

Town of Lovettsville

Planning Commission

Minutes of Public Hearing and Regular Meeting, February 2, 2011

The Public Hearing of the Lovettsville Planning Commission was called to order by Chairwoman Mari Bushway on Wednesday, February 2, 2011 at 7:34 P.M. at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA 20180.

Welcomes and Introductions

Chairwoman Bushway welcomed the citizens attending the meeting and thanked them for coming. She introduced Mayor Elaine Walker and Planning Commissioners Lorraine Bauer, Jack Burden, Rodney Gray and Joseph Mueller. She also introduced Town Manager Keith Markel, Zoning Administrator Steve McGregor and Town Clerk Judy Kromholz.

Absent

Planning Commissioners Elaine Fischer, Aaron Kahn

Audience

Among those present in the audience were Thomas Lovell (Lennar Homes), Kimberlee Welsh-Cummings (Walsh, Colucci, Lubeley, Emrich & Walsh, PC), Cliff Walker, Mayor Elaine Walker, and Pat Baker.

Explanation of Procedures and Opening of the Hearing

Chairwoman Bushway read the Public Notice of this Public Hearing as it appeared in the *Purcellville Gazette* (Attachment I: Public Notice). She stated that the public hearing topic will not be voted on at tonight's meeting.

Presentation

Administrator McGregor made a presentation on LVRZ 2010-0002 Lovettsville Retirement Village/Heritage Highlands Rezoning from R-1 to R-C. (Attachment II: Staff Report). Ms. Welsh-Cummings made an additional presentation.

Public Speakers

Chairwoman Bushway introduced the speakers in the order in which they had signed up to speak.

- 1 Elaine Walker
40 South Berlin Pike
 - a) Mrs. Walker stated that she and her husband are here tonight to speak as private citizens.
 - b) They reside on the parcel adjoining the retirement community.
 - c) They favor the rezoning from R1 to RC even though the owner, Lennar Homes, could continue to complete the project under the current zoning.
 - d) She will not comment on proffer changes at this time because the mailing she received as an adjoining neighbor did not include the proffers.
 - e) She hopes this project will now move forward and reach conclusion.
- 2 Pat Baker
Heritage Highlands
{not signed in}
 - a) Requested clarification as whether or not the changes would allow 19 year olds to reside in the development. She was informed that no one under the age of 25 would be allowed to reside in the development.

Chairwoman Bushway asked if any written material had been received concerning this public hearing and Clerk Kromholz confirmed that there had been no correspondence received for this public hearing.

Chairwoman Bushway confirmed that no additional member of the audience wished to speak. There being no further speakers, Chairwoman Bushway declared the hearing closed at 7:52 PM.

Chairwoman Bushway called the Regular Meeting of the Lovettsville Planning Commission to order at 7:59 PM

Changes in Present at Meeting

There were no changes in those present.

Public Comment

Chairwoman Bushway noted that no one had signed up to speak at the meeting

Additions/Deletions/Modifications to the Agenda

Chairwoman Bushway called for changes to the agenda. There were none.

Approval of Planning Commission Minutes

A. Planning Commission Public Hearing & Regular Meeting – January 5, 2011

- Motion:** To approve the minutes of the January 5, 2011 Planning Commission Public Hearing and Meeting as presented.
- By:** Commissioner Mueller
- Second:** Commissioner Gray
- Aye:** Commissioners Bauer, Burden, Bushway, Gray, Mueller.
- Nay:** None
- Abstain:** None
- Absent:** Commissioners Fischer, Kahn

Staff Reports

None

Action Items

None

Discussion Items

A. LVRZ 2010-0002: Heritage Highlands Rezoning

Chairwoman Bushway recognized Vice Chairman Burden who read the following statement into the record:

“I would like to address the discussion I had with the Lovettsville Town Attorney on January 13, 2011. I asked for clarification on whether it was allowable for me, as a resident of Heritage Highlands, to participate in the Lennar Heritage Highlands rezoning and proffer discussions during the Planning Commission meetings. It was determined that I do not have a conflict of interest in this matter and could participate in the Planning Commission deliberations. Thus, subject to objection by the Commission, I intend to participate in the discussions during the meeting but will abstain from any votes on the matter so as to preclude a perception of a conflict of interest.”

