

# Town of Lovettsville

## Town Council Minutes of the February 9, 2017 Regular Meeting and Joint Public Hearing with the Lovettsville Planning Commission

### Call to Order/Pledge of Allegiance

Mayor Zoldos called the meeting to order at 7:30 p.m. The meeting was held at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, VA.

### Council Members Present

- Mayor Robert Zoldos II
- Council Member Jim McIntyre
- Council Member Rob Gentile
- Council Member Mike Senate
- Vice Mayor Tiffany Carder
- Council Member Kimberly Allar
- Council Member Jennifer Jones

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### Staff Present

- Town Clerk Harriet West
- Town Manager Laszlo Palko
- Zoning Administrator Joshua Bateman
- Town Attorney Elizabeth Whiting
- Utility Director Stephen Gates

Mayor Zoldos recognized Planning Commission Chairman Frank McDonough and the other Planning Commissioners, as well as members from Scout Troop 962.

### Pledge of Allegiance

Daniel Thomas, with Troop 962, and Mayor Zoldos led those assembled in the Pledge of Allegiance.

### Presentations

#### A. Lovettsville-Waterford Ruritans EggstravaganzaFest

Tylee Ulmer gave an update on plans for EggstravaganzaFest.

Mayor Zoldos announced there would be two closed session items to discuss the possible bid for Town vehicle acquisition and the Town Manager's performance evaluation.

### Comments from the Public

Mayor Zoldos called for comments from the public. Vice Mayor Carder read the rules for public comment.

**Noland Yost**, 14 Potterfield Drive, signed up to speak but said he abstained.

**Jennifer Herron**, 25 Stocks Street, spoke about her high water bill and was told to come before the Town Council. The Town's utility department has looked into this issue and found that she is back on track for normal water usage. There is no leak in the house but there is still no justification for the big spike which doubled her normal usage. She was told she may have an intermittent leak and to have a plumber come out. Mayor Zoldos and Manager Palko responded to her concerns. Ms. Herron asked if it could have been a misreading. Utility Director Gates explained how the process works and noted the reading was not misinterpreted. Utility Director Gates confirmed her usage was double any other previous readings. He offered to do a mid-cycle reading and to install a radio read meter at the end of the billing cycle.

**Stacy Evans**, 16 S. Loudoun Street, read the definition of dereliction of duty. She discussed the fence issue she has had for over two years. She said she has spoken to the Council before and nothing is getting done. She also brought up the noise ordinance before and has problems on a daily basis. Mayor Zoldos stated that the noise ordinance is now in effect and to call the Loudoun County Sheriff's Office if there is noise within 100 feet of the property. The Mayor said has observed the Sheriff's Office enforce the noise ordinance on two separate occasions in Town. He told Ms. Evans she can call him directly the next time it occurs, after she contacts the Sheriff's Office. Town Attorney Whiting responded to the fence issue. She said she is working on establishing the Town's enforcement process and hopes to have an update at the Town Council meeting in March. Ms. Whiting responded to a question from Ms. Evans regarding the civil penalty process as an enforcement tool.

### **Community Presentations**

#### **A. Lovettsville Library**

Vice Mayor Carder reported on upcoming events at the Library.

### **Town Commission and Committee Reports**

#### **A. Lovettsville Planning Commission**

Chairman McDonough reported on the Zoning Amendment to create a new zoning area, called CRA-1, which is intended to be a transitional zoning district for annexations and boundary line adjustments.

#### **B. Events Committee**

Councilman McIntyre reported on the final stages of the Town-wide sponsorship packet.

- Love America – Councilwomen Allar reported on the first meeting for Memorial Day planning and she thanked the Scouts, who were in the audience, for their support.
- Love Spring – Vice Mayor Carder reported on the first MayFest meeting.
- Love Summer – Councilwomen Jones reported on the concerts and movies on the Green and the next committee meeting.
- Love Fall – Councilman McIntyre reported on the upcoming meeting to finalize the details for the pre-Oktoberfest concert on July 1. He said Oktoberfest will be sponsoring a free performance by The Reagan Years as part of the summer series.
- Love Winter – There was no report.

#### **C. Business & Tourism Committee**

Councilwoman Jones reported on the Town branding efforts, the ambassador's program, and the next meeting.

#### **D. Parks & Beautification Committee**

Councilman Senate reported on the next meeting and repairs to the clock faces.

#### **E. Infrastructure, Environment & Utilities Committee**

There was no report.

#### **F. Information Flow Committee**

Councilman Senate reported on improving ways to get information out the public and methods of getting real time coverage of meetings. He said it was good to see so many people at tonight's meeting.

### **Additions/Deletions/Modifications to the Agenda**

The following items were added to the agenda:

- Economic Planning Funding
- Acquisition of the Bucket Truck
- Town Manager's Evaluation

Minutes

There were none.

Staff Reports

A. Report from the Town Attorney

There was no report.

B. Report from the Town Manager

Town Manager Palko reported on the International Council of Shopping Centers Mid-Atlantic Conference he recently attended. He said he spoke with many retail businesses about Lovettsville and that it was a great networking opportunity and way to promote the Town. He explained how the recent market study helps the Town with economic development.

