

Town of Lovettsville

Town Council Minutes of Regular Meeting April 28, 2011

Vice Mayor Robert Zoldos called the regular meeting of the Lovettsville Town Council to order at 8:05 PM on Thursday, April 28, 2011. The Pledge of Allegiance was led by Boy Scout Geurin Gray of Troop 962.

Present at Meeting

- Vice Mayor Robert Zoldos II
- Council Members Tiffaney Carder, Charlotte Coleman, Tim Sparbanie, Shaun Staley, Michael Senate
- Town Manager Keith Markel
- Town Attorney Liz Whiting
- Zoning Administrator Steve McGregor
- Project Manager Karin Fellers *{arrived at 9:44 PM}*
- Town Clerk Judy L. Kromholz

Absent

- Mayor Elaine Walker

Comments from the Public

Mr. Howard Williamson addressed the Council concerning teenagers out of control in the downtown area. As the former owner of Talk of the Town, he had problems last year with vandalism, trashed property, loud destructive behavior, loud inappropriate language, congregating in dark areas, and blocking traffic at night. He stated that he is very disturbed that these disturbances have been going on in the community for two or more years. He is asking Council to put restrictions in effect to hold the teenagers and their parents responsible for what they do and to give the Sheriff's Deputies tools for enforcement.

Mr. Michael Page agreed with Mr. Williamson, stating that his grandson is afraid to go outside and is being bullied at his school bus stop and on the school bus. Mr. Page stated that he has lived here seven years and in Loudoun County all of his life and is considering moving because of these issues. He stated that his wife is afraid to go out on their own front porch and that he has seen the teenagers congregating on the restaurant porch when the restaurant is closed. He stated that he has called the Sheriff's Office to report the most recent incidents.

Mrs. Evelyn Baker reported that she and her grandson have also had incidents with these teenagers. She stated that they have threatened to beat her grandson up or shoot him. She reported that every night after that incident, the teenagers have thrown rocks at their house and kicked and broke their front door. She did report these incidents to the Sheriff's Department along with the names of some of the perpetrators. She has sworn out trespassing petitions which have been delivered to the parents and there has been a difference since that time.

Mr. Bing Lam objects to the sentence in the Council Rules and Procedures which disallows derogatory comments. He objected to the fact that his written, emailed comments were not read into the record of the April 14th meeting. He stated that many citizens cannot attend meetings and that allowing written comments would be a step forward in this arena. He stated that he can understand that excessive comments would have to be limited. He stated that he understands that the Council has considered his comments on the word derogatory, but he does not know how Council will enforce it and feels new word is synonymous with the word derogatory. He stated that the public has a right to criticize the members of Council.

Mr. Jason Lage, owner of the Market Table Bistro, reported that he has also had trouble with the teenagers in downtown. He reported that three months ago he caught someone breaking into his walk-in

freezer at 9:30 AM. He stated that he witnessed a rock throwing incident and that the gas cap has been removed from his truck. Guests on the restaurant patio are offended by the language they hear from these teenagers. Trash has been thrown over his fence. He stated that the incidents had become a lot worse in the last few months.

Community Presentations

Loudoun County Sheriff's Office

Loudoun County Deputy Sheriff Bressler stated that he had been asked by Deputy Mertz-Myers to attend this Council meeting and he is very glad to hear from the public concerning these issues. He questioned the previous speakers concerning details of the assorted incidents. He promised that he will elevate concern about these issues among all six patrol shifts and the dispatch center. He said there have been some recent arrests and Mrs. Baker confirmed that things have gotten quieter. Deputy Bressler emphasized that his office is going to find a way to make the perpetrators accountable. He also stressed that the public should call to report any and all incidents, no matter how seemingly trivial. He distributed his contact information to the Council and to the public in attendance.

Vice Mayor Zoldos emphasized how important it is to report all incidents to the Sherriff's Office and for dispatch to take these matters seriously. Councilman Staley asked if the Town should consider establishing a curfew and Attorney Whiting stated that it has been explored with the County Attorney on a case by case basis, noting that there are specific areas where the County Ordinance cannot apply. She stated that the tools are available; the Town will need to invest time and effort in the research. She noted that the County administration is philosophically supportive of this effort.