Administrator McGregor explained that the rezoning of Heritage Highlands must be handled in tandem with the proffer changes being requested by Lennar. He then offered a brief summary of the proffer changes that Lennar is requesting. Chairwoman Bushway suggested that the Commission guide their discussion of the proffer changes with the enumeration in Table 1 of the Staff memo. The Commission agreed to this procedure.

Item 1: Unit Types

Vice Chairman Burden requested that the unit descriptions be changed to describe 68 duplex units and 12 detached units throughout all documentation.

Item 2: Assisted Living Facility – no change.

Items 3 through 7: Allowing addition of third occupant with conditions and regulating age of residents
Administrator McGregor explained that the new proffers would allow a third occupant in all units, limited to 25 years or older, with specific conditions applying. Staff suggested that all conditions except for the age restriction be removed, citing the difficulty of defining and enforcing the other conditions. Commissioner

Mueller asked if the current residents had accepted this proffer and if they would be amenable to removing the additional conditions. Chairwoman Bushway stated that it would be extremely difficult for the Town to enforce these conditions and it should be left to the Home Owners Association to police these conditions. Commissioner Mueller agreed. Commissioner Gray asked how the community would identify if a third person was living in a unit. Vice Chairman Burden stated that the current residents do perceive the possibility of needing assistance and approved this proffer. Commissioner Mueller reiterated that this must be enforced by the HOA and not the Town. Vice Chairman Burden noted that the current residents are aware that both this proffer and the one concerning guest stays will have to be managed by the HOA, not the Town. Chairwoman Bushway and Commissioner Mueller both stated that this would be true of proffers 3 through 7.

Manager Markel pointed out that if the HOA failed for any reason, responsibility would revert to the Town and therefore the Town would like a more detailed definition of 'assistance'. Vice Chairman Burden suggested that it should be limited to 'medical assistance' and stated that the current residents want these considerations in the proffers because the developer currently controls the HOA and could make modifications to the HOA documents without the resident's approval.

Chairwoman Bushway polled the Commissioners and their consensus was that they would prefer a better definition of 'assistance' rather than removing it entirely. Vice Chairman Burden stated that the residents did not mean general assistance and he therefore recommended removing "and/or assistance".

Item 8: Regulating Guest Stays

Manager Markel stated that the proposed proffer allows a resident to have guests for up to 90 days per year, no matter how many individual guests were involved. Commissioner Bauer confirmed with Ms. Welsh Cummings that the HOA would be required to enforce this.

Items 9 through 11: The Commissioners agreed to these proffers as long as the current residents are also in agreement.

Items 12 and 13: Sewer Taps

Commissioner Gray asked if a physical pipe or meter determines the tap size and Manager Markel explained that this is an equality issue, not a physical change in any equipment. He stated that it is the responsibility of the Town Council to establish this policy, but he is concerned with enforcement issues and the perception of fairness. Vice Chairman Burden agreed that the Town Council must set this policy, but felt that the HOA could enforce it. Vice Chairman Burden suggested that the Council might waive this requirement because the third resident would be 'medically necessary'. The Commissioners agreed to defer these items to the Town Council.

Item 14: Certification of Assisted Living Residents

Administrator McGregor explained that this is regulated by Commonwealth law and there is no need for the proffer.

Item 15: Timing for the Community Center

The Commission agreed to the staff recommendation that a specified occupancy permit be the trigger for completion.

Item 16: Configuration of Units

The Commission agreed with staff that this is not a Town issue.

Items 17 and 18: Concept Plan and General Layout

No changes proposed.

Item 19: Elevations and Internal Configurations

Commissioner Mueller stated that the Town's only concern is that the elevations are consistent with the initial offering and the Commissioners agreed.

Item 20: Limitation on Models on Specified Lots

Vice Chairman Burden explained that the residents want the ten open lots (Lots 8,10,12,14, 24, 26, 31, 33, 36, and 38) that are interspersed with the current residences to be exactly like the existing twenty that are already constructed. The Commissioners all agreed with this request.

