

Town of Lovettsville

Town Council Minutes of Regular Meeting April 14, 2011

Vice Mayor Robert Zoldos II called the regular meeting of the Lovettsville Town Council to order at 7:32 PM on Thursday, April 14, 2011.

Present at Meeting

- Vice Mayor Robert Zoldos II
- Council Members Tiffany Carder, Charlotte Coleman, Michael Senate, Tim Sparbanie, Shaun Staley
- Town Manager Keith Markel
- Town Treasurer Lance Gladstone {arrived at 7:55 PM}
- Project Manager Karin Fellers
- Town Clerk Judy L. Kromholz

Absent

- Mayor Elaine Walker
- Town Attorney Elizabeth Whiting

Audience

Among those present in the audience were Planning Commissioner Jack Burden, Bing Lam, Anne George, Kimberlee Welsh-Cummings (representing Lennar), Mark Stemen (Lennar), and Tom Lovell (Lennar).

Call to Order/Welcome/Pledge of Allegiance/Invocation

Vice Mayor Zoldos led the assembled in the Pledge of Allegiance.

Comments from the Public

Councilman Staley read the rules and procedures for public speakers. Vice Mayor Zoldos called for comments from the public in the order in which they signed up to speak (Attachment I: Speaker Sign in Sheet).

Mrs. Anne George spoke to the Council concerning the entrance to the property at 2 East Pennsylvania Avenue. She thanked Manager Markel for pursuing the matter with VDOT and getting the situation resolved. She asked if the new tenant could now get a business license and Manager Markel confirmed that the Town could now issue a business license to the tenant. Mrs. George reported that the hedge along the South Church Street side of the property will be lowered but is happy that the trees can be left intact. She also reported that they are close to getting a physician as the tenant at the old post office property.

Mr. Bing Lam stated that he is extremely disappointed with the Town Council members who did not stand up for freedom of speech. He told Mr. Zoldos that he would expect this from him because Mr. Zoldos does not respond to his emails. Councilman Senate objected to Mr. Lam's addressing an individual Council member. Vice Mayor Zoldos stated that he had no objection to Mr. Lam's comments and encouraged him to proceed, noting that this topic is on tonight's agenda. Mr. Lam stated that he objects to the fact that disparaging comments are not permitted at Town Council meetings. He stated that this is an attempt to silence dissenting opinion and is a clear violation of the United States Constitution. Mr. Lam left the chamber at the conclusion of his comments.

Mr. Jack Burden spoke as a private citizen and a resident of Heritage Highlands. He stated that he wants the Council to vote to apply any additional sewer tap charge when the owner applies to have a third resident in a unit. He also stated that he wants the Home Owners Association to enforce the policy. He reported that the current residents have met with the developer and approve the current proffers.

Community Presentations

A. Loudoun County Sheriff's Office

Loudoun County Deputy Sheriff Vanessa Mertz-Myers reported that her supervisor will attend the next Council meeting and will address the part time nature of her assignment. Councilman Sparbanie emphasized that the Town is eager to see a full time Community policing officer assigned to the Town. She reminded those present that it is important to report incidents when they occur, noting that the Sheriffs computer system shows no incidents since last summer.

B. Planning Commission

Vice Chairman Jack Burden presented his report on Planning Commission activities.

Additions/Deletions/Modifications to the Agenda

Council announced that there will be a closed session at the end of tonight's meeting and that no actions will be taken after the closed session.

Presentations

No presentations were scheduled.

Approval of Town Council Minutes

No minutes were presented.

Staff Reports

A. Report from the Project Manager

The Council had no questions concerning Project Manager Feller's written report dated April 7, 2011.

B. Report from the Town Manager

Manager Markel distributed his monthly report.

Consent Agenda

There were no items on the Consent Agenda.

