

Town of Lovettsville

Town Council Minutes of the August 25, 2016 Regular Meeting

Call to Order/Pledge of Allegiance

Mayor Zoldos called the Regular Meeting of the Lovettsville Town Council to order at 7:31 p.m. on August 25, 2016 at the Lovettsville Town Office, 6 East Pennsylvania Ave, Lovettsville, VA.

Council Members Present

- Mayor Robert Zoldos II
- Vice Mayor Tiffany Carder
- Council Member Kimberly Allar
- Council Member Jennifer Jones (arrived at 8:25 p.m.)
- Council Member James McIntyre
- Council Member Mike Senate
- Council Member Robert Gentile (arrived at 8:40 p.m.)

Staff Present

- Town Manager Laszlo Palko (arrived at 7:40 p.m.)
- Town Attorney Elizabeth Whiting (arrived at 7:56 p.m.)
- Town Clerk Harriet West

Pledge of Allegiance

Mayor Zoldos led those assembled in the Pledge of Allegiance.

Presentations

Caroline Toye, Associate Director of the Community Foundation for Loudoun and Northern Fauquier County gave a presentation on the Face of Need, Face of Service Community Awareness Campaign. She said the goal is to change people's knowledge and behaviors about nonprofits in Loudoun County and to inspire and empower residents to get involved, through donations or volunteering. She noted that the campaign will be launched in March 2017. She further described details of the campaign and asked for the Town's support. Mayor Zoldos offered to include information in the Town's Friday email.

Closed Session

Mayor Zoldos stated there may be a possibility of a Closed Session at tonight's meeting.

Comments from the Public

Mayor Zoldos called for comments from the public.

Stacey Evans said she would like to put off speaking until the Council was talking about the fence issue. Evan Shalton introduced himself and said that Stacey Evans is his mom. Mayor Zoldos said he would like to take public comments from everyone now and that if there are questions for them during the discussion of this agenda item, the Council could ask questions.

Vice Mayor Carder read the rules for public comment.

Evan Shalton said he is here with his mother, Stacey Evans who resides at 16 S. Loudoun Street. He wanted to provide some context about what has been going on outside of the issues with the fence and ordinances. He and his brother came up before Thanksgiving a few years ago when his mom first moved. Before that she had been filling them in on what had been going on with her neighbors and she was intimidated. They grew up in Greensboro, North Carolina in a place where they didn't lock their doors, they didn't lock their cars, and they weren't afraid. It was a safe community. Coming here, it was a similar feel. When his mom was talking about being afraid, he didn't understand. Very quickly that weekend they were here he saw what she was talking about first-hand. It scared them to see their mother scared. Shortly thereafter he and his brother went home and they talked about it and not long after his mother called him terrified because her life had been threatened. They threatened to pay

someone to run over her with a car. He quit his job and moved up here. This is his mom. He has never seen her afraid or upset, not like this. She locks her doors and installed a security system in the house. This is not a petty property dispute or a triviality about a fence. This is a woman who comes home every day from her job terrified. Her family is terrified for her. They put up a fence for their dogs and a police officer advised them not to put them out for fear that they would be poisoned. Your home is your refuge and place of safety. The way the Town Council works here is different than in Greensboro and a lot of their resentment was misguided at the Council. They are appreciative the support they have gotten from and they will continue to reach out to the Town for support. He wants them to understand this is a real thing, it's not something small. It may seem that way on paper and comes across really pettily. It seems like a couple of neighbors who can't get along like kids on a playground but it's not. He wanted to offer that context to this entire messy situation.

Stacy Evans, 16 S. Loudoun Street, referenced a document that the Town Manager said he had already distributed to the Council. The reason she is back up here again is because the Town said they would report to her. The bottom line of her reaction at the last meeting is that the Town has ordinances, rules, and laws and that some have ramifications and some do not. She understands that's part of being a small town. The laws they do have, there is a loss of revenue from the flag that was up for 8 months, 6 months. They are talking about raising fees and getting fines; if they enforce what they have, maybe the area will become a) more civil and b) prettier, raise property values which will generate income, and help offset \$25,000 clocks and beautification fees for people who are violators. She apologized for her timing. She told the Town Manager that she would wait until Josh (the Zoning Administrator) got back but she melted down at the last meeting and she wanted to apologize to all of them for that. It seems like a lack of patience on her part. She was really excited when she moved here. She bought an old gas station and it's cute. She had this vision of her yard and flowers, not a banner or blue tarp. Every day she came home, first she had to wonder what they had done next. Then she had to be reminded of the situation she is living in. For the first six months she lived in her house, she didn't go outside. Her seeming urgency is from this constant reminder. Evan spoke to Charlie and was told that once his mom died, the fence was coming down, they just wanted some privacy. She said they could live with that but that didn't happen and that's why the whole thing got to the point that it got to. She does want to live here. It was a rental house for 30 years. She was told "awful" people lived in it. She doesn't know but it wasn't taken care of it inside or out. To work so hard and take everything she has and put it into something and just feel like she has no support; that's how she felt. That's why the urgency to please do something. She wanted to clarify that because the last time she did not prepare to say anything.

Mayor Zoldos called for other comments from the public. There were none.

Community Presentations

A. Loudoun County Sheriff's Office

Deputy LoPreto discussed a recent burglary in Town and vandalism at the Walker Pavilion.

Councilman McIntyre asked Deputy LoPreto about community policing support for Oktoberfest. Deputy LoPreto explained that the Sheriff's Office has changed the way it handles events. The events coordinator for the Sheriff's Office assigns deputies to various events and bills for their time. He discussed the reasons for this change with the Council.

Mayor Zoldos asked Deputy LoPreto about the statements made by Evan Shalton that were "eye opening" to him and that he had not heard before; specifically, that his mother's life had been threatened and that a police officer suggested that they not put the dogs out for fear that they would be poisoned. Deputy LoPreto said he had never heard that but he would need additional details to research this and find out. There are steps in place for those types of complaints. Regarding the dogs, it does not sound like something a deputy would say but who knows.