Action/Discussion Items

A. LVZA 2017-0001: Joint Public Hearing on Amendment to Article XII (Floodplains) of the Zoning Ordinance to Comply with Modifications to the National Flood Insurance Program

Mayor Zoldos opened the public hearing at 8:16 p.m. and turned the meeting over to Planning Commission Chairman McDonough. Mr. McDonough then opened the Planning Commission Special Meeting and Public Hearing at 8:16 pm.

Present

Commissioner Chris Hornbaker  
Vice Chair Nate Fontaine  
Commissioner Stephanie Wolf  
Commissioner Joe Mueller  
Chairman Frank McDonough

Absent

Commissioners Tom Ciolkosz  
Commissioner Shiva Shilling

Commissioner Wolf read the notice of public hearing. Chairman McDonough read the rules for public comment.

Zoning Administrator Bateman presented this item. The Planning Commission and Town Council are being asked to conduct a joint public hearing to amend Article XII (Floodplains) of the Zoning Ordinance. The proposed changes are necessary to comply with the recent amendments to the National Flood Insurance Program regulations, 44CFR Section 60.3(c), administered by the Federal Emergency Management Agency, model flood plain ordinance and Flood Insurance Rate Map covering the Town of Lovettsville. Mr. Bateman reviewed the additional modifications proposed by staff of the Virginia Department of Conservation and Recreation. Mr. Bateman responded to a question from Commissioner Fontaine and said that Zone X is not regulated. Hearing no further questions, Chairman McDonough called for a motion. Commissioner Hornbaker made the following motion:

**Motion:** I move to recommend approval of LVZA 2017-0001 amending Article XII (Floodplains) of the Zoning Ordinance, with the additional modifications requested by staff of the Virginia Department of Conservation and Recreation, highlighted in the version attached hereto and dated February 9, 2017.

**Second:** Mueller

Pat Davis, a Town resident, asked for a copy of the map. Mr. Bateman said the map is available online and the Town has paper copies which he can provide.

Mr. Bateman asked for a friendly amendment to the original motion to reflect additional comments from the Town Attorney. Commissioner Hornbaker amended his motion to include "modification by the Town

Attorney and staff of the Virginia Department of Conservation and Recreation, highlighted in the version attached hereto and dated February 9, 2017." Chairman McDonough called for the vote to amend the motion.

**Aye:** Mueller, Wolf, McDonough, Fontaine, Hornbaker  
**Absent:** Ciolkosz and Schilling

Chairman McDonough then called for a vote on the full amendment:

**Aye:** Mueller, Wolf, McDonough, Fontaine, Hornbaker  
**Absent:** Ciolkosz and Schilling

Chairman McDonough informed Mayor Zoldos that the Planning Commission was recommending LVZA 2017-0001, as amended, to the Town Council. The Planning Commission meeting was adjourned at 8:28 p.m.

Mayor Zoldos told the Council there was a recommendation before them to adopt the ordinance as well. Councilman McIntyre made the following motion:

**Motion:** I move to adopt Ordinance No. 2017-02-0001 approving LVZA 2017-0001 to amend Article XII (Floodplains) of the Zoning Ordinance, with the additional modifications requested by Town Attorney and staff of the Virginia Department of Conservation and Recreation, highlighted in the version attached hereto and dated February 9, 2017 (Attachment 1).

**Second:** Gentile

**Aye:** McIntyre, Gentile, Senate, Carder, Allar, and Jones

**Nay:** None

**Abstain:** None

**Absent:** None

**B. Adopt Comprehensive Plan Amendment**

Zoning Administrator Bateman presented this item. The Council is being asked to adopt the Comprehensive Plan. Mr. Bateman thanked everyone for their hard work over the past 20 months. He said there was a lot of discussion and a lot of debate which has resulted in an excellent product. He said the amendment is absolutely necessary to put the Town in a better place in the coming years to accommodate growth, expand infrastructure, and pursue economic development opportunities. He said he heartily endorses the amendment and requested the Council's adoption. Councilwoman Allar made the following motion:

**Motion:** I move to approve the 2017 amendment to the 2011 Lovettsville Comprehensive Plan (Attachment 2).

**Second:** Carder

Town Attorney Whiting noted an error on the fifth "whereas" clause regarding the date. She noted the correct date should be 2016, rather than 2017. Mayor Zoldos asked Vice Mayor Carder to read a written comment from Kari and Dan Parrish at 53 East Broad Way in support of the new Comprehensive Plan. Mayor Zoldos called for the vote.

**Aye:** McIntyre, Gentile, Senate, Carder, Allar, and Jones  
**Nay:** None  
**Abstain:** None  
**Absent:** None

Mayor Zoldos thanked the Planning Commission, the Zoning Administrator, and the citizens who served on the committees.

**C. Office Closure – Office Training**

Town Clerk West presented this item. The Council is being asked to approve closing the office to the public on February 21<sup>st</sup> from 8:30 a.m. to 1:00 p.m. for staff training to include CPR, AED (automated external defibrillator), and basic first aid. There was no objection from the Council.