Items 21 and 22: Assisted Living Facility Elevation and Water Supply Proffer

The Commission had no changes.

Item 23: HOA responsibilities

The Commission requested that regulating guests be added to the HOA responsibilities, as discussed previously.

In addition to these items, Administrator McGregor explained that the length of the driveways in both the new and proposed elevations must be long enough to allow off street parking without overhanging the sidewalks. Ms. Welsh Cummings stated that she will scale it off the construction profile plats to establish exact dimensions and provide that information to the Town. Both she and Vice Chairman Burden stated that the existing driveways accommodate off street parking without hazard.

The Commissioners agreed to the schedule as proposed and to the necessity of handling the rezoning and proffer changes concurrently.

Information Items

There were no information items on the agenda.

Comments from the Mayor and Commissioners

Chairwoman Bushway called for comments from the Mayor and the Commissioners.

Mayor Walker reminded those present that there will be a public hearing on PATH tomorrow at Loudoun Valley High School in Purcellville at 4:00 PM.

Adjournment/Recess

Motion: To adjourn the Planning Commission meeting of February 2, 2011

By: Commissioner Gray

Second: Commissioner Bauer

Aye: Commissioners Bauer, Burden, Bushway, Gray, Mueller

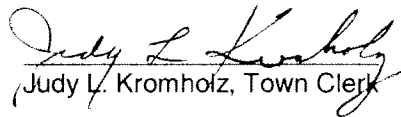
Nay: None

Abstain: None

Absent: Commissioner Fischer, Kahn

The Meeting was adjourned at 9:27 PM.

Respectfully submitted,


Judy L. Kromholz, Town Clerk

Date Approved: February 16, 2011

Attachments:

- I. *Purcellville Gazette* Public Notice
- II. Staff Report without Attachments
- III. Speaker Signup Sheet

Odds and Ends

Miss America Has Plans to Attend Patrick Henry College

On Saturday, January 15, Teresa Scanlan was crowned the new Miss America at the Planet Hollywood Resort & Casino in Las Vegas. The 17-year-old Nebraskan plans to attend Patrick Henry College. Her education at the college will launch her political career. In the spring of 2004, seven of the 100 student White House interns in the Bush administration were from Patrick Henry.

Wolf Receives Committee Assignments for 112th Congress

Rep. Frank Wolf (R-10th), the senior member of the Virginia

congressional delegation, announced his committee assignments for the 112th Congress. He will continue to serve on the House Appropriations Committee, where he will return as chairman of the Commerce-Justice-Science Appropriations subcommittee. In addition to overseeing the budgets of the Commerce and Justice departments, the subcommittee has jurisdiction over NASA, the National Science Foundation and the White House Office of Science and Technology Policy. It also oversees the budgets of the Office of the U.S. Trade Representative and the International Trade Commission. Wolf also will continue to serve on the Transportation Appropriations subcommittee.

As chairman of the CJS subcommittee, Wolf will work with the Commerce Department to focus on job creation by boosting American exports, bringing jobs back to the U.S. and rebuilding the manufacturing sector. In science and technology, he will work to prioritize science, technology, engineering and math (STEM) education and invigorate NASA's manned space exploration program to increase American competitiveness. He also will work with the FBI to focus on U.S. counterterrorism strategy and fighting crime. It was during his tenure as chairman from 2001-2006 that the two anti-gang task forces operating in northern Virginia were established. He also pushed for the creation of the National Gang

Intelligence Center at the FBI, which serves as a national clearinghouse for information on gang-related activity.

Public Hearing/Legal Notices

Notice of Public Hearing

Town of Lovettsville Planning Commission

The Lovettsville Planning Commission will hold a public hearing on the following item at their meeting on February 2, 2011 at 7:30pm at the Lovettsville Town Hall, 6 East Pennsylvania Avenue.