Evan Shalton said they did try to get a protective order but were told by the judge they couldn't get a protective order until she was physically assaulted. Stacey Evans said she had notes of everything the officers have told her and that is where there are 18 things missing from the FOIA request. Mr. Shalton said they have tried everything; they didn't come here first thing off the cuff. They tried to get a protective order but couldn't. The thing with the dogs was amazing to him, but it was good advice and they don't

use the doggy door. They did do a FOIA request to get information about the officers so they would have exact names for their notes.

Stacey Evans said it's a moot point at this point. She does not use her dog door and she partitioned her yard differently so that her neighbors on the other side, who are perfectly fine with them, keep an eye on her dogs for her and have called her before. Mr. Shalton said they have added another fence in the back yard for the dogs.

Mayor Zoldos said the reason he asked is because they hear all the time that law enforcement is not made aware of issues and he wanted to make sure they have spoken with the Sheriff's Office. Stacey Evans said she has even met the officers at other locations because she didn't want to incite her neighbors.

Deputy LoPreto said if they meet the officer at another location, the report may have been filed at that address. This can make finding records difficult and may be the reason there were things missing from their FOIA request. He said the Sheriff's Office will be implementing a new system soon and he's not sure how calls will be entered; however, as of now everything is an address-based system.

Evan Shalton said this took place when his mother first moved here so instead of having law enforcement show up at the door, she met with the officers at another location. Deputy LoPreto said a lot of people do this but you need to make sure the call taker enters the address correctly. Mr. Shalton said they were advised to use the Brown's address.

B. Lovettsville Library

Councilwoman Carder reported on upcoming events at the library.

Town Commission and Committee

A. Lovettsville Planning Commission

Chairman Frank McDonough gave updates on the Omnibus Subdivision Ordinance, the Comprehensive Plan review process, and revisions to the sign regulations.

B. Events Committee

Councilman McIntyre said the kick off meeting for the Events Committee is scheduled for September 1.

- a. Love America – Councilwoman Allar gave updates on the Patriot Day Ceremony. Mayor Zoldos said he now has the official Virginia 9/11 Commemorative Flag.
- b. Love Spring – There was no report.
- c. Love Summer – There was no report.
- d. Love Fall – Councilman McIntyre gave updates on Oktoberfest, including providing local trolley service on Friday night, expanding Kinderfest to the Town Green, and social media flurry about changes in logistics for vendors. He distributed a copy of a letter we wrote to a local business person and asked the Mayor and Council to please talk to him if they felt anything he said was inappropriate. He said he talked to the rest of the business community and everyone seems happy.
- e. Love Winter – Councilwoman Allar

C. Business & Tourism Committee

Councilman McIntyre discussed sponsoring the Catoctin Holiday Art Tour.

D. Parks & Beautification Committee

Councilman Senate gave updates on the bike station and the Christmas decorations for East Broad Way. He noted it is likely they will need a bucket lift to put up and take down the ornaments on the street lights.

E. Infrastructure, Environment & Utilities Committee

Councilman Senate said they will be conducting a tour of Town facilities on September 9.

F. Information Flow Committee

Councilman Senate said he intends to schedule a committee meeting next month to discuss the development of the new website.

Additions/Deletions/Modifications to the Agenda

The following changes were made to the agenda:

- Move the S. Loudoun Fence Discussion up to Item A.
- Add an Action/Discussion Item to discuss the Oktoberfest Committee's decision to provide matching grants of up to \$500 to certain businesses for tent rental. Following discussion, the Council agreed to hold off on taking action on this until the next meeting.
- Add Action/Discussion Item E – Teens on the Green.

Minutes

A. September 17, 2015

Motion: I move to accept the minutes of the September 17, 2015 Regular Meeting.

By: Vice Mayor Carder

Second: Council Member Allar

Aye: Council Members Allar, Carder, Jones, McIntyre, and Senate

Nay: None

Abstain: None

Absent: Council Member Gentile

Monthly Financial Report

There was no report.

Staff Reports

A. Report from the Town Engineer

The Town Engineer submitted a written report.

B. Report from the Zoning Administrator

The Zoning Administrator submitted a written report.

C. Report from the Events and Tourism

There was no report.

D. Report from the Utility Supervisor

There was no report.

E. Report from the Town Attorney

There was no report.

F. Report from the Town Manager

There was no report.

Action/Discussion Items

A. S. Loudoun Fence Discussion

Mayor Zoldos explained this item is a request to brief the Council on staff actions on this issue.

Town Manager Palko presented this item. He briefed the Council on Town Staff actions pertaining to the dispute between 14 and 16 S. Loudoun Street in response to issues raised by Stacey Evans, 16 S. Loudoun Street at the Town Council meeting on July 28, 2016. He noted the Zoning Administrator's letter that includes the timeline of what occurred and then reviewed the following critiques of Town Staff:

1. **Lack of support from the Town with Law Enforcement and County Health Department-**
Manager Palko said the Town has been working with the Sheriff's Office to ensure they can enforce laws within Town. As a result of this hard work (especially from the Mayor and Town Attorney), the Town and the County are now in agreement in the ability to enforce county code within the Town. He

noted two exceptions (noise and parking violations), which will be brought up through COLT (Coalition of Loudoun Towns) since these issues impact all of the towns.

Manager Palko said this is the first time any of the parties at 14 or 16 S. Loudoun Street communicated directly with him that there was an issue with how staff was responding. He noted that this was brought to him the day before the July 28 Town Council meeting.

He and the Town Attorney have been reviewing the Town Code to see if there is anything that would have prohibited the County Health Department from enforcing their codes within the Town and they did not find anything. The Zoning Administrator did speak with the County Health Department official and was informed they were not pursuing the case based on merit, and not on anything having to do with the Town Code.