**D. Economic Planning Funding**

Town Manager Palko presented this item. The Council is being asked to approve \$16,500 to fund the shortfall for completing the Town Square Master Plan and to select dates for meeting with the consultant. In response to a question from Mayor Zoldos, Mr. Palko explained that the Master Plan would enable the Town to develop options and a vision for the Town Square to promote business attraction and drive tourism. The Mayor asked Mr. Palko to explain what products would be provided based on the cost of \$31,000. Mr. Palko responded that this would include a concept plan for the Town Square, architectural images, and a comprehensive report on the types of businesses that would be viable in the Town Square. He added that the Master Plan will give the Town more tools when negotiating with developers. Following further discussion, Councilmember Senate made the following motion:

**Motion:** I move that the Town Manager budget \$16,500 in the FY 18 Capital Budget for the Town Square Planning.  
**Second:** Jones

Following discussion, the Council agreed to schedule meetings with the consultant March 21-March 23.

**Aye:** McIntyre, Gentile, Senate, Carder, Allar, and Jones  
**Nay:** None  
**Abstain:** None  
**Absent:** None

**Closed Session**

Mayor Zoldos announced that the Council would be convening in closed session to discuss the Town Manager's performance evaluation and the possible acquisition of a bucket truck. Vice Mayor Carder made the following motion:

**Motion:** I move that the Lovettsville Town Council convene in closed session pursuant to Va. Code Section 2.2-3711A (1). Discussion, consideration, or interviews or prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; for the performance review of the Town Manager; and discussion of the award of a public contract involving the expenditure of public funds, including interview 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, regarding the acquisition of a truck for the Town fleet; and thereafter reconvene in open session for action as appropriate.

**By:** Carder  
**Second:** Gentile  
**Aye:** McIntyre, Gentile, Senate, Carder, Allar and Jones  
**Nay:** None  
**Abstain:** None  
**Absent:** None

The Council went into closed session at 8:58 p.m. and reconvened in open session at 9:24 p.m. Mayor Zoldos announced that the Council only discussed Item 2 during the closed session, acquisition of a truck for the Town fleet. He said that the expectation is that the Council will go back into closed session to discuss Item 1.

The Mayor asked the Council Members to certify that to the best of their knowledge (1) only public business matters lawfully exempt from open meeting requirements under this chapter and (2) 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. Council Members McIntyre, Gentile, Senate, Carder, Allar, and Jones certified to the above. Mayor Zoldos asked if there was any further action to come before the Council. Councilman McIntyre adopted the following motion as stated by the Town Attorney:

**Motion:** I move to authorize the Town Manager to make a bid on auction number 1782954-1997 Ford truck with Boom.  
**Second:** Senate  
**Aye:** McIntyre, Gentile, Senate, Carder, Allar and Jones  
**Nay:** None  
**Abstain:** None  
**Absent:** None

**D. Vulture Update**

Town Manager Palko said he is working with the County on solutions they may be able to provide.

**E. Sign Complaint**

Mayor Zoldos updated the Council on several complaints the Town has received about a sign in Town. He has discussed the issue with the Town Attorney, the Zoning Administrator, and the Deputy Sheriff and there is little the Town can do based on a court case that limits the Town's ability to regulate the contents of a sign. Town Attorney Whiting further explained the ramifications of the court case and stated they are working on a draft to update the Town's sign ordinance. A discussion ensued about hateful speech versus freedom of speech. The Mayor reiterated that there is no mechanism for the Town to have the sign removed. He discussed other options for those who are offended by the sign and said he would address this in the Friday email.

Commissioner Gentile said he had just received his water/sewer bill and had less than 30 days to pay it. Manager Palko said he would look into this.

Mayor Zoldos announced the Council would reconvene in closed session, pursuant to an earlier vote, to take up Item 1, performance review of the Town Manager. The Council went into closed session at 9:50 p.m. and reconvened in open session at 10:49 p.m. Mayor Zoldos announced that Council Members Gentile and Jones left during the closed session. Mayor Zoldos asked the Council Members to certify that to the best of their knowledge (1) only public business matters lawfully exempt from open meeting requirements under this chapter and (2) 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. Council Members McIntyre, Senate, Carder, and Allar certified to the above.

**Information Items**

There were none.

**Comments from the Mayor and Town Council**

Vice Mayor Carder announced that the Have a Heart Party is this coming Saturday.

Mayor Zoldos gave an update on his meeting with Supervisor Higgins. They discussed the Lovettsville tour for the Board of Supervisors and possibly including it as a stop on the Rural Economic Tour. They also discussed meeting on a regular basis to discuss Lovettsville's needs, including the capital improvements, support from the Loudoun County Sheriff's Office, and the vulture problem.

**Adjournment**

There being no further business before the Council, the meeting was adjourned at 10:57 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harriet West".