Councilwoman Coleman reported that she has also had encounters with the teenagers, chasing them off the bank grounds where there is a No Trespassing sign. She has also encountered them outside the beauty shop.

Vice Mayor Zoldos noted that the rules of procedure had been suspended tonight because there was a clear need for a Town meeting on this topic tonight, when so many citizens had made the effort to attend the meeting and speak out while Deputy Bressler was available to hear their concerns. He also stated that it is clear that the Town needs a full time Community Sheriff and he intends to pursue this with the Sherriff's Office and the County administration.

Lovettsville Volunteer Fire and Rescue Company

Rescue Chief Tracey Senate discussed the Loudoun County Fire Marshall's modified Open Burn Calendar, gave the run report for both fire and rescue and reminded those present that the Company continues to have bingo every Saturday night.

Lovettsville Community Center

Manager Elizabeth Bracey stated that she is really pleased that the public has come to the Council to discuss the safety issues in our community. She reported that she has been attending the Oktoberfest Committee meetings and is really excited about this year's event. The Community Center pool will open on May 28th.

Additions/Deletions/Modifications to the Agenda

None

Presentations

No presentations were scheduled.

Approval of Town Council Minutes

A. Town Council Public Hearing and Regular Meeting – March 10, 2011

Motion: To approve the minutes of the March 10, 2011 Town Council Public Hearing and Meeting as modified at this meeting.

By: Council Member Sparbanie

Second: Council Member Coleman

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

Nay: None

Abstain: None
Absent: None

B. Town Council Regular Meeting – March 24, 2011

Motion: To approve the minutes of the March 24, 2011 Town Council Meeting as modified at this meeting.

By: Council Member Senate

Second: Council Member Carder

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

Nay: None

Abstain: None

Absent: None

Report from the Treasurer

No report was presented.

Staff Reports

A. Report from the Zoning Administrator

Administrator McGregor presented his written report for March 2011.

B. Report from the Town Attorney

Attorney Whiting informed Council that she has been forwarded an opinion from Fairfax County which calls into question a number of classifications for zoning applications for special uses. While this is not yet the rule of the Commonwealth, she is following the situation closely and will keep Council informed.

C. Report from the Town Manager

Manager Markel had no report at this time.

Consent Agenda

There were no items on the Consent Agenda

Action/Discussion Items

A. LVRZ 2010-0002 Lovettsville Retirement Village/Heritage Highlands

Manager Markel noted for the record that proffer number eight mentions the possibility of additional sewer tap charges. The Council had no questions concerning this provision at this time.

Motion: I move that the Town Council approve Ordinance No. 2011-04-01: LVRZ 2010-0002: Lovettsville Retirement Village/Heritage Highlands with proffers dated April 19, 2011 (Attachment II)

By: Council Member Senate

Second: Council Member Sparbanie

Vice Mayor Zoldos called for discussion. Councilman Staley noted that proffer eight is somewhat limiting. Vice Mayor Zoldos stated that the proffer frames the issue but does not limit the resolution, except insofar as requiring when the payment would be required.

Manager Markel stated that the administrative requirements will be manageable, no matter what Council decides. Attorney Whiting noted that proffer one requires the Home Owners Association to assume some of the mechanisms of enforcing the proffers. She noted that, by law, the town attorney is required to review the proffers and procedures on an ongoing basis. She stated that a protocol can be worked out to enforce the proffers between the HOA and the Town. Vice Mayor Zoldos asked Attorney Whiting to define the word 'reside' as it is used in the proffers and she replied that it would be someone who is not a guest as defined by the 90 day guideline.

Councilman Sparbanie stated that the Council has tried to make this as fair as possible for current and future residents of Heritage Highlands, as well as for the Town at-large, and he wants the residents to know the Council appreciates their efforts and their signing multiple times. There being no further discussion, Vice Mayor Zoldos called for the vote.