2. **Lack of support from the Town Staff in enforcing zoning violations in a timeline that Ms. Evans preferred-** Manager Palko explained the Zoning Administrator was pursuing the violation; however, it was delayed by the unfortunate passing of the owner of 14 S. Loudoun. This resulted in the Zoning Administrator having to send an updated letter to the new owners of the property. The second factor is that this issue was sent to a higher court for a criminal case. Manager Palko said the Council knows that since he has been here he takes fiscally responsible actions. There is no need to spend Town taxpayer dollars for the Zoning Administrator and Town Attorney working on a case when the case is already going to be resolved by a higher court. As a result, that stopped any further action by the Town.
3. **Disappointment that this issue was not raised with the Town Council-** Manager Palko said there was no decision for the Council to make once the matter went to a higher court. He added that residents are always free and encouraged to communicate with their elected representatives. Staff has never told residents that they cannot communicate with the Town Council.

Manager Palko then discussed his recommendations for responding to the issues raised by Stacey Evans based on the Town's authority per the Code and enforcement capabilities:

1. **Harassment-** This is not something the Town can respond to since the Town does not currently have law enforcement capacity or responsibility. The Council did an analysis this past budget year about getting a Town Police Department and determined they are not at the point where this is needed; however, they will be developing the criteria this year to begin evaluating when it's both fiscally responsible to do so and when the need is actually there. In the interim, it is the County Sheriff's authority and responsibility. Our residents pay County taxes and they are supposed to have that service. As the Mayor has reiterated, if there are any issues residents should call 9-1-1.
2. **Loud Music-** This is something the Town can address but the Town will need to amend its noise ordinance based on the new ordinance the County recently adopted on August 9, 2016. This item is on tonight's agenda for the Council's consideration. This will enable enforcement by the Sheriff's Department of any noise complaints from residents.
3. **Junkyard-like Environment on 14 S. Loudoun Street-** As discussed previously, the County Health Department rejected the case due to merit and there is no issue with the Town Code that would prevent enforcement.
4. **Property Damage to Stacey Evan's Fence-** The attachment has been taken down so that is no longer an issue.
5. **Blue Tarp Fence-** After sitting down with the Zoning Administrator and Town Attorney, it was determined that the blue tarp is a fence; it does go from the ground to the top. Manager Palko referred to the definition of fence in his staff memo.
Manager Palko said he recommends that a Zoning Violation Notice be sent to 14 S. Loudoun Street. If the Council wants to discuss specific details, Manager Palko recommended going into closed session since this could lead to a civil court case. He is also recommending that a Zoning Violation Notice be sent to the property owner where the bamboo fence is located between 14 and 16 S. Loudoun Street. This has now been raised to the Council level and he is asking for approval. He

said they have in front of them a letter received from Stacey Evans on August 24, 2016. Manager Palko asked if there were any questions.

Councilmember Jones made a motion to go into closed session to discuss this.

Mayor Zoldos asked Attorney Whiting to define how a closed session would be appropriate here. Attorney Whiting said it depends on what's discussed. There is an exemption for discussion of matters that are likely to become the subject of litigation. This could qualify as one of those. There is also an exemption for specific legal matters. Attorney Whiting noted that it is not appropriate to talk about, for example, the Town's processes for evaluating and acting on zoning violations – that's an open session item. In part, it depends on what someone wants to explore in closed session as to whether it qualifies under potential litigation.

Mayor Zoldos said everything they do could fit into that category of possible litigation but this seems like an open part of working government. Attorney Whiting said there are very few times when they have to go into closed session. She has been the Town Attorney for Hillsboro since 1990 and they have had three closed sessions. Unless someone wants to explore how to handle this in court or recommendations for a law enforcement tool, they are getting close to the line.

Councilwoman Jones said her concern is the interpretation of the zoning ordinance. Mayor Zoldos said that is well within open session. Councilwoman Jones then withdrew her motion.

Councilman McIntyre said the issuance of a zoning violation doesn't normally come to this level. He asked if this was before the Council because they are defining this particular instance as a fence. Manager Palko said this has been an ongoing issue for a very long time. Council was brought into this issue by Ms. Evans a few weeks ago. Since the Council and Town Manager are now involved, Manager Palko said he wants to make sure they are proceeding based on the route that Council deems appropriate. He noted that this is no longer just a Zoning Administrator issue.

Councilwoman Jones said she appreciates the tremendous amount of time the Zoning Administrator and Town Manager have put into this. She is upset like everyone else and wished everyone could get along. Reading through the notes, looking at the pictures, and driving by the property she does not agree with zoning administrator's opinion of what a fence is. She believes it is a privacy screening. It's not attached to the fence. It's not around the whole exterior of the home. It's just blocking the view. Everybody here has a right to have their own privacy. To her, it's a screen which is used to conceal, protect, or shelter. She does not believe it's a fence. It's not permanent. It may not be visually appealing, but she does not agree with staff's interpretation.

Manager Palko said that he, the Zoning Administrator, and the Town Attorney looked at this so this is not just the Zoning Administrator's opinion. He asked if this was not a barrier.

Councilwoman Jones said it is a visual barrier but everybody has a right to have curtains on their windows. If you are outside and you want privacy from your neighbor you can put a curtain or a screen up so that you can block their view. You have the right to do that. Just because it's a blue tarp doesn't mean it's not a screen. If it was a beautiful canopy, would it be an issue? Just because it's a blue tarp doesn't mean that it's not allowed. Manager Palko said it's nine feet high and there is not even a permit for it. Councilwoman Jones said she has neighbors who have structures over six feet tall with canopies attached to them. When they want their privacy they can let down the screen. She said you should be allowed to have certain things on your property unless it's against the Town's ordinances. In this case, she's not trying to keep anything out of her yard; she's just trying to keep her privacy. Manager Palko said he still believes it's a physical barrier. Councilwoman Jones said it's a visual barrier. Councilwoman Jones asked the property owner, Wonza Bell Stevens, if she could detach the blue tarp from the pole. Ms. Stevens said you can walk right through it; it's not even attached to the fence. She said the cameras are pointing into her yard, that's why the screen is up there. The camera is pointing in her yard, in her bathroom window. Who wants to be raped without the proper tool. Who want to be raped period. Ms. Stevens continued addressing the Council for several minutes; however, most of what she said was difficult to understand. She referenced the name Comstock several times and seemed to by

saying this issue was racially motivated. She also said that this little fence issue had turned into an FBI investigation.