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Harriet West, Town Clerk

Date Approved: October 12, 2017

Attachments:

1. Ordinance 2017-02-0001
2. Resolution 2017-02-0001

# Town of Lovettsville

ORDINANCE NO. 2017-02-0001

## AMEND ARTICLE XII, FLOODPLAINS, OF THE ZONING ORDINANCE

**MOTION: McIntyre**

**SECOND: Gentile**

**WHEREAS**, the National Flood Insurance Program (NFIP) provides insurance protecting against flood damage for properties located within local jurisdictions that have adopted an ordinance regulating construction within areas subject to flooding that meets or exceeds the standards required by the Federal Emergency Management Agency (FEMA) for construction therein; and

**WHEREAS**, Article XII, Floodplains, of Chapter 42, Zoning (hereinafter "the Zoning Ordinance") of the Town Code establishes a floodplain overlay district, requires the issuance of permits for development with such district, and provides factors and conditions for variances to the terms of the floodplain regulations; and

**WHEREAS**, the Planning Commission has initiated an amendment to Article XII, Floodplains, of the Zoning Ordinance necessary to bring the Town floodplain regulations and floodplain overlay district into compliance with recent amendments to the NFIP regulations and revisions to the Flood Insurance Rate Map (FIRM) for the Town of Lovettsville scheduled to go into effect on February 17, 2017; and

**WHEREAS**, the Lovettsville Planning Commission and Town Council held a joint public hearing on the matter on February 9, 2017, pursuant to notice given in accordance with Va. Code section 15.2-2204; and

**WHEREAS**, following the joint public hearing on February 9, 2017, the Planning Commission recommended approval of the amendment with several additional modifications requested by the Virginia Department of Conservation and Recreation (DCR); and

**WHEREAS**, the Town Council has determined that public necessity, convenience, general welfare, and good zoning practices generally support adoption of the amendment to the Zoning Ordinance initiated and recommended by the Planning Commission.

**NOW, THEREFORE, BE IT ORDAINED** that Article XII of the Zoning Ordinance be amended as set forth in the ordinance attached hereto.

**BE IT FURTHER ORDAINED** that the Zoning Administrator and Town Attorney are hereby authorized to make corrections of misnumberings or misspellings found in the said attachment without further action by the Council.

*The German Settlement*



**VOTE:**

**Ayes: Allar, Carder, Jones, Gentile, McIntyre, and Senate**

**Nays: None**

**Abstentions: None**

**Absent for vote: None**

**Approved: February 9, 2017**

  
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**Robert Zoldos II, Mayor**

Attest:

  
\_\_\_\_\_  
Harriet West, Town Clerk

Harriet West, Town Clerk

## ARTICLE XII. FLOODPLAINS

### DIVISION 1. GENERALLY

#### Sec. 42-421. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Appurtenant or accessory structure* means an accessory structure not to exceed 200 square feet.

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year.

*Base flood elevation* means the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on the Town of Lovettsville's Flood Insurance Rate Map. For the purposes of this article, the base flood is the one percent (1%) annual chance flood.

*Basement* means any area of the building having its floor sub-grade (below ground level) on all sides.

*Board of zoning appeals* means the board appointed to review appeals made by individuals with regard to decisions of the zoning administrator in the interpretation of this article.

*Development* means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, temporary structures, mining, dredging, filling, grading, paving, excavation, drilling or other land-disturbing activities or storage of equipment or materials.

*Elevated building* means a non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

*Encroachment* means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

*Existing construction* means, for the purposes of the insurance program, structures for which the "start of construction" commenced before July 5, 2001. "Existing construction" may also be referred to as "existing structures" and "pre-FIRM."

*Flood or flooding* means:

- (1) A general or temporary condition of partial or complete inundation of normally dry land areas from:
  - a. The overflow of inland or tidal waters; or,
  - b. The unusual and rapid accumulation or runoff of surface waters from any source.
  - c. Mudflows which are proximately caused by flooding as defined in subsection (1)b. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1)a. of this definition.

*Flood Insurance Rate Map (FIRM)* means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

*Flood Insurance Study (FIS)* means a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

*Floodplain or flood-prone area* means any land area susceptible to being inundated by water from any source.

*Floodproofing* means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point within the community.

*Freeboard* means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

*Functionally dependent use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic structure* means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior; or,
  - b. Directly by the Secretary of the Interior in states without approved programs.

*Hydrologic and hydraulic engineering analysis* means analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

*Letter of map change (LOMC)* means an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. The term "letters of map change" includes:

- (1) Letter of map amendment (LOMA), which is an amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or structure is not located in a special flood hazard area.
- (2) Letter of Map Revision (LOMR), which is a revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A letter of map revision based on fill (LOMR-F) is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (3) Conditional letter of map revision (CLOMR), which is a formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

*Lowest adjacent grade* means the lowest natural elevation of the ground surface next to the walls of a structure.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44 CFR 60.3.

*Manufactured home* means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include a recreational vehicle.

*Manufactured home park or subdivision* means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean sea level** means an elevation point that represents the average height of the ocean's surface (such as the halfway point between the mean high tide and the mean low tide) which is used as a standard in reckoning land elevation.

**New construction** means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after July 5, 2001 and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the Town of Lovettsville and includes any subsequent improvements to such structures.

**Post-FIRM structure** means a structure for which construction or substantial improvement occurred on or after July 5, 2001.

