Administrator requesting a number of waivers for site plan requirements. On June 30, 2005 the Council passed a resolution that accepted a number of waivers of regulations by reference to the Administrator's June 23rd letter on the subject. The resolution agreeing to the waivers, however, made approval of the Conversion of Use Permit conditional. In part, it referred to approving the site plan "modified by the Zoning Administrator...provided that the applicants shall secure VDOT approval for their entrance on the public road network and construct the improvements...not later than 6 months from the date of this resolution [December 30, 2005]."

Administrator McGregor reported that the applicant did not comply with the Council resolution regarding the condition for accepting the waivers and the conversion of use zoning certificate was never approved by the Zoning Administrator. In the meantime, the applicants have converted the property from residential to commercial use.

Administrator McGregor explained that the applicant's Conversion of Use zoning certificate submission could have been evaluated and acted upon by the then Zoning Administrator under Zoning Ordinance provisions Sec. 10-4 (d). Nevertheless, the Zoning Administrator and Town Attorney wrote a joint memo to the Council explaining the applicant's requirements for obtaining a conversion of use zoning certificate. The Zoning Administrator brought a series of waivers to the Council to get their opinion. This resulted in the Town Council passing the resolution on June 30, 2005. To date the applicants have not complied with the resolution's requirement to provide an improved entrance per VDOT standards.

Administrator McGregor recommended that the Town Council send a letter to the applicant/owners of the property at 2 Pennsylvania Avenue requesting that they submit a new application for a conversion of use zoning certificate. In that letter the Council is advised to:

A) Request that the applicants submit a clear and complete site plan that includes:

1. All the existing site features (house, outbuilding, sidewalk, concrete parking pad, trees, shrubs, hedges, entrance etc.), with dimension of the features and the total square feet of the structures that will be used for commercial uses.
2. The proposed parking spaces and turning areas showing dimensions.
3. What type of surface the parking spaces and turning areas will be made of and how the parking spaces will be marked on the property itself.
4. What exact waivers of Zoning Ordinance requirements are being requested.

B) Indicate that the application does not require a fee.

C) Indicate that the application needs to be submitted no later than September 1, 2010.

D) Indicate that the Zoning Administrator will have a report and appropriate recommendations prepared for the October 14th Town Council meeting.

Mayor Walker opened the discussion by asking the applicant if he wished to speak. Mr. George stated that he has spoken to and emailed Mr. Massey at VDOT. Mr. Massey had told him that the existing parking lot and driveway are fine and that he will send a letter to that effect. Despite repeated attempts by Mr. George, he has not been able to get the promised letter from Mr. Massey. Ms. Fletcher stated that Mr. Massey had told her that he had spoken to someone from the Town and had told that person that nothing needs to be done. Mr. George stated that they have been a good neighbor to the Town and that the location has not been successful as a commercial structure, but could easily be rented as a residential property. Ms. Fletcher stated that they think they should leave the property residential at this time.

Administrator McGregor stated that one of the reasons he is proposing this method is that he would be able to send the application to VDOT himself as part of his usual procedure and thereby get a written response from VDOT within 30 days. Administrator McGregor stated that he would also ask for wheel stops to accurately define the number of parking spaces. Manager Markel stated that because the property is currently zoned C-1 and has been used commercially for 24 consecutive months the applicant would not be able to rent the property as a residential use.