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

Nay: None

Abstain: None
Absent: None

B. Heritage Highlands Sewer Availability

Manager Markel asked Council to provide direction on the option they preferred.

Motion: To direct staff to prepare a motion to adopt the imposition of a ¼ tap charge at Heritage Highlands when the third occupant becomes a resident based on the guidelines in the proffers.

By: Council Member Sparbanie

Second: Council Member Carder

Vice Mayor Zoldos called for discussion. Attorney Whiting stated that this may require a public hearing because it is a rate change. There being no further discussion, Vice Mayor Zoldos called for the vote.

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

Nay: None

Abstain: None

Absent: None

C. Update to the Mayor and Town Council Rules and Procedures

Manager Markel presented this item.

Motion: I move to adopt the modifications to the currently approved Rules and Procedures for Meetings of the Mayor and Town Council, with the revised draft date of April 28, 2011.

By: Council Member Senate

Second: Council Member Coleman

Vice Mayor Zoldos called for discussion. Councilwoman Carder stated that the substitution of the word 'disparaging' did not change the meaning of the sentence. Vice Mayor Zoldos stated that the public should be allowed to criticize council members' actions and Councilwoman Carder agreed. Councilman Sparbanie suggested removing the sentence entirely.

Attorney Whiting suggested discouraging attacks directed to the person rather than to the idea, stating that items of public concern or public business are what should be addressed by the public. Councilman Sparbanie suggested limiting vulgarity, profanity, and obscenities in the current version and asking staff to research what has stood up in court. Councilman Senate suggested that the goal was to "treat each other with respect".

Friendly Amendment: I move to adopt the modifications to the currently approved Rules and Procedures for Meetings of the Mayor and Town Council, with the revised draft date of April 28, 2011, only limiting obscenities, vulgarities and profanity.

By: Council Member Senate

Second: Council Member Coleman

There being no further discussion, Vice Mayor Zoldos called for the vote.

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

Nay: None

Abstain: None

Absent: None

D. Meter Sizing Policy

Project Manager Fellers presented this item. Manager Markel noted that Availability and Meter Fees are included in this year's advertised rates and fees so that they can be adopted in the coming fiscal year.

Project Manager Fellers stated that this proposal reflects what Council has previously discussed, but has been reorganized to allow easier updating in the future. She noted that it includes the only change requested by Council which allows an in-law suite without having to upgrade the meter unless the owner adds a true apartment. She reviewed the proposed meter sizing table, emphasizing that this expense could impose a financial burden on a small start-up restaurant.

Councilman Sparbanie asked what meter sizes are currently being used and Manager Markel replied that the vast majority of meters in Town are 5/8th inch and that even some of the restaurants are on that size meter. He reported that the school, a couple of irrigation systems, the Community Center, and the pool at the Community Center are on larger meters. Councilman Sparbanie asked if it is necessary to have

seven different meter sizes and Project Manager Fellers explained that this is how users purchase capacity from the plant to support their business needs. Manager Markel stated that practically, higher usage wears out the meter and philosophically the meters represent what each facility demands from the overall system capacity. Vice Mayor Zoldos asked if Council needed to take action at this meeting and Manager Markel said a motion is needed tonight in order to incorporate the draft meter sizing policy into the overall Water and Sewer Ordinance, but it would not be adoption of the Ordinance or policy. There being no further discussion, Vice Mayor Zoldos called for a motion.

Motion: I move that the Town Council direct staff to incorporate the Meter Sizing Policy as amended by Town Council into the Water and Sewer Ordinance; revise and update the Water and Sewer Ordinance as appropriate and bring the Ordinance back to Town Council for Public Hearing and consideration for approval."

By: Council Member Senate

Second: Council Member Carder

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

Nay: None

Abstain: None

Absent: None

E. Approval to Advertise FY 2012 Budget and Not to Exceed Rates and Fees

Manager Markel presented this item. He noted that the only proposed increase is in the utility rates.

Motion: I move to adopt Resolution 2011-04-01: Authorize Town Manager To Advertise Budget And Maximum Tax Rates And Fee Changes.