LVRZ 2010-0002, Heritage Highlands, to rezone from R-1, Residential, to R-C, Retirement Community, approximately 27 acres, as follows:

Address	PIN	Owner	Address	PIN	Owner
1 Harpers Mill Way	370-19-0979	Jack Roy & Alice Ruth Wilson, Trustees	57 Harpers Mill Way	370-18-9560	Patriot Homes of Virginia Inc
7 Harpers Mill Way	370-19-0980	Wilson Family Trust	14 Harpers Mill Way	370-18-9599	Patriot Homes of Virginia Inc
10 Harpers Mill Way	370-19-1196	Beverly B. Schrader, Trustee	17 Harpers Mill Way	370-18-9647	Patriot Homes of Virginia Inc
11 Harpers Mill Way	370-18-9685	Eleanor Guarrion & P & T Cuarnio	370-18-9669	370-18-9669	Patriot Homes of Virginia Inc
12 Harpers Mill Way	370-19-1700	Elizabeth V. Barbee	13 Harpers Mill Way	370-18-9894	Patriot Homes of Virginia Inc
15 Harpers Mill Way	370-18-9390	Wendy E. Burke	32 Harpers Mill Way	370-19-0024	Patriot Homes of Virginia Inc
16 Harpers Mill Way	370-19-1305	Tamara Mohyla	370-19-0041	370-19-0041	Patriot Homes of Virginia Inc
43A & 46 Harpers Mill Way	371-49-0966 & 370-19-2276	John R. Burden Sr. & Jean E. Burden	61 Harpers Mill Way	370-19-0063	Patriot Homes of Virginia Inc
19 Harpers Mill Way	370-18-8995	Villas at Lovettsville HOA	58 Harpers Mill Way	370-19-0250	Patriot Homes of Virginia Inc
2 Harpers Mill Way	370-19-0584	Joseph T. & Frances L. Evans	28 Harpers Mill Way	370-19-0319	Patriot Homes of Virginia Inc
2 Harpers Mill Way	370-19-1886	Ashraf & Rama Ghishan & Z. Ghishan	18 Harpers Mill Way	370-19-0405	Patriot Homes of Virginia Inc
20 Harpers Mill Way	370-19-1009	Mary L. Baker	65 Harpers Mill Way	370-19-0566	Patriot Homes of Virginia Inc
22 Harpers Mill Way	370-19-0110	Ronald L. & Helen Cricks	60 Harpers Mill Way	370-19-0644	Patriot Homes of Virginia Inc
8 Harpers Mill Way	370-19-2095	Kenneth & Vera Shipman	62 Harpers Mill Way	370-19-0654	Patriot Homes of Virginia Inc
23 Harpers Mill Way	370-18-8600	Olive D. Johnson, Trustee	24 Harpers Mill Way	370-19-0714	Patriot Homes of Virginia Inc
26 Harpers Mill Way	370-18-9815	Marie T. Musante	14 Harpers Mill Way	370-19-0801	Patriot Homes of Virginia Inc
27 Harpers Mill Way	370-18-8305	Ramona L. Lewis	64 Harpers Mill Way	370-19-1048	Patriot Homes of Virginia Inc
6 Harpers Mill Way	370-19-1491	Richard C. & Jeanetta M. Sullivan	69 Harpers Mill Way	370-19-1070	Patriot Homes of Virginia Inc
3 Harpers Mill Way	370-19-0375	Mary A. & Adel Y. Salem	66 Harpers Mill Way	370-19-1157	Patriot Homes of Virginia Inc
9 Harpers Mill Way	370-19-0289	Patricia Ann Fleagle, Trustee	68 Harpers Mill Way	370-19-1551	Patriot Homes of Virginia Inc
12745 Berlin Trk	370-19-5365	Jacoba P. Warringa, Trustee	70 Harpers Mill Way	370-19-1660	Patriot Homes of Virginia Inc
43 Harpers Mill Way	370-18-6924	Kenneth R. Patricia G. Dant	72 Harpers Mill Way	370-19-2055	Patriot Homes of Virginia Inc
39 Harpers Mill Way	370-18-7219	287 Joint Venture	74 Harpers Mill Way	370-19-2164	Patriot Homes of Virginia Inc
41 Harpers Mill Way	370-18-7528	Patriot Homes of Virginia Inc.	4 Harpers Mill Way	370-19-2490	Patriot Homes of Virginia Inc
35 Harpers Mill Way	370-18-7614	Patriot Homes of Virginia Inc.	76 Harpers Mill Way	370-19-2558	Patriot Homes of Virginia Inc
47 Harpers Mill Way	370-18-7655	Patriot Homes of Virginia Inc.	78 Harpers Mill Way	370-19-2667	Patriot Homes of Virginia Inc
37 Harpers Mill Way	370-18-7823	Patriot Homes of Virginia Inc.	3 Fox Mill Way	370-19-2785	Patriot Homes of Virginia Inc
31 Harpers Mill Way	370-18-7909	Patriot Homes of Virginia Inc.	80 Harpers Mill Way	370-19-3061	Patriot Homes of Virginia Inc
45 Harpers Mill Way	370-18-8049	Patriot Homes of Virginia Inc.	82 Harpers Mill Way	370-19-3171	Patriot Homes of Virginia Inc
51 Harpers Mill Way	370-18-8159	Patriot Homes of Virginia Inc.	84 Harpers Mill Way	370-19-3565	Patriot Homes of Virginia Inc
33 Harpers Mill Way	370-18-8218	Patriot Homes of Virginia Inc.	71 Harpers Mill Way	370-29-0172	Patriot Homes of Virginia Inc
29 Harpers Mill Way	370-18-8513	Patriot Homes of Virginia Inc.	73 Harpers Mill Way	370-29-1179	Patriot Homes of Virginia Inc
49 Harpers Mill Way	370-18-8553	Patriot Homes of Virginia Inc.	75 Harpers Mill Way	370-29-1573	Patriot Homes of Virginia Inc
55 Harpers Mill Way	370-18-8662	Patriot Homes of Virginia Inc.	79 Harpers Mill Way	370-29-1582	Patriot Homes of Virginia Inc
21 Harpers Mill Way	370-18-8809	Patriot Homes of Virginia Inc.	83 Harpers Mill Way	370-29-1976	Patriot Homes of Virginia Inc
53 Harpers Mill Way	370-18-9056	Patriot Homes of Virginia Inc.	87 Harpers Mill Way	370-29-2086	Patriot Homes of Virginia Inc
21 Harpers Mill Way	370-18-9165	Patriot Homes of Virginia Inc.	81 Harpers Mill Way	370-29-2480	Patriot Homes of Virginia Inc
30 Harpers Mill Way	370-18-9204	Patriot Homes of Virginia Inc.	85 Harpers Mill Way	370-29-2589	Patriot Homes of Virginia Inc
	370-18-9420	Patriot Homes of Virginia Inc.	91 Harpers Mill Way	370-29-3092	Patriot Homes of Virginia Inc
			89 Harpers Mill Way	370-29-3487	Patriot Homes of Virginia Inc