Manager Palko said he wanted to make it clear that Town staff never makes decisions based on skin color.

Mayor Zoldos asked staff to get to the actual code regarding fences and prohibited fencing material. He asked the Zoning Administrator if the material that was being used is a prohibited in any way. The Mayor said there are two ways this goes. Either it's an illegal fence because they don't have a permit; or, it's not a fence because it's made out of prohibited materials.

Zoning Administrator Bateman said the first thing you have to look at is the definition. Mr. Bateman read aloud section 42-2 of the Zoning Ordinance of Lovettsville, Definition of Fence: *(1) The term "fence" means a barrier, usually made of posts and boards or wire, intended to prevent escape or intrusion or to mark a boundary. (2) The term "fence" does not mean trees, shrubbery or other foliage.* Mr. Bateman noted that trees, shrubs, and evergreens are not considered a fence; they are a screening method, but they are not a fence.

Mayor Zoldos asked how the bamboo fits into that. Zoning Administrator Bateman said it's not made of posts so there is no guidance there. The question is, is it a barrier that prevents escape or intrusion or marks a boundary. That is the first determination that has to be made. The Zoning Administrator noted that this is a very broad definition.

Councilman Gentile asked if this is something that was strung on a line and the bottom is free to move, would that be a barrier? Zoning Administrator said the edge of the tarp is free to move, it's not attached on the edge closest to the front of the property. Mr. Bateman said he didn't think a trellis is a barrier because you can walk underneath of it. He added that "if it were attached to boards and it had a five or six foot clearance and then extended two feet above that, would that be a barrier? No, it's not a physical barrier because I could walk right through it." Councilman Gentile said if the tarp is not connected and you could push it out of the way, it's not really a barrier. Zoning Administrator Bateman responded that in this case the bottom is nailed to the 2x4s. He added that this is not a simple call. This is why he did not answer Ms. Evans inquiry originally when she asked if it was a fence. His response to her was that he would have to investigate this to determine if it is a fence. He has conferred with the Town Attorney and they have looked at this; they do have a broad definition but it could be considered a fence.

Councilwoman Jones said this is the key thing, it "could be" is up to interpretation because it is so broad. Her main concern is setting a precedence in the future if other people want to put up a privacy screening and it's not a fence. Is the Town going to say no, we didn't allow Ms. Stevens to have that tarp that she considered a privacy screening, or to keep away the vision? What are we going to do by doing that?

Mayor Zoldos said that is the key of the debate. Councilwoman Jones said she is not using it as a fence she is using it as something to screen. Manager Palko said you could also be setting the precedence for the other side of the issue. Zoning Administrator Bateman said this was discussed with the Town Attorney and her advice was very straight forward, "You have to be prepared with the consequences of calling it a fence and you have to be prepared to live with the consequences of not calling it a fence." What that means is that other people could put up fences like that in Town and you have to be prepared to live with that. Councilwoman Jones said if it's a fence, then you cannot put up temporary materials. Zoning Administrator Bateman said if it's a fence, the temporary materials would be an issue. Councilwoman Jones said the issue is, is it a fence? Councilwoman Jones asked Ms. Stevens if she's using it as a fence.

Mayor Zoldos interjected and said this is a Council discussion right now. They are trying to define a fence. Town Attorney Whiting said the Council needs to understand the institutional posture that the Town is in. By state law, the officer who is charge with interpreting the Ordinance is the Zoning Administrator. If people don't like the interpretation, there are appeals. Mayor Zoldos asked if that was the case, why are we here now? Attorney Whiting said this issue is before the Council because the Council asked the Town Manager to make an investigation and report what his recommendations were and part of his

recommendations were based on the facts that staff was evaluating on where we stand today. The Town Manager is recommending that two zoning violation notices be issued. She noted that normally that discussion wouldn't occur in the Town Council but staff felt this was embraced in the mission the Council gave the Town Manager on July 28 to come back and give you the recommendation based on the facts as staff found them. She added that the Zoning Administrator has made a preliminary determination that will be reflected in those Notices of Zoning Violation if they go out, that both of those two things are fences under the definition of fence. Zoning Administrator Bateman said any Notice of Violation will contain the statutory language that says anyone who disagrees with the written determination or interpretation of the Zoning Administrator may appeal that decision to the Board of Zoning Appeals within 30 days. He said that is process someone who disagrees with his interpretation can use. If the Council disagrees with his interpretation, the process is the Council can amend the Code.

Mayor Zoldos said they cannot amend the Code tonight. He asked if the Council is short-circuiting the process by discussing this since the Zoning Administrator has already made a determination that they should move forward with this. Mr. Bateman said he may be bound to move forward with this based on the Code that is currently on the books that was adopted by the Town Council. Mayor Zoldos said tonight the Council is looking for the report on what the Town is doing; part of that is the Council is looking for the Zoning Administrator's interpretation, which the Council follows 99.9% of the time. Mr. Bateman said he has spoken with Charlie and Wonza over the past couple of days and they said it was intended to be a temporary measure to protect their privacy. He informed them of some other options that would protect their privacy that would not be a zoning issue, like landscaping. They did seem receptive to that but until they go down this road, they do not know what the outcome is going to be.

Mayor Zoldos addressed the Council and said he had something he would like to ask both parties, unless there were any objections. The Mayor said to him it was a very simple thing, but there were a whole bunch of issues here. He then spoke to Ms. Stevens and said he understood what her concern is – there's a camera on the corner and she feels like it's invading her privacy. He said he understood that. He then addressed Ms. Evans and her son and said they are concerned about the look of the tarp, which is hurting the property and it's something they don't want to look at every day. He said he understood that too. Mayor Zoldos asked the parties if this situation could be resolved without going through the legal process if Ms. Evans would be willing to aim the camera down or show Ms. Stevens where the camera looks and if Ms. Stevens would be willing to remove the tarp because it's only there to protect their privacy from the camera.