By: Council Member Sparbanie

Second: Council Member Coleman

Vice Mayor Zoldos called for discussion. Councilman Staley stated that although the Council had agreed to advertise a 1% increase in water and sewer usage he would like to revisit advertising a 2% increase. He stated that even at 2% the Town will not be recovering the rising costs in this area but will at least be closer. Vice Mayor Zoldos agreed with Councilman Staley, stating that the system is at some risk, but not a huge risk in this fiscal year. Councilman Senate agreed, noting that the current economic climate dictates that the Town be as gentle as possible, while developing a five year plan to protect the Town's systems. There being no further discussion, Vice Mayor Zoldos called for the vote.

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

Nay: None

Abstain: None

Absent: None

Information Items

Manager Markel informed Council that the Loudoun County Sheriff's Office had requested use of the old McDonough property (3 Short Hill Chase), which is now owned by Elm Street Development, for a SWAT team exercise. Elm Street Development has agreed if the Town supports the idea. The Council approved the project as long as hanging doorknob cards are placed on the surrounding properties to inform the residents of the activity.

Comments from the Mayor and Town Council

Councilman Senate suggested that the Council revisit the curfew issue. Attorney Whiting stated that the Town Council had discussed this in the past, but never enacted any ordinance. She noted that the Town would need to closely coordinate with the County.

Councilwoman Carder stated that she is looking forward to the opening day of Little League Baseball. She announced that Market Table Bistro is planning a benefit for the Lovettsville Food Cooperative. She reported that the Lovettsville Business Association is planning a presentation on the development of the commercial space at Lovettsville Town Center and she has been invited to speak. She stated that she will emphasize that she is speaking only for herself, not for the Council or the Town.

Councilman Staley reported that he had met with Councilwoman Carder and John Broman about the proposed 'Americana Fair'.

Councilman Sparbanie reported that the next Oktoberfest Committee meeting will be at Town Hall on May 9th and that he is very excited about the progress the committee is making. Along with the rest of Council, he is very concerned about the reports they received from the public earlier this evening.

Vice Mayor Zoldos reported that he had met with Mayor Walker prior to this meeting and had reviewed the agenda with her. He also reported that transportation to and from the parking lots will be available to all attendees at the Little League Opening Day ceremonies.

Adjournment

The Council went into Closed Session at 10:31 PM (Attachment III: Closed Session Motions).

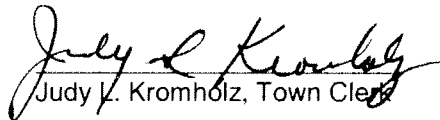
The Council came out of closed session at 11:40 PM.

All council members certified that only public business matters lawfully exempt for the open meeting requirements under the Virginia Freedom of Information Act were discussed.

Let the record reflect that no vote was taken following the Closed Session.

The meeting was adjourned at 11:45 PM.

Respectfully submitted,


Judy L. Kromholz, Town Clerk

Date Approved: May 26, 2011

Attachments:

- I. Speaker Signup Sheet
- II. Ordinance No. 2011-04-01: LVRZ 2010-0002: Lovettsville Retirement Village/Heritage Highlands
- III. Closed Session Motions

Written Submissions:

- I. Rebecca Mohajeri Bryant (Email distributed to Council at the meeting)

Town of Lovettsville

Speaker Sign - Up Sheet

Joint Public Hearing, Town Council Regular Meeting - April 28, 2011

Please Print.

Name and Association	Address	Topic	Email Address (Optional) ¹
JACK BURDEN	16 HARRERS MILL	PROFFER	
HOWARD WILLIAMSON	12609 Lutheran Church Rd.	Town Council - Pub. Com	
T.C. Michael & Loriby	14 East Broadway	Teenagers	orntrugs@aol.com
T.C. Elizabeth Barber	11 Harpers Mill	Proffer	ELBARBER@T.COM
T.C. Guleya Baker	1 N. Light St.	Teenagers	e.bakus@comcast.net
T.C. Bibig Lam	2 Risen Town	Public Comment	
Trison Lago	3 N. Light St	travis	ChadLago@msn.com