The application being considered is available for review at the Town Hall between the hours of 9AM and 3PM weekdays or by special appointment, holidays excepted. Call 540-822-5788 for more information or visit www.lovettsvilleva.gov. In the event the meeting is cancelled due to inclement weather, the public hearing will be convened on February 16, 2011, at the same time and place.

New Toastmasters Forming in Western Loudoun

Toastmasters International, a public speaking and leadership organization that helps members improve their public speaking and leadership skills in a friendly and supportive environment, is working on chartering a new Purcellville Club. Diana Kane is organizing the effort. Kane says she will need at least 20 members to charter the new club. The meeting place according to Kane is still uncertain although she is hoping to use the Carver Center. Currently, the closest Toastmasters Clubs are in Leesburg and Winchester and the new Club that Kane is forming will serve the residents in Round Hill, Purcellville, Lovettsville, and Hamilton. Anyone interested in being a part of a Toastmasters Club in the Purcellville area is asked to email: Crossbedsoe@aol.com.

Loudoun County Expands Smoke Alarm Program

The Loudoun County Department of Fire, Rescue and Emergency Management has expanded its "Get Alarmed Loudoun: Put A Finger On It" smoke alarm campaign to the communities of Lovettsville, Luckettes and Philomont. The "Put a Finger On It" Campaign began in 2008 in Purcellville and was expanded to the communities of Hamilton and Round Hill shortly thereafter. In 2009, over 250 home visits were performed in Purcellville and approximately 100 smoke alarms were installed. Thanks to smoke alarms installed through this program, two residential fires in Purcellville were detected early on, which allowed occupants to safely exit their home.