Mr. Shalton said his understanding is that the Council had already seen the footage from Charlie putting up the fence. Mr. Shalton said that from the video, you can see there is not a privacy concern; they have no intention of encroaching on their privacy. To that extent, when you put security cameras to protect you from certain people, which is what they have done in this instance, it does not behoove you to show those people where the coverage of your cameras are. A discussion ensued about the video and the Mayor and Council Members noted they had not seen the video. Ms. Evans said the video does not show the window at all; they were very careful to run it on the fence line. Councilman McIntyre said it sounds like the video shows what's going on the other side of the fence. Mr. Shalton clarified that the camera is above the fence line so it's at a downward angle and you can see the ground behind the fence. Marcia Fuqua, who was seated in the audience, suggested that they play the video. Mr. Shalton said he was reluctant to play a video that shows the security coverage of the security system that he put up to protect his mother from Wonza and Charlie to Wonza and Charlie Brown. Ms. Evans said she was more than willing to let the Mayor and Council see the video so they could resolve it for Wonza that it doesn't go anywhere near her house. Further discussion ensued regarding the camera and footage. Mayor Zoldos said they are back to whether this is a fence or not. Mayor Zoldos said they may need to amend the code anyway. Mr. Bateman said the process is still administrative at this point; issuance of a Notice of Violation is an administrative step taken by the Zoning Administrator. It does not constitute escalation to the point where any decision has been rendered with respect to taking it to the next level, meaning pursuing civil charges. He explained the escalation process for zoning enforcement, which is what other jurisdictions do as well. The first thing he does is to talk to the people involved in a potential zoning violation and this resolves 95% of the issues. The next step is then to issue the Notice of Zoning Violation. There is a 30-day period to file an appeal with the BZA (Board of Zoning Appeals). If they file and appeal within 30-days, that stops the process until the public hearing before the BZA. Each person is

able to offer testimony as to why they think it is or isn't a fence. If the BZA affirms the Zoning Administrator's interpretation, then he can issue a notice after that giving them 10 days to take the fence down. Manager Palko said he is comfortable the Council understands the direction staff is going.

Mayor Zoldos asked the Zoning Administrator what options Wonza has if she's told to take down the tarp because it's a fence. Mr. Bateman said they have talked about those options. The best option is landscaping; but obviously landscaping is not free. Other options include trellises that contain vines or ivy would work well. Councilwoman Jones said that takes time to grow so it's not an immediate fix to her problem. Mayor Zoldos said he just wanted to know are some of the other options. Zoning Administrator Bateman said he would be hard pressed to say that a structure that is erected on posts that allows for passage underneath constitutes a physical barrier. Councilwoman Jones asked if Ms. Stevens un-nailed it from the bottom, she would be fine? Councilman Gentile asked what if she raised the bottom up another five feet? The Zoning Administrator's response was "possibly."

Mayor Zoldos asked Ms. Stevens if the camera wasn't there, would there be a blue tarp? Ms. Stevens said no, it wouldn't be there. She then referenced Code 18.362 that had to do with videotaping her and her not knowing it. She said if it's not attached to the bottom it's not a fence. If she takes the nails out tonight then she is fine with it. She said it's not a permanent fixture, it's a monetary resource fixture and it won't be there forever but nothing is going to happen overnight. She said something about having a fence made and un-attaching the tarp from the bottom temporarily until that comes through. She then talked about planting bamboo along the fence and said she said she should be able to do what she wants to do to her yard. When the cameras came through it became a whole new story. All she is asking the Town to do is to let Ms. Evans know it's not permanent and that's she's going to beautify when the monetary resources hit. It's going to be sooner rather than later so just be patient on that level. Ms. Stevens said she knows Ms. Evans doesn't like how it looks because she doesn't like how it looks. But on the other hand, she has to have her privacy.

Mr. Shalton said he would like to propose a way forward that would be amicable to both parties, but it would require some buy in from the Council. Mayor Zoldos said he would love to hear it. Mr. Shalton said he would take down the camera under one of two conditions: 1) there are plans and timelines for when some sort of permanent barrier is constructed; and 2) if the Council would agree to hold them accountable for any past due fees associating with maintaining a temporary barrier in this way. He said that under the current ordinance, there are penalties for maintaining a fence that is not within compliance. He is happy to remove the camera if there is a way to hold them accountable for putting something up in a reasonable time line. He did not want to take the camera down, have them take the barrier down, and not be able to protect his mother for another five years because the fence is never constructed. On the flip side of that, if the barrier persists during this deliberation, you can curb behavior with a carrot and with a stick; at this point it warrants punitive fees for breaking these violations. They have had the bamboo fence up since August and have had different iterations of this with no resolution and no curbing initiatives. He is willing to give and will take the camera down and attach it to the inside of their fence so the only thing they can see is if someone jumps it. In response to a question from Mayor Zoldos, Mr. Shalton said he wants to put the camera back up for all of the reasons he enumerated earlier. If he's going to concede and take down the camera to give them time to gather their monetary resources so that they can come to a solution that is consistent with policy, then he wants there to be accountability for them to carry forward with that plan.

Zoning Administrator Bateman said the penalties do not apply until after the Notice of Zoning Violation has been issued. Attorney Whiting explained how the mechanism is set up in the State Code. She said the process starts with the Notice of Violation and Correction Order and they have 30 days to appeal to the BZA. A second tool is issuing the civil penalty citation but that is like a traffic summons. The Town doesn't get to impose fines; the fines are a judicial penalty. When you issue the civil citation it has to summons the recipient to a court date. The Town does not have the necessary forms set up to actively enforce a civil penalty program. That is the part that is missing from the civil penalty process.