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

Ordinance No. 2011-04-01

APPROVE LVZA 2010-0002: LOVETTSVILLE RETIREMENT VILLAGE/HERITAGE HIGHLANDS--ZONING MAP AMENDMENTS AND ACCEPT PROFFERED CONDITIONS

MOTION: Senate
SECOND: Sparbanie

WHEREAS, the owners of all properties approved for independent living units within the project originally approved as the Lovettsville Retirement Village, being the parties identified in and signing the proffer statement dated "Draft August 13, 2010", and revised through April 19, 2011, ("the Applicants") seeking revisions to the zoning map amendment, as proffered, and conditional use permit approved April 24, 2003, (i) to rezone the property to the R-C Retirement Community District, with proffers; (ii) to amend the age restrictions applicable to the independent living portions of the property to match the requirements of the Virginia Fair Housing Law, specifically to Section 36-96.7 of the Code of Virginia (1950); (iii) to increase the maximum square footage allowed for the independent living units; (iv) to increase the number of persons who may reside in the units and allow residency by a person either providing care to or receiving care from another occupant of the independent living residence; (v) to lengthen the time that guests may occupy the independent living residence; and (vi) to eliminate the requirement that independent living units be the primary residence of the occupants; and

WHEREAS, the Lovettsville Planning Commission and Lovettsville Town Council conducted a joint public hearing on the application April 28, 2011, pursuant to notice given in accordance with the requirements of Va. Code section 15.2-2204; and

WHEREAS, the Planning Commission on April 28, 2011, recommended approval of the application as proffered; and

WHEREAS, the Town Council has determined that approval of the application and acceptance of the proffered conditions will promote the health, safety and welfare of the Town's citizens and are consistent with good zoning practice.

NOW, THEREFORE, BE IT ORDAINED by the Lovettsville Town Council that the application by the Applicants is hereby approved, subject to the conditions as voluntarily proffered in Proffer Statement dated "Draft August 13, 2010" and revised through April 19, 2011, (i) rezone the property to the R-C Retirement Community District, with proffers; (ii) to amend the age restrictions applicable to the independent living portions of the property to be consistent with the requirements of the Virginia Fair Housing Law, specifically to Section 36-96.7 of the Code of Virginia (1950); (iii) to increase the maximum square footage allowed for the independent living units; (iv) to increase the number of persons who may reside in the units and allow residency by a person either providing care to or receiving care from another occupant of the independent living residence; (v) to lengthen the time that guests may occupy the independent living residence; and (vi) to eliminate the requirement that independent living units be the primary residence of the occupants; and

BE IT FURTHER ORDAINED that the foregoing approvals are subject to the conditions, voluntarily proffered by the applicants pursuant to Va. Code section 15.2-2303 attached hereto.

ATTACHMENTS: Original Proffer Statement dated "Draft August 13, 2010", revised through April 19, 2011, together with EXHIBITS A and B, ATTACHED HERETO.

VOTE:

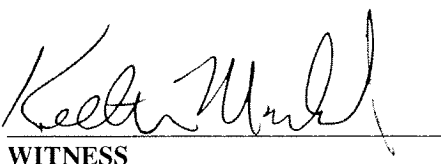
Ayes: Carder, Coleman, Senate, Sparbanie, Staley, Zoldos

Nays: None

Abstentions: None

Absent for vote: None

APPROVED April 28, 2011


WITNESS


ROBERT ZOLDOS H., VICE MAYOR

The German Settlement

Town of Lovettsville

VIRGINIA FREEDOM OF INFORMATION ACT Resolution: AUTHORIZE CLOSED SESSION

Date: 28 April 2011

Time: 10:31 PM

MOTION BY: Tim Sparbanic

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,

Town of Lovettsville

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: ~~Jim Sparbante~~ Charlotte Coleman

VOTE:

Ayes: 6

Nays: 0

Abstentions: 0

Absent for vote: 0

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:"

28 April, 2011 at 11:40 PM

Certified:

Vice Mayor