See **ODDS** on page 15

Town of Lovettsville

STAFF REPORT

PLANNING COMMISSION

PUBLIC HEARING	
ITEM IDENTIFICATION	LVRZ 2010-0002 Lovettsville Retirement Village/Heritage Highlands
TYPE OF ITEM	Rezoning from R-1 to R-C
DATE OF HEARING	February 2, 2011
APPLICANT	US Homes / Lennar / current land owners within the Lovettsville Retirement Village development

PROPERTY: Lovettsville Retirement Village/Heritage Highlands is an approved twenty-seven acre restricted independent living/assisted living residential development located at the intersection of Lutheran Church Road and Berlin Pike on the west side of Berlin Pike. This rezoning item is based upon a submission filed by the applicant, December 2, 2010.

BACKGROUND and PROPOSAL: The applicant had submitted an application to amend the approved proffers in early 2010 under the existing R-1 district. It was determined at the time that the approved proffers and conditions could not be amended because after the original 2003 rezoning (from CR-1 to R-1 with a conditional use permit) the retirement community use was removed from the R-1 district. In the revision of the Town Zoning Ordinance in 2006 a new zoning district was created solely for the retirement community use, the Retirement Community R-C district. Therefore, the applicant's submission for proffer amendments in 2010 was changed to this rezoning application for the R-C district, with amendments to the previously approved proffers and conditions of April 24, 2003. Table 1 shows the differences between the major approved proffers and the proposed major proffer amendments. This table does not reference a number of approved proffers that mainly address sewer and water supply/treatment facilities, which are not proposed for amendment in this rezoning application. The remaining proffers can be found in the attached proffers, approved April 24, 2003.

Table 1. Comparison of Approved and Proposed Proffers

	Approved Proffers	Proposed Proffers
1	80 independent living units in 40 duplex structures	No change
2	Assisted living facility with no more than 42 units	No change
3	2 occupants per independent living unit	3 occupants (only if the 3 rd occupant is 25 year or older and provides assistance or medical assistance to an older occupant, or is a handicapped family member and additional sewer capacity is provided to the unit)
4	1 st occupant shall be 55 years or older in all occupied units (independent and assisted)	1 st occupant shall be 55 years or older in 80% of all occupied units (independent and assisted)
5	2 nd occupant over 45 all occupied units (independent and assisted)	2 nd occupant shall be 45 years or older in 80% of all occupied units (independent and assisted)
6	n/a	1 st occupant shall be 45 years or older in 20% of all occupied units (independent and assisted)
7	n/a	2 nd occupant shall be 45 years or older in 20% of all occupied units (independent and assisted)
8	Guests can stay no more than 30 days	Guests can stay no more than 90 days
9	Units must be primary residence of owner	Unit does <i>not</i> have to be primary residence of owner
10	\$300 per independent living unit to the Lovettsville Volunteer Fire and Rescue Company at the time of zoning permit issuance	The same except the funds are due at the time of occupancy permit issuance.
11	Applicant provides \$12,600 to the Lovettsville Volunteer Fire Dept upon issuance of a building location permit for the assisted living units	No change
12	Each independent living unit is provided one-half sewer tap.	25 percent cost of full sewer tap is provided per unit if there is a third occupant in the unit (independent)
13	Sewer tap requirements for assisted living units to be determined at time of final construction plans and depend on number and type of plumbing fixtures	No change
14	Assisted living residents have to be certified by physicians.	No change
15	A community center for the independent living units has to be open for use no later than the time the 40 th occupancy permit for the independent living units is issued.	A zoning permit for the construction of a community center for the independent living units has to be obtained not later than the issuance of the 32 nd independent living unit occupancy permit.
16	The unit footprint of all independent living units is 1,350 sq ft, excluding garage, patio and front entry. (One enclosed garage space shown on proffered elevations).	No change to current proffer but an additional larger footprint option for each independent living unit (not to exceed 1,450sq ft, excluding uninhabitable areas, such as garage, patio and front entry) is being proposed. This option includes a two car garage.
17	General layout, scale, design and architectural details and materials	No change
18	Concept plan	No change, except proffered as part of an R-C rezoning instead of an R-1 rezoning with proffers/conditions
19	Building elevations and interior floor plan options for independent living units; one car garage	The same but adding two car garage elevations and removing floor plans.
20	n/a	10 new independent units adjacent to existing units will be constructed using previously proffered elevations.
21	Rendering of elevation of assisted living facility	Omitted
22	\$250,000 to Town for water supply infrastructure	No change
23	n/a	The HOA is responsible for enforcing the occupancy and age-restriction proffers for the independent living units

The proffers are annotated to make clear what portions of the originally approved proffers have been satisfied.