**Pre-FIRM structure** means a structure for which construction or substantial improvement occurred before July 5, 2001.

**Recreational vehicle** means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and,
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

**Repetitive loss structure** means a building covered by a contract for flood insurance that has incurred flood-related damages on two occasions during a ten-year period, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage

**Severe repetitive loss structure** means a structure that:

- (1) Is covered under a contract for flood insurance made available under the NFIP; and
- (2) Has incurred flood related damage:
  - (a) For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
  - (b) For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

**Shallow flooding area** means a special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Special flood hazard area** means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year.

**Start of construction** means, for other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. 97-348) and subject to Code of Virginia, § 15.2-2307, the date the building permit was issued, provided the actual start of construction, repair,

reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Structure* means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

*Violation* means the failure of a structure or other development to be fully compliant with Lovettsville's floodplain management regulations. Subject to Code of Virginia, § 15.2-2307, a structure or other development without the elevation certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

*Watercourse* means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. "Watercourse" includes specifically designated areas in which substantial flood damage may occur.

(Ord. No. 2013-02-001, glossary, 2-28-2013)

**Sec. 42-422. Penalty for violations.**

- (a) Any person who fails to comply with any of the requirements or provisions of this article or directions of the floodplain administrator or any authorized employee of the town shall be guilty of the appropriate violation and subject to the penalties thereof.
- (b) The Virginia Uniform Statewide Building Code ("USBC"), Code of Virginia, title 36, art. 6 (Code of Virginia, § 36-97 et seq.), addresses building code violations and the associated penalties of the Code of Virginia, § 36-106. Violations and associated penalties of the Zoning Ordinance of the Town of Lovettsville are addressed in section 42-35.
- (c) In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the town to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

(Ord. No. 2013-02-001, § 1.7, 2-28-2013)

**Sec. 42-423. Statutory authorization and purpose.**

This article is adopted pursuant to authority granted to localities by Code of Virginia, § 15.2-2280. The purpose of this article is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- (1) Regulating uses, activities and development which alone or in combination with other existing or future uses, activities, and development which will cause unacceptable increases in flood heights, velocities, or frequencies;
- (2) Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
- (3) Requiring all those uses, activities and developments that do occur in floodprone districts to be protected and/or floodproofed against flooding and flood damage; and
- (4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(Ord. No. 2013-02-001, § 1.1, 2-28-2013)

**Sec. 42-424. Applicability.**

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of Lovettsville and identified as areas of special flood hazard according to the flood insurance

rate map (FIRM) or included in the flood insurance study (FIS) that are provided to the Town of Lovettsville by the Federal Emergency Management Agency ("FEMA").

(Ord. No. 2013-02-001, § 1.2, 2-28-2013)

**Sec. 42-425. Compliance and liability.**

- (a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this article and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this article.
- (b) The degree of flood protection sought by the provisions of this article is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.
- (c) This article shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 2013-02-001, § 1.3, 2-28-2013)

**Sec. 42-426. Abrogation and greater restrictions.**

To the extent that the provisions are more restrictive, this article supersedes any ordinance currently in effect in floodprone districts. To the extent that any other existing law or regulation is more restrictive or does not conflict, it shall remain in full force and effect. These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

(Ord. No. 2013-02-001, § 1.5, 2-28-2013)

**Sec. 42-427. Variances.**

- (a) Subject to the provisions of Code of Virginia, § 15.2-2309, variances shall be issued only:
  - (1) Upon a showing of good and sufficient cause;
  - (2) After the board of zoning appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (3) After the board of zoning appeals has determined that the granting of such variance:
    - a. Will not result in:
      - 1. Unacceptable or prohibited increases in flood heights;
      - 2. Additional threats to public safety;



3. Extraordinary public expense; and

- b. Will not create nuisances, cause fraud or victimization of the public, or conflict with local laws or ordinances.
- (b) While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the board of zoning appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.
- (c) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (d) In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:
- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development or activity within any floodway district that will cause any increase in the 100-year flood elevation.
  - (2) The danger that materials may be swept onto other lands or downstream to the injury of others.
  - (3) The proposed water supply and sanitation system and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
  - (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
  - (5) The importance of the services provided by the proposed facility to the community.
  - (6) The availability of alternative locations not subject to flooding for the proposed use.
  - (7) The requirements of the facility for a waterfront location.
  - (8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
  - (9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
  - (10) The safety of access by ordinary and emergency vehicles to the property in time of flood.
  - (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
  - (12) The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic

structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(13) Such other factors which are relevant to the purposes of this article.

- (e) Subject to the availability of funds for such purposes, the board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.
- (f) Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not:
  - (1) Result in unacceptable or prohibited increases in flood heights, additional threats to public safety, or extraordinary public expense; and
  - (2) Create nuisances, cause fraud or victimization of the public, or conflict with local laws or ordinances.
- (g) Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief.
- (h) The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the 100-year flood elevation:
  - (1) Increases the risks of life and property; and
  - (2) Will result in increased premium rates for flood insurance.
- (i) A record shall be maintained of the notification in subsection (h) of this section as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

(Ord. No. 2013-02-001, art. VI, 2-28-2013)

#### **Sec. 42-428. Severability**

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

**Secs. 42-429—42-440. Reserved.**

### **DIVISION 2. - ADMINISTRATION AND ENFORCEMENT**

**Sec. 42-441. Designation of floodplain administrator.**

The zoning administrator is hereby appointed to administer and implement the regulations of this article and is referred to herein as floodplain administrator. The floodplain administrator may:

- (1) Do the work himself. In the absence of a designated floodplain administrator, the duties are conducted by the Town Manager.
- (2) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- (3) Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the Town of Lovettsville of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 CFR 59.22.