Mayor Zoldos said it does not sound like the parties will be able to agree to removing the camera and taking the tarp down. He said if the Council puts this back in the Zoning Administrator's hands and he decides to proceed with the Notice of Violation, they can appeal to the BZA. If it's not appealed to the

BZA, then it goes to the circuit court. He said this would be expensive and would likely result in greater conflict between the two parties. He asked if they could avoid that by taking the camera down, taking the tarp down, and then putting the camera back up. A discussion ensued about the placement of the camera and the timeline for removal of the tarp. Ms. Stevens said it's not a fence if she takes the nails from the bottom; that's in the Town's Code. In response to a question from Mayor Zoldos, Ms. Stevens said it would take her two years to take the tarp down. Ms. Evans said she is talking months. Mayor Zoldos said it is conceivable this is not going to be seen as a fence, it can stay forever. Mr. Shalton said the fence is actually on their property. In response to a question from Ms. Evans, Zoning Administrator Bateman said the windows on the side of Ms. Steven's house are not visible from that camera, from what he has seen. He said a portion of the side yard may be visible.

Mayor Zoldos addressed the Council and said he had given the parties some options. If they don't want to take them, then he suggested putting it back in the Zoning Administrator's hands and either he moves forward with it, or not, based on his interpretation. He noted there is the right of appeal of the party charged with the violation.

Mayor Zoldos addressed Ms. Stevens again. He said it comes down to a time and he wanted this to work out. Ms. Stevens responded with a year-and-a-half.

Councilwoman Jones said it was an unfair to place a monetary burden on Ms. Stevens because Ms. Evans and Mr. Shalton decided to put up a camera and she feels violated. Now Ms. Stevens has to come up with extra funds; maybe she can't financially do it in a couple of months.

Mayor Zoldos said the Code addresses fencing; there is nothing about cameras. A discussion ensued about the context that was discussed by Mr. Shalton earlier in the meeting. Mayor Zoldos addressed the Council and said they were about at the end of trying to make this happen. He thanked the Town Manager and Zoning Administrator for their report. The Mayor suggested sending this back to the Zoning Administrator for interpretation and appropriate action. There was no objection from the Council.

B. Bond Release Town Center Section 3

Zoning Administrator Bateman presented this item. The Council is being asked to consider a request from the developer to release the bond for public improvements recently completed in Lovettsville Town Center Section 3.

Motion: I move to adopt Resolution 2016-08-001 approving the requested release of the performance agreement and bond for Lovettsville Town Center Section 3 and accepting the attached warranty agreement and maintenance bond in the amount of \$170,700.00 guaranteeing all work, materials and installation for a period of one year from August 25, 2016.

By: Council Member Senate

Second: Council Member Gentile

Aye: Council Members Allar, Carder, Gentile, Jones, McIntyre, and Senate

Nay: None

Abstain: None

Absent: None

C. Public Hearing – FY 17 Schedule of Fees Amendment 1

Town Manager Palko presented this item. The Council is being asked to amend the Fiscal Year 17 Schedule of Fees to adjust our Business License Fees and Taxes and to recover new in-house utility inspections of development. He noted this will not impact residents and that it will benefit businesses.

Mayor Zoldos opened the public hearing at 9:35 p.m. and called for comments from the public. There were none. The Mayor closed the public hearing and opened the regular meeting at 9:35 p.m.

Motion: I move to adopt Ordinance 2016-08-001 in order to amend the FY 17 Schedule of Fees.

By: Council Member McIntyre

Second: Council Member Allar
Aye: Council Members Allar, Carder, Jones, McIntyre, Gentile and Senate
Nay: None
Abstain: None
Absent: None

D. Town Code Reform

Town Manager Palko presented this item. The Council is being asked to amend the Town Code to ensure that the Town does not block the County's ability to enforce Codes in the Town. Town Attorney Whiting suggested adding an effective date of September 1, 2016 to the Ordinance to coincide with the County's effective date.

Motion: I move to adopt Ordinance 2016-08-002 in order to amend the Town's Noise Ordinance to ensure that the County has the ability to enforce its laws within the corporate limits of the Town of Lovettsville with the exception of Parking which will be addressed at a future date.
By: Council Member Jones
Second: Council Member Senate
Aye: Council Members Allar, Carder, Jones, McIntyre, Gentile and Senate
Nay: None
Abstain: None
Absent: None

E. Teens on the Green

Vice Mayor Carder presented this item. She discussed plans for an event on August 27 in collaboration with the Lovettsville Library. She is asking the Council to waive the rental fee and to use the Town's tables/chairs. She said they would make it more of a formal partnership next year. Manager Palko said the Parks Committee should look at the Town's policy for not charging other county entities since they haven't been charging the Town.

Motion: I move that the Town sponsor this event by allowing for a rent-free use of the Green and tables and chairs from the Town.
By: Council Member Carder
Second: Council Member Jones
Aye: Council Members Allar, Carder, McIntyre, Gentile, Jones and Senate
Nay: None
Abstain: None
Absent: None

Closed Session

There was no closed session.

Information Items

Attorney Whiting said she looked at the issue of marking hours of operations on Town signs. She spoke of Deputy LoPreto's prior recommendation to either posted hours or "sunrise to sunset" versus "dawn to dusk," which is not a legally accepted point in time. She suggested using "sunrise to sunset" if the Town does not want to use posted hours, and adding language that violations are subject to enforced by the Sheriff's Department.

Comments from the Mayor and Town Council

Councilman McIntyre gave an update on the final Movie on the Green and thanked Councilwoman Jones for her assistance at the food pantry over the weekend. Councilwoman Jones explained how the food pantry works.

Councilman Gentile said Upper Loudoun Youth Football starts this Saturday.

Councilwoman Carder said attendance was down at Wild on the Green but she had a good time and thought it was a good event as always. She had a wonderful time at the concert.

Councilwoman Allar said her family will be the Ambassador Family for the March of Dimes event this Saturday and will be representing Lovettsville Little Wonders. She said attendance was low at Wild on the Green but it could have been due to the weather and other events going on. She said they may be it differently next year and make it more like the Black & Blue on the Green.

Councilman Jones said gave an update on Volunteer Spot in the Friday Email and said the Girl Scouts will be featured in September. She also gave an update on several Gods Work, Our Hands projects on September 11.