Councilman Dockum noted that this scenario is very similar to the process that the Talk of the Town restaurant and other properties have gone through. Councilman Staley asked what options the applicant has to accomplish the two goals of earning VDOT approval and providing acceptable parking spaces. Administrator McGregor stated that the applicant could apply to VDOT themselves and Attorney Whiting pointed out that VDOT is required to respond to the Town according to a timeline but does not have the same constraints when responding to an individual. *{Vice Mayor Zoldos arrived during this discussion.}* Councilman Staley said that it appears that the fastest way to get the existing application approved would be through the new application proposed by Administrator McGregor. Administrator McGregor noted that the plat in the original application differs from the County records. Councilman Senate stated that the Council should not rescind what the Council did in 2005, but should complete it. Attorney Whiting pointed out that the original application was never completed within the allotted time and is therefore moot at this point. The condition was never satisfied so neither the current nor the prior Zoning Administrators were ever in a position to issue the Conditional Use Permit. Attorney Whiting noted that VDOT has more flexibility now than it did five years ago and it would have been much more difficult to get an approval letter in the past. Councilman Dockum asked Administrator McGregor if he could forward the original plans to VDOT and Attorney Whiting stated that there must be a legal application accompanying the plat for VDOT to look at it. Councilman Dockum suggested that the easiest path forward is to submit the original application with the original plat to VDOT and await their response. Councilman Staley agreed with Councilman Dockum's suggestion. Mayor Walker asked Mr. George if he was comfortable with this plan and he agreed. Councilman Dockum asked Mr. George to agree to discuss parking spaces at a future time and Mr. George agreed. The Council directed Administrator McGregor to re-submit the original application to VDOT.

{Mr. George and Ms. Fletcher left at the conclusion of this discussion.}

{Administrator McGregor left at 9:50 PM}

B. VDOT Resolution for Town Center Street Acceptance

Manager Markel presented this item. He is asking Council to consider adopting the resolution in support of VDOT acceptance of secondary streets related to the construction of the Town Square and the realignment of Berlin Pike as part of the Lovettsville Town Center project. He explained that as part of Elm Street Development's Lovettsville Town Center Project, Route 287 (Berlin Pike) was re-aligned near the intersection of Broad Way. The construction of the new Town Square and Phase 1 of the Town Center project created new sections of Berlin Pike along with new streets such as Town Center Drive. Existing roads such as South Church Street and West Broad Way were rebuilt and improved with curb and gutter. It was originally believed that only the Loudoun County Board of Supervisors needed to pass a resolution that would abandon the old right-of way and accept the new streets. The County passed their resolution this past March. After further review by VDOT it was determined that a resolution was also necessary from the Town. The County has the authority to request that VDOT abandon and accept right of way, but Town's are only authorized to request secondary street acceptance into the maintenance system. This resolution is requesting that VDOT bring the listed streets into their secondary system of state highway maintenance. The developer has already posted the required maintenance bonds with VDOT. This action does not affect the Lovettsville Town Center - Section 1 Performance Bonding held by the Town.

Motion: To approve resolution 2010-08-01: To request the Virginia Department of Transportation add streets related to the Lovettsville Town Center project for addition to Secondary system maintenance under section 33.1-82, Code of Virginia

By: Vice Mayor Zoldos

Second: Councilman Senate

Mayor Walker called for discussion. There being none, who called for the vote.

Aye: Council Members Carder, Dockum, Senate, Staley, Zoldos

Nay: None

Abstain: None
Absent: Council Member Coleman

C. Water Meter Sizing Policy

Project Manager Fellers presented this item. She explained that staff has made modifications to the proposed policy based on discussions in Town Council meetings as well as during a special Town Council retreat. At this point the remaining concern revolves around the enforcement of any required meter upgrade. Staff has presented two options for a policy for Town Council to consider. Water Meter Sizing Policy is the latest version of the Policy being discussed with Town Council. The major modification from previous versions is revisions to paragraph D4 which discusses the options available to Town Council for enforcement of a meter upgrade if necessary. With the revised wording, Town Council is provided with options for enforcement should it be needed. Staff has also included a simplified version of the Meter Sizing Policy that does not require a meter upgrade for a residence that exceeds the Maximum Allowable Usage by less than 20%. It simply indicates that the Town will charge twice the water and sewer rate for any water usage above the Maximum Allowable Water Usage for a 5/8" meter. The only residences that would be required to upgrade would be those that exceed the Maximum Allowable Usage by more than 20%, have a second structure connected to water or have a home business. In this way, the Town is offering some leeway for the residences to exceed the Maximum Allowable Usage a little bit without triggering the need for the meter upgrade. Staff has evaluated the water use for all Town accounts for FY10. Because of a wetter summer last year, the water usage for residents was down and no residents exceeded the average annual water usage of 500 gallons per day. The data staff evaluated and presented in prior meter sizing policy discussions was for a drier year and the Town did have several accounts that exceeded the yearly average. Thus, it would appear that the weather does have an impact on the overall usage for some homeowners who wish to water their lawns. There are still several commercial/apartment accounts that are exceeding the water usage for their meter size and would need to be grandfathered under the proposed policy.