(Ord. No. 2013-02-001, § 2.1, 2-28-2013)

**Section 42-442. Duties and responsibilities of floodplain administrator.**

(a) The duties and responsibilities of the floodplain administrator shall include but are not limited to:

- (1) Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
- (2) Consistent with section 42-443 and subject to determination by the board of zoning appeals pursuant to Code of Virginia, § 15.2-2309, interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
- (3) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
- (4) Review applications to determine whether all necessary permits have been obtained from the federal, state or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the state.
- (5) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
- (6) Approve applications and issue permits to develop in flood hazard areas if the provisions of this article have been met, or disapprove applications if the provisions of this article have not been met.

- (7) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
- (8) Review elevation certificates and require incomplete or deficient certificates to be corrected.
- (9) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the Town of Lovettsville within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
- (10) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
  - a. Flood insurance studies, flood insurance rate maps (including historic studies and maps and current effective studies and maps) and letters of map change; and
  - b. Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been flood-proofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- (11) Enforce the provisions of this article, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
- (12) Advise the board of zoning appeals regarding the intent of this article and, for each application for a variance, prepare a staff report and recommendation.
- (13) Administer the requirements related to proposed work on existing buildings:
  - a. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
  - b. Subject to the provisions of Code of Virginia, § 15.2-2307, make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
- (14) Undertake, as determined appropriate by the floodplain administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under NFIP flood insurance policies.
- (15) Notify the Federal Emergency Management Agency when the corporate boundaries of the town have been modified and:

- a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation and boundary line adjustment; and
- b. If the FIRM for any area incorporated into the town through annexation or a boundary line adjustment includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in this article, prepare amendments to this article to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation or boundary line adjustment and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

(16) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

- (b) It is the duty of the floodplain administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Town of Lovettsville, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

(Ord. No. 2013-02-001, § 2.1, 2-28-2013)

**Sec. 42-443. Use and interpretation of FIRMs.**

Subject to the provisions of Code of Virginia, § 15.2-2307, the floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- (1) Where field surveyed topography indicates that adjacent ground elevations:
  - a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area ("SFHA") and subject to the requirements of this article;
  - b. Are above the base flood elevation and the area is labeled as a SFHA on the FIRM, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.
- (2) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
- (3) Base flood elevations and designated floodway boundaries on FIRMs and in Flood Insurance Studies, ("FISs") shall take precedence over base flood elevations and

floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.

- (4) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
- (5) If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:
  - a. Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering this article.
  - b. Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
  - c. Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(Ord. No. 2013-02-001, § 2.3, 2-28-2013)

**Sec. 42-444. Jurisdictional boundary changes.**

- (a) The town shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to any boundary line adjustment containing identified flood hazards. If the FIRM for any area incorporated into the town through boundary line adjustment includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in this article, the town shall prepare amendments to this article to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation or boundary line adjustment and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.
- (b) In accordance with the 44 CFR 59.22(a)(9)(v), all NFIP participating communities must notify the Federal Insurance Administration and optionally the state coordinating office in writing whenever the boundaries of the town have been modified by annexation or boundary line adjustment or the town has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.
- (c) In order that all Flood Insurance Rate Maps accurately represent the town's boundaries, a copy of a map of the town suitable for reproduction, clearly delineating the new corporate limits or new area for which the town has assumed or relinquished floodplain management regulatory authority must be included with the notification.

(Ord. No. 2013-02-001, § 2.4, 2-28-2013)

**Section 42-445. District boundary changes.**

The delineation of any of the floodplain districts may be revised by the town where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed Letter of Map Revision ("LOMR") is a record of this approval.

(Ord. No. 2013-02-001, § 2.5, 2-28-2013)

**Sec. 42-446. Interpretation of district boundaries.**

Initial interpretations of the boundaries of the floodplain districts shall be made by the floodplain administrator. Should a dispute arise concerning the boundaries of any of the districts, the board of zoning appeals, on appeal from a determination by the zoning administrator, or on original application by the landowner, shall make the necessary determination with the recommendation of the zoning administrator, in accordance with the provisions of Code of Virginia, § 15.2-2308 et seq. and article IV of this chapter. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence if he so desires.

(Ord. No. 2013-02-001, § 2.6, 2-28-2013)

**Sec. 42-447. Submitting model backed technical data.**

The town's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the town shall notify the Federal Emergency Management Agency (FEMA) of the changes by submitting technical or scientific data. The town may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

(Ord. No. 2013-02-001, § 2.7, 2-28-2013)

**Sec. 42-448. Letters of map revision.**

When development in the floodplain causes a change in the base flood elevation, the town must notify FEMA by applying for a conditional letter of map revision and then a letter of map revision. Examples are as follows:

- (1) Any development that causes a rise in the base flood elevations within the floodway.
- (2) Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
- (3) Alteration or relocation of a stream (including but not limited to installing culverts and bridges).