DISCUSSION: The following paragraphs containing a discussion of the issues are keyed to the numbers in Table 1:

- 1. The proffers do not indicate that there are two types of independent units that have been approved as part of the community, duplex and single-family detached units.**

Probably an oversight in the approved proffers. Single-family detached units were approved in the proffered concept plan. The number and types of independent living units should be included in the proffers.

- 2. No issues.**

- 3. Proffer that allows a third occupant in all units who is twenty-five years or older if they are a handicapped family member or providing assistance (medical or otherwise) to one of the other occupants.**

Changes the demographics of the retirement community. Enforcing any conditions for what type of person the third occupant should be and what activities they are undertaking in the unit seems impractical. Recommend limiting the condition for who the third occupant is only to their age.

- 4. Proffer that 80 percent of all units (independent and assisted) require the first occupant to be 55 years or older instead of in all units.**

The Town Plan policy for the retirement community reflects the character of the project approved in 2003. The proposed change would alter the demographics of the approved retirement community by decreasing the number of units with the original higher age restriction. There is no need to include the age of assisted living units occupants because the definition of persons qualified for residence in assisted living facilities is controlled by State law. Therefore, it is recommended that age restrictions for assisted living occupants be removed from the proffers.

- 5. Proffer that 80 percent of all units (independent and assisted) require the second occupant to be forty-five years or older instead of in all units.**

The same issue and recommendation as in # 4.

- 6. Proffer that 20 percent of all units (independent and assisted) require the first occupant to be forty-five years or older instead of in all units.**

The same issue and recommendation as in # 4.

- 7. Proffer that 20 percent of all units (independent and assisted) require the second occupant to be forty-five years or older in all units.**

The approved proffers already require the second occupant to be forty-five years or older in all units. The issue involves allowing two occupants forty-five or older. Age restrictions for occupants of the assisted living units should be removed because the definition of persons qualified for residence in assisted living facilities is controlled by State law.

8. Proffer that allows guests to stay 90 days instead of 30 days.

May create the need for more parking in the community, which could congest the streets, especially if driveways are not long enough for off-street parking.

9. Proffer that allows units to be second homes instead of primary homes.

The only possible drawback might be that units could be vacant for periods of time inviting vandalism or neglect.

10. Proffer to contribute \$300 per independent living unit to the Lovettsville Volunteer Fire and Rescue Company.

No issue but to note that the point at which the contribution is to be made is changed from the zoning permit to the occupancy permit because of State law pertaining to such contributions.

11. No issues.

12. Proffer to provide additional sewer capacity for independent living units if a third occupant is allowed.

If this rezoning application is approved the Town Council will have to establish policy for the developer to provide this capacity given that each independent living unit has one-half a sewer tap. The policy will help determine if the applicant's offer to provide 25 percent of the cost of a sewer tap for a third occupant in a unit. A corollary issue is the problem for the Town in knowing when a third occupant resides in a unit. One solution to this difficulty would be to require additional sewer capacity for all units, including existing units, based on the presumption that eventually it will benefit all resident owners to have the additional sewer capacity.

13. Sewer tap allocation for assisted living units.

No issues unless the Town Council policy for providing sewer capacity in the Lovettsville Retirement Community addresses this matter as part of the issue regarding the independent living units.

14. No issues. The definition of persons qualified for residence in assisted living facilities is controlled by State law.