Project Manager Fellers noted that it is important that the Town Council adopt a Meter Sizing Policy. New businesses will come to Town and it is important to ensure the water meter for their business is sized appropriately. This policy will facilitate the process of determining the appropriate meter size and will ensure that the Town collects the appropriate Availability Fee in order to cover the capital expense of facilities needed to provide service. Town Council should review the Availability Fee amounts for different meter sizes carefully as part of this process. The larger meter fees are calculated in direct proportion to the water volume that the meter can provide. The higher meter sizes require a much higher Availability Fee.

The Council queried Project Manager Fellers concerning the different types of meters which would be required by different types of businesses. Mayor Walker expressed concern about requiring changing out residential meters based on excessive usage. Project Manager Fellers clarified that the 'simplified plan' would only require meter change out for supplementary usage (extra building, home occupancy). It would only charge a surcharge amount over a certain level of usage. Mayor Walker stated that she has no problem with timed change outs for current commercial users but does not think the Town should monitor residential units in this manner. Project Manager Fellers pointed out that the proposal is that Council will always have discretion over individual issues.

Motion: I move that the Town Council direct staff to move forward with modifications to the Water and Sewer Ordinance in order to adopt the Water Meter Sizing Policy Simplified with modifications as discussed and bring back the policy and the revisions needed for the Water and Sewer Ordinance for consideration for approval.

By: Vice Mayor Zoldos

Second: Councilman Senate

Aye: Council Members Carder, Dockum, Senate, Staley, Zoldos

Nay: None

Abstain: None

Absent: Council Member Coleman

{Project Manager Fellers left at 10:35 PM.}

Information Items

No information items were presented.

Comments from the Mayor and Town Council

Councilman Senate reported that the Lovettsville Fire and Rescue Company Friday night duty crew installed all of the hydrant rings. In the process they discovered that 60-65% of the side spuds were loose and there are probably 10 fire hydrants that are not painted Bavarian blue. Vice Mayor Zoldos suggested asking the career staff at the station to paint them all blue.

Councilman Staley noted that an editorial in *Leesburg Today* in July solidified the suspicion that small businesses are still having problems in this economy. He encouraged everyone to shop locally and support local businesses.

Councilwoman Carder reported that she had received a letter stating that there might have been a violation of campaign funding law. She stated that she paid for her campaign pamphlets out of her own pocket and did not intentionally or willfully violate any law. She stated that if a violation is found she will pay the fine. Councilwoman Carder also reported that she had attended a meeting of the proposed Lovettsville Coop Grocery Store at which there were about 25 people. Individuals at the meeting pledged approximately \$1,800 to fund a feasibility study. She invited everyone to become involved in this effort. Mayor Walker asked how the coop would be financed and Councilwoman Carder stated that the group had a long way to go before they are ready to incorporate and establish themselves.

Councilman Dockum wished Councilwoman Carder the best of luck with her impending baby delivery. He mentioned that he had been overwhelmed with the number of people who had thanked him for his Letter to the Editor of the *Purcellville Gazette*.

Vice Mayor Zoldos reminded those present that the Movie in the Park tomorrow will be *Raiders of the Lost Ark*. Setup will begin at 7:30 PM and any assistance will be appreciated.