Mayor Zoldos reported on the following:

- He thanked Councilwoman Allar for her work on Wild on the Green.
- He attended a meeting held by Congresswoman Comstock with the mayors of 14 incorporated towns. He and Mayor Frasier from Purcellville brought up transportation needs.
- He met with the new Virginia Regional Director of Lennar to discuss concerns about the bike path and community center for the Heritage Highland's community.
- The Town will be hosting an upcoming meeting of TANV (Town Association of Northern Virginia).
- He met with Mayor Frasier about scheduling a meeting for COLT (Coalition of Loudoun Towns).
- Councilman McIntyre will be doing the Mayor's Message this week.
- He encouraged the Council Members to take a look at the snow flake and wreath decorations which will be on display on East Broad Way tonight.

Adjournment

There being no further business before the Council, the meeting was adjourned at 10:08 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Harriet West", written over a horizontal line.

Harriet West, Town Clerk

Date Approved: October 6, 2016

Attachments:

1. Resolution 2016-08-001
2. Ordinance 2016-08-001

Town of Lovettsville

Ordinance 2016-08-001: AMEND TOWN OF LOVETTSVILLE SCHEDULE OF FEES TO REVISE WATER AND SEWER USER CHARGES AND BUSINESS LICENSE REVENUE FEES AND TAXES

MOTION: McIntyre

SECOND: Allar

WHEREAS, the Town Council periodically reviews its schedule of charges and fees and taxes to establish practicable and equitable fees and taxes; and

WHEREAS, the Town has taken over Water and Sewer Inspection services from Loudoun Water and need to be able to recover costs associated with inspections; and

WHEREAS, the Town amended Article IV Business License Taxes of the Town Code on July 28th 2016 which requires reduction of Business License Taxes and Fees per Commonwealth Code changes; and

WHEREAS, notice of the proposed changes has been given in accordance with the requirements of Virginia Code Section 15.2-107.

NOW, THEREFORE, BE IT ORDAINED that the Town's Schedule of Fees, be amended as set forth in the schedule attached hereto. This ordinance shall be effective 25th day of August, 2016.

VOTE:

AYES: Allar, Carder, Jones, Gentile, McIntyre, and Senate

NAYS: None

ABSTENTIONS: None

ABSENT FOR VOTE: None

APPROVED: August 25, 2016



ROBERT ZOLDOS II, MAYOR

CERTIFIED:



HARRIET WEST, TOWN CLERK

The German Settlement

Business License:

Type	Fee/Tax
All Businesses Except Contractors	Fee of \$30.00 for gross receipts up to \$20,000.00 and a Tax of \$0.17/\$100 for gross receipts over \$20,000.00
In-Town Contractors	Fee of \$30.00 for gross receipts up to \$20,000.00 and a Tax of \$0.16/\$100 for gross receipts over \$20,000.00
Out-of-Town Contractors	No charge for work valued under \$25,000.00 annually; Fee of \$30.00 plus a Tax of \$0.16/\$100 for gross receipts over \$25,000.00

Water and Sewer Inspection Fees:

Type	Fee
Main Inspection Fee	\$1.90 x linear foot of Water Main + \$2.15 x linear foot of Sewer Main + \$300 for Beneficial Use Inspection + \$300 Final Inspection
Lateral Inspection Fee	\$150 per connection- charged with Zoning Permit for the building
Line Record Drawing Fee	\$1,350 + \$1.25/linear foot of Water Main + \$1.50/linear foot of Sewer Main

Town of Lovettsville

SCHEDULE OF FEES – FY 2017 BUDGET

ADOPTED JUNE 16, 2016 AND AMENDED AUGUST 25, 2016

GENERAL FUND

Real Estate Tax: \$0.21 / \$100 assessment

Elderly/Disabled Real Estate Tax discount is 100% for qualifying residents

Meals Tax: 3.0% on gross receipts

Cigarette Tax: \$0.40 per pack

Transient Occupancy Tax: 5% of gross receipts

Vehicle License Tax: \$25.00 per car/truck 16.00 per motorcycle (no change)

Business License:

Type	Fee/Tax
All Businesses Except Contractors	Fee of \$30.00 for gross receipts up to \$20,000.00 and a Tax of \$0.17/\$100 for gross receipts over \$20,000.00
In-Town Contractors	Fee of \$30.00 for gross receipts up to \$20,000.00 and a Tax of \$0.16/\$100 for gross receipts over \$20,000.00
Out-of-Town Contractors	No charge for work valued under \$25,000.00 annually; Fee of \$30.00 plus a Tax of \$0.16/\$100 for gross receipts over \$25,000.00

Application Fees:	Type:	Fee:
	Zoning Permit – Minor	\$75
	Zoning Permit – Major	\$150
	Pool (fence included)	\$100
	Zoning Determination Letter	\$75
	Demolition Permit	\$50
	Rezoning/Zoning Map Amend.	\$750* for first acre + \$250* for each additional acre
	Proffer Amendment	\$500
	Ordinance Amendment	\$150*
	Home Occupation Permit	\$50
	Zoning Certificate (conversion of use)	\$75
	Sign Permit – Permanent	\$75 (up to three signs)
	Sign Permit – Temporary	\$25 (per sign)
	Preliminary Plat	\$300 + \$15 per lot
	Preliminary Plat Amendment	\$250
	Final Plat	\$500 + \$25 per lot
	Final Plat Amendment	\$250
	Boundary Line Adjustment	\$250
	Minor Subdivision	\$300 + \$15 per lot
	Preliminary Site Plan	\$1,000 + \$50 per acre
	Final Site Plan	\$1,000 for first acre + \$50 for each additional acre
	Preliminary/Final Site Plan	\$1,000 for first acre + \$50 for each additional acre
	Construction Plan	\$1,000 for first acre + \$25 for each additional acre
	Conditional Use Permit	\$350*

Amended August 25, 2016

Town of Lovettsville

Variation /Waiver	\$100* per section varied
Occupancy Permit	\$75
Bond Reduction	\$100 per reduction
Bond Release	\$150
Street Acceptance (VDOT Maintenance)	\$150
BZA Variance/Appeal	\$100*

*: additional charges for advertising and/or adjacent property owner notification will be billed to the applicant
Applicants are responsible for all base fees as well as any engineering or Town Attorney Review Costs

All civic, charitable, and religious organizations having non-profit status are exempt from application fees.