Action/Discussion Items

A. Approval of Utility Professionals, Inc. Scope of Work for East Broad Way Sidewalk Project

Project Manager Fellers presented this item. She explained the stepped approach that this project will require, with each step defining the next step. Councilman Staley asked if the consultant rates and fees are usual and customary. Project Manager Fellers stated that they are comparable to attorney fees and are less than the engineering principals the Town uses. Councilman Sparbanie asked if reimbursing expenses for attending meetings is standard and Project Manager Fellers confirmed that this is standard practice, although some firms roll this charge into the fee. Councilman Sparbanie asked when the project would begin and Manager Markel stated that it will be a minimum of 10 business days after the agreement is signed. Vice Mayor Zoldos called for a motion.

Motion: I move the Town Council approve the Scope of Services for Utility Professionals dated April 12, 2011 and authorize the Mayor or Town Manager to sign the appropriate paperwork once in a form acceptable to the Town Attorney.

By: Council Member Senate

Second: Council Member Coleman

Vice Mayor Zoldos called for additional discussion. Councilman Senate asked if the results will be delivered to the Town in a format usable by other consultants. Project Manager Fellers confirmed that the contract requires all work product be delivered to the Town. She noted that the Town already has a set of autocad drawings from PRH+A. There being no further discussion, Vice Mayor Zoldos called for the vote.

Aye: Council Members Carder, Colman, Sparbanie, Senate, Staley, Zoldos

Nay: None

Abstain: None

Absent: None

B. Approval of KDR, Inc. Scope of Work for East Broad Way Sidewalk Project

Project Manager Fellers presented this item. There being no questions from the Council, Vice Mayor Zoldos called for a motion.

Motion: I move that Town Council approve the Scope of Services for KDR and authorize the Mayor or Town Manager to sign the appropriate paperwork once in a form acceptable to the Town Attorney.

By: Council Member Sparbanie

Second: Council Member Carder

Aye: Council Members Carder, Colman, Sparbanie, Senate, Staley, Zoldos

Nay: None

Abstain: None

Absent: None

Report from the Treasurer

A. Financial Report – February 2011

Treasurer Gladstone presented his report for February 2011. The Council had no questions on the general or utility fund. Vice Mayor Zoldos thanked Treasurer Gladstone for keeping the reporting current.

Motion: To approve the February 2011 Treasurer's report as presented.

By: Council Member Sparbanie

Second: Council Member Senate

Aye: Council Members Carder, Colman, Sparbanie, Senate, Staley, Zoldos

Nay: None

Abstain: None

Absent: None

C. Update from Heritage Highlands Representatives on Status of Rezoning Application

Ms. Welsh-Cummings explained that the developer has met with Town staff and the existing homeowners at Heritage Highlands and that Mr. Storch, the property owner of the parcel zoned for the assisted living facility, has agreed not to be part of the requested rezoning. Manager Markel confirmed that he had received a letter from Mr. Storch confirming this decision. Councilman Sparbanie asked what the overall implication of removing the Storch property from the application will be. Manager Markel stated that the property will be bound by the existing proffers in effect today.

D. Sewer Tap Policy for Heritage Highlands

Manager Markel presented this item. He explained that because the proffers include the ability to have a third resident in the units, the Council must decide if a change to the development's sewer tap policy is required.

The Council agreed to limit the initial discussion to deciding if Lennar needs to purchase additional capacity in the event of a third resident. Councilman Sparbanie stated that he supports no additional charge for any additional sewer capacity given the infrastructure Lennar has already provided to the Town at a greater cost than the taps would have cost. Councilman Staley noted that other developers have also provided infrastructure and still paid the tap fees. Councilman Senate stated that the resource Lennar provided is wonderful and extremely expensive, which is the only thing that makes the option of not requiring the purchase of additional capacity palatable for him. He said there will be future developments that will make the same request if Council approves this and that questions of fairness will be inevitable. He noted that the developer of Kingsridge provided a water treatment facility and still paid all tap fees. Councilwoman Coleman agreed with Councilman Senate and expressed concern about explaining the decision to future developers. Councilwoman Carder stated that the key issue is the density of population in this community as compared to other communities. She noted that the restrictions will apply in perpetuity.