Mayor Walker reported on the following:

1. The Virginia Downtown Development Association luncheon will be on August 19th in Purcellville.
2. The benches and trash cans have been installed in the Town Park thanks to Manager Markel's efforts.
3. She received a letter from an 11 year old skateboarder who lives just outside of Town who is requesting that the Town construct a skateboard park. Mayor Walker read the letter into the record.
4. Manager Markel has received another FOIA request from a Lovettsville Town Center resident.
5. Kathy Lopresti's husband Tony had surgery on August 2nd and is doing well.
6. The SPEX for Lovettsville Park was approved by the Loudoun County Board of Supervisors on July 12th.
7. Along with Manager Markel, she met with a VML insurance representative to discuss Town insurance for this year.
8. She met with Ryan Homes and reported that they are waiting to purchase another block of lots in Lovettsville Town Center as soon as Elm Street Development gets them recorded.
9. National Night Out on August 3rd was another success.
10. She attended a Park planning meeting at the Community Center. Among the items discussed by the Committee were nature study programs, a dog park, and pedestrian access to the Park.

Adjournment

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

Motion: To adjourn the August 12, 2010 meeting of the Lovettsville Town Council

By: Council Member Senate

Second: Council Member Staley

Aye: Council Members Carder, Dockum, Senate, Staley, Zoldos

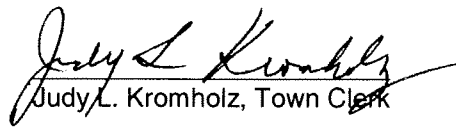
Nay: None

Abstain: None

Absent: Council Member Coleman

The meeting was adjourned at 11:23 PM.

Respectfully submitted,


Judy L. Kromholz, Town Clerk

Date Approved: October 14, 2010

Attachments:

- I. Speaker Signup Sheet
- II. Resolution 2010-08-01: To request the Virginia Department of Transportation add streets related to the Lovettsville Town Center project for addition to Secondary system maintenance under section 33.1-82, Code of Virginia

Town of Southville

Speaker Sign - Up Sheet

Town Council Public Hearing and Regular Meeting - August 12, 2010

Please Print.

Name and Association	Address	Topic	Email Address (Optional) ¹
Fred Myers		Skate boards	

Each speaker will be limited to no more than three (3) minutes at the beginning of the meeting, or no more than five (5) minutes at the end of the meeting.

¹ If you provide your email address, you will be added to the Town Council & Planning Commission Meetings Notification List.

Town of Lovettsville

RESOLUTION 2010-08-01:

TO REQUEST THE VIRGINIA DEPARTMENT OF TRANSPORTATION ADD STREETS RELATED TO THE LOVETTSVILLE TOWN CENTER PROJECT FOR ADDITION TO SECONDARY SYSTEM MAINTENANCE UNDER SECTION 33.1-82, CODE OF VIRGINIA

MOTION: Zoldos
SECOND: Senate

WHEREAS, the Town of Lovettsville has authority pursuant to Section 33.1-82, Code of Virginia, to add mileage to the secondary system that conforms to specific requirements established by the 2005 Subdivision Street Requirements of the Virginia Department of Transportation addressing right of way widths and the condition of streets to be added to the secondary system; and

WHEREAS, the Town of Lovettsville or another development entity is responsible for the provision of surety, maintenance fees, and administrative cost recovery fees required by the 2005 Subdivision Street Requirements for all mileage to be added to the secondary system pursuant to Section 33.1-82, Code of Virginia; and

WHEREAS, Town Center Lovettsville LC, the developer of Lovettsville Town Center has posted a surety in the form of an irrevocable letter of credit with the Virginian Department of Transportation for any first year maintenance issues.

NOW, THEREFORE, BE IT RESOLVED, this Council requests the Virginia Department of Transportation add the street(s) described in the attached additions form AM-4.3 to the secondary system of state highways, pursuant to Section 33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, this Council guarantees a clear and unrestricted right of way, as described, and any necessary easements for cuts, fills and drainage.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be forwarded to the Permits Manager for the Virginia Department of Transportation.