15. Proffer on the timing for the community center being available for use by the independent living unit residents.

The approved proffers require that the applicant shall “complete construction and open... a community facility” not later than the issuance of an occupancy permit for the 40th independent living unit. The proposed proffers change the timing to the 32nd unit but change the requirement from the center being open for use to the issuance of a zoning permit. This problem with this requirement is that a zoning permit (a building location zoning permit) does not require construction and operation of the facility. Therefore, it is recommended that the requirement be for an *occupancy permit*.

16. Proffer to increase the unit footprint size by 100 square feet.

The effect of this proffer is to decrease the outdoor living space for each unit. This is a marketing choice by the developer/applicant and is not a concern of the Town.

17. No issues.

18. The concept plan changed to be proffered under the R-C district.

There is no change to the concept plan. The lots, location of the community center and the assisted living facility, and the streets and open space would not change. The only change is that it is proffered under a different zoning district.

19. Proffer to change the design and floor plan options for the independent living units.

There is no significant difference in the architecture, scale and site design of the units between the approved design options and the proposed design options. The difference is that there is an additional 100 square feet in the footprint of each unit and this option provides for a two car garage whereas the approved proffers only allow a one car garage. The proposed architectural style is very similar to the approved design options, under which the existing units have been built. Therefore, the only discernable difference is there could be slightly less outdoor living space, which is a marketing choice by the developer/applicant. This is of no concern to the Town. Also, of no concern of the Town is the option for interior floor plans. The removal of the existing approved floor plans from the proffers are appropriate.

20. New proffer to construct 10 independent living units adjacent to the existing units that are the same design as the existing units.

This appears to be a distinction without a difference because the proposed design options are practically the same as the existing ones. By accepting the proffered design options in this application it should guarantee compatibility of architecture between the existing units and new units. The proffer should be withdrawn.

21. Design of the assisted living facility.

The approved sketch elevation of the assisted living facility cannot be located by the Town or the applicant. Since a sketch was approved in 2003 with the rest of the project it would seem reasonable for the applicant to provide a commitment to provide a design for the facility that has architecture compatible with the design of the independent living

units and that specific architectural elevations will be provided to the Town prior to the issuance of a zoning permit to confirm this.

22. Proffer for \$250,000 to be paid toward water system improvements to be determined by the Town.

The Town cannot determine that this proffer has been satisfied although the applicant contends that it has. The Town will have to investigate the situation but it is appropriate that the proffer be retained for the project.

23. Proffer that the Heritage Highlands HOA would be responsible for enforcing the occupancy and age restrictions regarding the independent living units.

This is an advantage because the Town does not have the resources to enforce this type of proffer.

Other issues are:

1. Is there enough driveway length to provide for vehicular parking in case the enclosed garage space is not used for vehicle parking?

As a practical matter if there is not enough length to the driveways then vehicles may overhang the sidewalk or park on the street. It would be better for the aesthetic quality of the community and pedestrian circulation on sidewalks if vehicles could park in driveways without overhanging sidewalks.

2. The proffer changes requested would require amending the Retirement Community R-C district.

A separate item has been created to propose certain amendment language for the R-C district. It will be scheduled for public hearing on February 16, 2011 in order that it can be discussed and acted upon concurrently with this rezoning on the same date.

RECOMMENDATION: Once the Planning Commission works through the issues discussed above and expresses their wishes regarding the rezoning they should recommended approval of the rezoning on condition that the Town Council amends the sewerage policy in such a manner as to accommodate a third occupant in each unit. The Commission should consider making a recommendation at the February 16, 2011 meeting, the same date as the public hearing scheduled for amending the R-C zoning district, which would be necessary to complete this rezoning.

DRAFT MOTION: None.

ATTACHMENT:

1. The applicant's December 2, 2010 application, including draft proffers, dated January 14, 2011.
2. Statement of Justification, November 17, 2010
3. The proffers/conditions in the Letter of Clarification, dated and approved, April 24, 2003.

Town of Southville

Speaker Sign - Up Sheet

Planning Commission Public Hearing and Regular Meeting - February 2, 2011

Please Print.

Name and Association	Address	Topic - Please Indicate Public Hearing (Signs) or Other
<i>St James W. Shaw</i>	<i>410 S Redline Drive</i>	<i>Heritage Highlands</i>

Each speaker will be limited to no more than three (3) minutes.