Vice Mayor Zoldos stated that there is 'no free flush here', noting that capacity has to come from somewhere. If the Town decides to reserve this capacity for Heritage Highlands, it is forfeiting possible income from other developers who could buy these taps. He emphasized that the Town will have to reserve the capacity whether or not they charge for it and that there is an opportunity cost associated with reserving the capacity, noting that there might not be capacity available for a future school or a business.

Councilman Staley asked if a full tap is allocated to a large family, why the Council would also allocate a full tap for a family of two or three. He also suggested that Council direct that only new units built in

Heritage Highlands be subject to whatever Council decides. He stated that this would reserve some of the system capacity as required, but not impact the existing residents.

Councilman Sparbanie asked what the typical requirements would be for a school. Manager Markel noted that there have been no formal discussions of the potential needs of a school but the standard used in this area is in the neighborhood of 18,000 gallons per day per school. Councilman Sparbanie asked what the impact would be on capacity if the Town was totally built out. Manager Markel stated that the Town would have adequate capacity if the build out continued under current development patterns without unique, unplanned items such as annexation or extraordinary commercial use. Project Manager Fellers noted that as the Town approached capacity there would be narrower ranges for extra-ordinary events and additional I&I or other engineering solutions would be required. Councilman Sparbanie asked what the impact of total Town build-out and the addition of two schools would be on the existing system. Project Manager Fellers stated that the system would be challenged during major rain events because capacity would be utilized with the system without additional excess capacity for inflow and infiltration. Both Manager Markel and Project Manager Fellers stated that the additional capacity being discussed for Heritage Highlands would not have a major impact either way.

Vice Mayor Zoldos stated that whatever policy is agreed upon must be documented in a very detailed manner. Manager Markel reported that he and Attorney Whiting had agreed that a very detailed resolution would be prepared for Council once a policy is established. In order to further the discussion, Vice Mayor Zoldos asked for a motion.

Motion: I move that Lennar and existing residents **not** be required to buy additional sewer capacity for each dwelling unit if one additional individual, over the two that are currently permitted, moves in and direct staff to prepare a resolution to that effect.

By: Council Member Sparbanie

Second: Council Member Senate

Aye: Council Members Carder, Sparbanie, Senate, Staley

Nay: Council Members Coleman, Zoldos

Abstain: None

Absent: None

Manager Markel asked Council to provide specific guidance as to the specifics of the resolution. They agreed to provide input via email or phone. Councilman Staley noted for the record that he may still vote against the resolution, based on the facts that further research presents.

E. Town Council Policy for Receiving Written Public Comments

Town Clerk Kromholz presented this item. Staff is recommending that Council make the following changes to the Rules and Procedures:

1. Any member of the public speaking for an organization must submit a letter from the Board of that organization authorizing them to speak for the organization. Written comments must also be accompanied by an authorizing letter.
2. Written comments must be received by 3:00 PM the day before the meeting to be distributed to the members of the Body at the meeting. Items received before the packet deadline (generally, 9:00 AM the Friday before the meeting) will be included in the packet.
3. Written communications must contain the writer's name and physical address.
4. Written comments meeting the above criteria and all other criteria established by the body (e.g. – no profanity, personal attacks) will be distributed to the members by the Town Clerk. Minutes of the meeting will contain a section at the end of the minutes listing the name and address of anyone submitting written comments distributed at the meeting or in the meeting packet. Those comments will be available under normal FOIA procedures.

Councilman Senate stated that he supported these procedures, noting that the differences are that only spoken public comments will be included in the minutes and that individuals speaking for an organization must provide authorization to do so. Written submissions will continue to be distributed to the Council in a timely manner.

Councilman Staley stated that he found it unfortunate that the person who precipitated this discussion left the meeting before the discussion. Councilman Staley also noted that if something is not mentioned in the rules and procedures it does not mean that it is admissible.

Councilman Sparbanie noted that when Council members receive communication it is up to them to respond in a timely manner. He stated that these things are not appropriate in the official records of a meeting. Councilman Sparbanie emphasized that the Council members must encourage communication from the public.