VOTE:

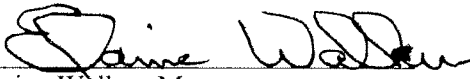
AYES: Carder, Dockum, Senate, Staley, Zoldos

NAYS: None

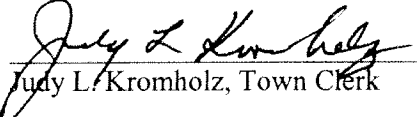
ABSTENTIONS: None

ABSENT FOR VOTE: Coleman

Adopted this 12th day of August, 2010


Elaine Walker, Mayor

CERTIFIED:


Judy L. Kromholz, Town Clerk

The German Settlement

In the County of Loudoun

By resolution of the governing body adopted March 2, 2010

The following VDOT Form AM-4.3 is hereby attached and incorporated as part of the governing body's resolution for changes in the secondary system of state highways.

A Copy Testee

Signed (County Official): _____

Report of Changes in the Secondary System of State Highways

Project/Subdivision Lovettsville Town Center

Type Change to the Secondary System of State Highways: Abandonment

The following facilities of the Secondary System of State Highways are hereby ordered abandoned, pursuant to the statutory authority cited:

Reason for Change: Developer Project - Section 33.1-155

Pursuant to Code of Virginia Statute: §33.1-155

Street Name and/or Route Number

◆ Broad Way, Segment C-D, State Route Number 673

Old Route Number: 0

● From: 0.12 miles east of intersection with SR 674

To: 0.03 miles west of intersection with SR 1501, a distance of: 0.09 miles.

Street Name and/or Route Number

◆ Church St, Segment M-N, State Route Number 1501

Old Route Number: 0

● From: 0.05 miles south of East Broadway SR 673

To: C/L Intersection with old Berlin Tpke SR 287, a distance of: 0.03 miles.

Report of Changes in the Secondary System of State Highways

Project/Subdivision Lovettsville Town Center

Type Change to the Secondary System of State Highways: Addition

The following additions to the Secondary System of State Highways, pursuant to the statutory provision or provisions cited, are hereby requested; the right of way for which, including additional easements for cuts, fills and drainage, as required, is hereby guaranteed:

Reason for Change: Developer Project - Section 33.1-155

Pursuant to Code of Virginia Statute: §33.1-155

Street Name and/or Route Number

◆ Town Center Drive, Segment J-E, State Route Number 1388

Old Route Number: 0

-
- From: C/L New Intersection of Berlin Turnpike (SR 287) J-K Section

To: .22 Miles West of Above Intersection, a distance of: 0.22 miles.

Recordation Reference: 20050615-0062700

Right of Way width (feet) = 38 ft plus

Street Name and/or Route Number

◆ Town Center Dr, Segment F-G, State Route Number 1388

Old Route Number: 0

-
- From: C/L Intersection Berlin Tpke SR 287

To: C/L Intersection relocated Church St SR 1501, a distance of: 0.04 miles.

Recordation Reference: Instr. 20050615-0062700

Right of Way width (feet) = 42 ft

Street Name and/or Route Number

◆ Church St, Segment M-G, State Route Number 1501

Old Route Number: 0

-
- From: 0.03 miles south of East Broad Way SR 673

To: C/L Intersection of new Town Center Dr SR1388, a distance of: 0.01 miles.

Recordation Reference: Existing ROW

Right of Way width (feet) = 46 ft

Street Name and/or Route Number

◆ East Broad Way, Segment K-C, State Route Number 673

Old Route Number: 0

-
- From: C/L New intersection with Brelin Turnpike S.B. (287)

To: 0.12 miles east of intersection with SR 674, a distance of: 0.04 miles.

Recordation Reference: Existing ROW

Right of Way width (feet) = 42 ft plus

Street Name and/or Route Number

- ◆ East Broad Way, Segment D-L, State Route Number 673

Old Route Number: 0

- From: 0.03 miles west of intersection of S. Church (SR 1501)

To: C/L New intersection with Berlin Turnpike (287), a distance of: 0.01 miles.

Recordation Reference: N/A

Right of Way width (feet) = 42 ft plus

Street Name and/or Route Number

- ◆ Church St, Segment G-H, State Route Number 1501

Old Route Number: 0

- From: C/L Intersection of new Town Center Dr SR1388

To: C/L Intersection of new Berlin Tpke SR287, a distance of: 0.07 miles.

Recordation Reference: Existing ROW

Right of Way width (feet) = 46 ft