(Ord. No. 2013-02-001, § 2.8, 2-28-2013)

**Sec. 42-449. Records.**

Records of actions associated with administering this article shall be kept on file and maintained by or under the direction of the zoning administrator in perpetuity.

(Ord. No. 2013-02-001, § 1.4, 2-28-2013)

**Secs. 42-450—42-460. Reserved.**

**DIVISION 3. ESTABLISHMENT OF FLOODPLAIN ZONING DISTRICTS**

**Sec. 42-460. Description of special flood hazard districts.**

- (a) The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for the Town of Lovettsville prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated February 17, 2017, and any subsequent revisions or amendments thereto.
- (b) The town may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.
- (c) The boundaries of the SFHA Districts are established as shown on the FIRM which is declared to be a part of this ordinance and which shall be kept on file at the Town offices.
- (d) The Floodway District is in an AE Zone and is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 5 of the above-referenced FIS and shown on the accompanying FIRM. The following provisions shall apply within the Floodway District of an AE zone [44 CFR 60.3(d)]:
  - (1) Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within Lovettsville during the occurrence of the base flood discharge. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.
  - (2) Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies, with the Town of Lovettsville's endorsement, for a Conditional Letter of Map Revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.



- (3) If subsections (d)(1) and (2) of this section are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of division 4 of this article.
  - (4) The placement of manufactured homes (mobile homes) is prohibited.
- (e) The AE or AH Zone on the FIRM accompanying the FIS shall be those areas for which one-percent annual chance flood elevations have been provided and the floodway has not been delineated. The following provisions shall apply within an AE or AH zone [44 CFR 60.3(c)] where FEMA has provided base flood elevations:
- (1) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE or AH on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the town.
  - (2) Development activities in Zones A1-30 and AE or AH on the town's FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies, with the town's endorsement, for a conditional letter of map revision, and receives the approval of the Federal Emergency Management Agency.
- (f) The A Zone on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply:
- (1) The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted practices, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.
  - (2) The floodplain administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood level plus eighteen (18) inches.
  - (3) During the permitting process, the Floodplain Administrator shall obtain:
    - a. The elevation of the lowest floor (in relation to mean seal level), including the basement, of all new and substantially improved structures; and,

- b. If the structure has been flood-proofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.
  - (4) Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.
- (g) The AO Zone on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM. For these areas, the following provisions shall apply:
- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade.
  - (2) All new construction and substantial improvements of non-residential structures shall:
    - a. Have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or
    - b. Together with attendant utility and sanitary facilities be completely flood-proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - (3) Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

(Ord. No. 2013-02-001, § 3.1, 2-28-2013)

**Sec. 42-461. Overlay concept.**

- (a) The floodplain districts above shall be overlays to the existing underlying zoning districts as shown on the official zoning map, and as such, the provisions for the floodplain district shall serve as a supplement to the underlying district provisions.
- (b) If there is any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
- (b) In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(Ord. No. 2013-02-001, § 3.2, 2-28-2013)

**Secs. 42-462—42-475. Reserved.**

#### DIVISION 4. DISTRICT REGULATIONS

**Sec. 42-476. Permit and application requirements.**

- (a) *Required.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this article and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and Chapter 30 of this Code. Prior to the issuance of any such permit, the zoning administrator shall require all applications to include demonstration of compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- (b) *Site plans and permit applications.* All applications for development within any floodplain district and all zoning permits for new construction and substantial improvements issued for the floodplain shall incorporate the following information:
- (1) The elevation of the base flood at the site.
  - (2) The elevation of the lowest floor (including basement).
  - (3) For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.
  - (4) Topographic information showing existing and proposed ground elevations.

(Ord. No. 2013-02-001, § 4.1, 2-28-2013)

**Sec. 42-477. General standards.**

- (a) The following provisions shall apply to all permits:
- (1) New construction and substantial improvements shall be according to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
  - (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.
  - (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
  - (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to

prevent water from entering or accumulating within the components during conditions of flooding.

- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
  - (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
  - (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (b) In addition to the provisions of subsection (a) of this section, in all special flood hazard areas, the additional provisions shall apply:
- (1) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Army Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), other required agencies, and the Federal Emergency Management Agency.
  - (2) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(Ord. No. 2013-02-001, § 4.2, 2-28-2013)

**Sec. 42-478. Elevation and construction standards.**

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with section 42-460(f)(1), the following provisions shall apply:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) in Zones A1-30, AE, AH and A with detailed base flood elevations shall have the lowest floor, including basement, elevated to or above the base flood level plus eighteen (18) inches.
- (2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to or above the base flood level plus eighteen (18) inches. Non-residential buildings located in all A1-30, AE, and AH Zones may be floodproofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus two feet are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the base flood level (in relation to mean sea level) to

which such structures are flood-proofed, shall be maintained by the floodplain administrator.