Taxes are authorized by VA Code 58.1. Fees are authorized by Code of Virginia Sections 15.2-2241 and 15.2-2286.

UTILITY FUND:

All rates reflect quarterly charges

Minimum Water/Sewer Bill: \$135.18 for up to 6,000 gallons

Water User Rate: \$8.70 per thousand gallons

Sewer User Rate: \$13.82 per thousand gallons

Sewer Only Customers: Fixed Rate of \$115.15

Out of Town Water/ Sewer Customers charged 250% the in-town rate.

Penalty for Late Payment: 10%

Virginia Department of Health Waterworks Technical Assistance Fund: Set by VDH

Water Cutoff Charge: \$30

Fire Sprinkler Fee of \$20 per quarter for facilities with a fire sprinkler system connected to Town Water

Availability Tap refund processing charge: \$50.00

Water and Sewer Inspection Fees:

Type	Fee
Main Inspection Fee	\$1.90 x linear foot of Water Main + \$2.15 x linear foot of Sewer Main + \$300 for Beneficial Use Inspection + \$300 Final Inspection
Lateral Inspection Fee	\$150 per connection- charged with Zoning Permit for the building
Line Record Drawing Fee	\$1,350 + \$1.25/linear foot of Water Main + \$1.50/linear foot of Sewer Main

Deposit for new water and sewer accounts:

Type of Connection	Water	Sewer
Residential (within Town limits)	\$50.00	\$50.00
Residential (outside Town limits)	\$100.00	\$100.00
Non-Residential	\$100.00	\$100.00

Water Connection: \$1,000

Sewer Connection: \$1,000

Availability Fees, Maximum Allowable Usage and Meter Fee:

Meter Size	Maximum Allowable Usage (GPD)	Water Availability Fee*	Wastewater Availability Fee*	Meter Fee
5/8"	500	\$8,100	\$11,900	\$0
3/4"	750	\$12,150	\$17,850	\$0

Town of Lovettsville

1"	1,250	\$20,250	\$29,750	Cost of meter + \$20
1 1/2"	2,500	\$40,500	\$59,500	Cost of meter + \$20
2"	4,000	\$64,800	\$95,200	Cost of meter + \$20
3"	8,000	\$129,600	\$190,400	Cost of meter + \$20
4"	12,500	\$202,500	\$297,500	Cost of meter + \$20

*Upgrades from a smaller meter size will equal the difference between the new availability fee and the current availability worth of the existing meter size.

Excess Use Surcharge for Water: Two times the water rate for all usage above the Maximum Allowable Usage for a billing period.

Excess Use Surcharge for Sewer: Two times the sewer rate for all usage above the Maximum Allowable Usage for a billing period.

Failure to Upgrade Meter Fine – First Offense: \$100.00

Failure to Upgrade Meter Fine – Second Offense: \$200.00

Failure to Upgrade Meter Fine – Third Offense: \$300.00

Water Theft Fines:

First Offense Fine	\$500.00
Second Offense Fine	\$1,000.00
Third or Subsequent Offense Fine	\$2,000.00

Reward for Successful Notification and Capture of Water Theft in Progress:

Town Water and Sewer Account Holders	\$50.00 Credit
Non-account Holders	\$50.00 Check

Fine for Failure to Follow Water Emergency Rules and Regulations: \$500.00 each offense

Frye Court Service District Tax (per VA Code Section 15.2-2400 et seq.): \$0.275 per one hundred dollars (\$100.00) of assessed value for taxable real estate (exclusive of improvements).

These actions are authorized by the Code of Virginia Section 15.2-2111, 15.2-2143 (Water) and Sections 15.2-2111, 15.2-2119 (Sewer)

Charge for all returned checks: \$25.00 plus \$5.00 bank charge

Town of Lovettsville

Ordinance No. 2016-08-002: AMENDMENTS TO SECTIONS 22-19 (PENALTY), 22-20 (PURPOSE), 22-21 (EXEMPTIONS), 22-22 (TRANSMISSION OF NOISE BEYOND PROPERTY LINE), AND 22-23 (APPLICATION OF ENGINE BRAKES UNLAWFUL) OF THE TOWN CODE FOR NOISE

MOTION: Jones
SECOND: Senate

WHEREAS, Chapter 22, Article II of the Town Code contains requirements regarding Noise Violations; and

WHEREAS, the Town has identified the need to amend this Article to ensure that the County Sheriff's Department can enforce Noise Violations within Town Limits;

WHEREAS, the County amended their Noise Ordinance (Chapter 654.02) on July 13th, 2016 to be effective on September 1st, 2016; and

WHEREAS, the Town Council reviewed these changes on August 25, 2016.

NOW, THEREFORE, BE IT ORDAINED that sections 22-19, 22-20, 22-21, 22-22, and 22-23, of Chapter 22 of the Town Code be amended as set forth in the attachment hereto with an effective date of September 1, 2016.


VOTE:

Ayes: Allar, Carder, Jones, Gentile, McIntyre, and Senate
Nays: None
Abstentions: None
Absent for Vote: None

Approved: August 25, 2016



ROBERT ZOLDOS, MAYOR



HARRIET WEST, TOWN CLERK

The German Settlement

ARTICLE II. - NOISE

Sec. 22-19. - County Noise Ordinance

Pursuant to Code of Virginia, §§ 1-220 and 15.2-900, 15.2-919, 15.2-980, 15.2-1100, 15.2-1102, and 15.2-1201, and *Tanner v. City of Virginia Beach*, 277 Va. 432, 674 S.E.2d 848 (2009), the provisions of chapter 654.02 of the Codified Ordinances of Loudoun County, Virginia, 1982, as amended, are hereby adopted by reference to be the noise ordinance laws of the town, effective immediately, to include such amendments, including renumbering, as may be enacted from time to time.