Councilwoman Carder stated that she thinks the detailed minutes are wonderful and reflect the spirit of the meetings.

Councilman Staley noted that the fact that the Council has codified these items shows that the process does work – a change was precipitated because of a citizen's comments.

Vice Mayor Zoldos noted that this actually clarifies the procedure, not changed it. He stated that one Council member cannot set process, the Body does that. He cautioned the members to remember that when they speak in public they speak for themselves, not for the Town. He suggested changing the phrase 'no disparaging remarks' to 'no profanity and no personal attacks'. Vice Mayor Zoldos stated that he is very proud of this Council, noting that they do not storm out or insult each other as has occurred on prior Councils.

There being no further discussion, Vice Mayor Zoldos called for a motion.

Motion: The Town Council directs staff to amend the Council Rules and Procedures as discussed and present the revised document to Council.

By: Council Member Senate

Second: Council Member Coleman

Aye: Council Members Carder, Coleman, Sparbanie, Senate, Staley, Zoldos

Nay: None

Abstain: None

Absent: None

Information Items

No information items were presented.

Comments from the Mayor and Town Council

Councilwoman Carder stated that she is pleased to hear we might be getting a family doctor in Town. She reported that she has received an email from a woman considering opening a Montessori school in Town and she encouraged her to make a presentation to the Council.

Councilman Staley reported that he and Councilwoman Carder continue to explore the possibility of having a wine tasting festival in Town in the spring of 2012.

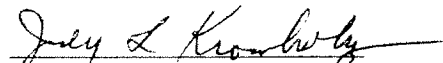
Councilman Sparbanie reported that he has met with business and property owners concerning plans for Oktoberfest and is very optimistic about their participation. The next Oktoberfest Committee meeting will be April 18th in Town Hall.

Vice Mayor Zoldos reported that the PTO auction for the Lovettsville Elementary School was a big success. He also suggested that the Council schedule a budget session next Thursday night and the Council agreed.

Closed Session

The Council went into Closed Session at 9:41 PM and exited the session and adjourned at 10:54 PM.

Respectfully submitted,


Judy L. Kromholz, Town Clerk

Date Approved: May 12, 2011

Attachments:

- I. Speaker Signup Sheet
- II. Closed Session Motions

Town of Southsville

Speaker Sign - Up Sheet

Town Council Regular Meeting - April 14, 2011

Please Print.

Name and Association	Address	Topic	Email Address (Optional) ¹
Ann George	13620 Berlin Pike	Patience Old Post Office Potheld House	
Bing Lynn	2 Birstown Dr.	Case of Speech	
Jackie Burden	16 Harben Mill Way	Ken Taylor ^{Henry} Blair ^{Byrd} Byrd	

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.

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VIRGINIA FREEDOM OF INFORMATION ACT Resolution: AUTHORIZE CLOSED SESSION

Date: 4/14/11
Time: 9:42 pm

MOTION BY: Tim Sparbnie

I move that the Lovettsville Town Council convene in closed session pursuant to Va. Code section 2.2-3711 A

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals,

③ Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body,

4. The protection of the privacy of individuals in personal matters not related to public business,

⑤ Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community,

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected,

⑦ Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; or consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. ~~For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter],~~

19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure,

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29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body,

33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6,

40. Discussion or consideration of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6 [Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where, if such records are made public, the financial interest of the public body would be adversely affected],

with regard to [person, issue or property subject of discussion]

And thereafter reconvene in open session for action as appropriate.

SECOND: Senate

VOTE:

Ayes: Zoldos, Sparbanic, Staley, Cauder, Senate, Coleman

Nays: None

Abstentions: None

Absent for vote: None

Roll-call poll by presiding official:

“Do you certify to the best of your knowledge that (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the Lovettsville Town Council?”

When polled as to whether (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business 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:”

14 April, 2011 at 10:52 PM

Certified:

Vice-Mayor