- (3) *Space below the lowest floor.* In zones A, AE, AH, AO, and A1-A30, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:
- a. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
  - b. Be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
  - c. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
    1. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
    2. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
    3. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
    4. The bottom of all required openings shall be no higher than one foot above the adjacent grade.
    5. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
    6. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.
- (4) Standards for manufactured homes and recreational vehicles.
- a. In zones A, AE, AH, and AO, all manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in sections 42-476 and 42-477.
  - b. All recreational vehicles placed on sites must either:
    1. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or

2. Meet all the requirements for manufactured homes in subsection (4)a. of this section.

(Ord. No. 2013-02-001, § 4.3, 2-28-2013)

**Sec. 42-479. Standards for subdivision proposals.**

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards
- (d) Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a flood insurance study for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

(Ord. No. 2013-02-001, § 4.4, 2-28-2013)

**DIVISION 5. EXISTING STRUCTURES**

**Sec. 42-480. Existing structures in floodplain areas.**

Any structure or use of a structure or premises must be brought into conformity with these provisions when it is changed, repaired, or improved unless one of the following exceptions is established before the change is made:

- (a) The floodplain manager has determined that:
  - (1) The change is not a substantial repair or substantial improvement; and
  - (2) No new square footage is being built in the floodplain that is not compliant; and
  - (3) No new square footage is being built in the floodway; and
  - (4) The change complies with this ordinance and the VA USBC; and
  - (5) The change, when added to all the changes made during a rolling 5-year period, does not constitute 50% of the structure's value;
- (b) The changes are required to comply with a citation for a health or safety violation; or
- (c) The structure is a historic structure and the change required would impair the historic nature of the structure.

**Sec. 42-481—42-488. Reserved.**

# Town of Lovettsville

Resolution No. 2017-02-0001

## APPROVE 2017 AMENDMENT TO THE 2011 LOVETTSVILLE COMPREHENSIVE PLAN

**MOTION:** Allar  
**SECOND:** Carder

**WHEREAS**, Virginia Code section 15.2-2223 et seq. requires the Planning Commission to prepare and recommend to the Town Council a comprehensive plan for the physical development of the Town and that, after adoption, the plan shall be reviewed at least once every five years by the Planning Commission to determine whether it is advisable to amend the plan; and

**WHEREAS**, the Lovettsville Planning Commission on February 18, 2015 began reviewing the comprehensive plan as required by state law and on April 15, 2015 and May 6, 2015 formed four topic advisory committees comprised of members of the Planning Commission and various citizens and stakeholders interested in the long-term development of the Town, supported by Town staff, in order to thoroughly review and make recommendations to the Commission as to amendments to the introduction, public facilities and utilities, economic development and housing, land use, and transportation chapters of the adopted plan; and

**WHEREAS**, the topic advisory committees reviewed the adopted plan, listened to subject matter experts and stakeholders, and agreed to revisions drafted by staff to the background and existing conditions, issues and future needs, goals and policies of these individual chapters, concluding their work on April 6, 2016, at which time the draft revisions were compiled by staff and presented to the Planning Commission for further review and consideration; and

**WHEREAS**, the Planning Commission reviewed and discussed these draft revisions to each of these chapters, as well as the Introduction chapter, and directed staff to make additional changes to the draft amendment, appendices and maps before finalizing the draft amendment for public hearing and final consideration by the Commission; and

**WHEREAS**, the Planning Commission conducted a public hearing on the proposed plan amendment on November 2, 2016, pursuant to notice as required by Va. Code section 15.2-2204; and on November 16, 2016 adopted Resolution No. PC 2016-11-0001 forwarding the amendment to the Town Council with a recommendation for approval; and

**WHEREAS**, the Lovettsville Town Council met on November 6<sup>th</sup>, December 8<sup>th</sup> and December 21<sup>st</sup> to consider and discuss the plan amendment recommended by the Planning Commission, and agreed to additional modifications as set forth in the text attached hereto; and

**WHEREAS**, the Lovettsville Town Council on January 26, 2017 conducted a public hearing on plan amendment as further modified by the Council, pursuant to notice as required by Va. Code section 15.2-2204, at which time the Town Attorney recommended several additional minor changes which were agreed to by the Council and subsequently incorporated by staff into the final comprehensive plan amendment; and

**WHEREAS**, the Town Council has concluded that the final comprehensive plan amendment should be adopted as the Comprehensive Plan of the Town of Lovettsville.

*The German Settlement*

**NOW, THEREFORE, BE IT ORDAINED** by the Lovettsville Town Council that the Town of Lovettsville 2011 Comprehensive Plan be amended as set forth in the text attached hereto.

**BE IT FURTHER ORDAINED** that the Town Council hereby authorizes the Town Planner/Zoning Administrator to edit the hereby amended plan in order to ensure that all text is incorporated as indicated, and that any misspellings; misnumberings; typographical, grammatical or punctuation errors; mistakes regarding the cross-referencing of sections, tables, figures, appendices and/or maps; and modifications to formatting deemed necessary to properly publish the amended plan, identified by the Planner/Zoning Administrator, are corrected.

**VOTE:**

**Ayes:** Allar, Carder, Jones, Gentile, McIntyre, and Senate

**Nays:** None

**Abstentions:** None

**Absent for vote:** None

**APPROVED:** February 9, 2017

  
HARRIET WEST, TOWN CLERK

  
ROBERT ZOLDOSKI, MAYOR