

Town of Lovettsville

Minutes of the Planning Commission Regular Meeting October 26, 2015

Call to Order/Pledge of Allegiance

Chairman Frank McDonough called the Special Meeting of the Lovettsville Planning Commission to order at 7:00 p.m. on October 26, 2015 at the Lovettsville Town Hall, 6 East Pennsylvania Avenue, Lovettsville, Virginia. He announced the members present for the meeting and stated that this meeting was a special meeting of the Rules and Procedures Committee. He said that the Commission must wait at least 30 days after discussing changes to the Bylaws and Rules of Procedure to vote on any proposed amendment.

Present at Meeting

- Chairman Frank McDonough
- Commissioner Thomas Ciolkosz
- Commissioner Joseph Mueller
- Commissioner Buchanan Smith (arrived at 7:31 p.m.)

Commissioners Absent

- Vice Chairman Rob Gentile
- Commissioner Nate Fontaine

Staff Present

There were none.

Action/Discussion Items

Chairman McDonough stated that staff prepared the enclosed draft amendment to the Bylaws and Rules of Procedure for the Planning Commission packet this evening. He said the red underlines represent added text and the strike-throughs represent deleted text. He noted that, if there are no changes, the draft amendment as presented may be emailed to the Planning Commission on Wednesday and can be voted on at the second meeting next month. Mr. Ciolkosz asked what the green text represents, and Mr. Mueller replied that this reflects added text as well. Chairman McDonough said that the Commission should be able to read this within the next 30 minutes if we do not get too deep into it and asked whether there were any objections.

Mayor Zoldos asked whether the new, clean version distributed at the meeting was different from the June 1, 2011 version. A discussion followed. Mr. Mueller said that there is a July 2014 amendment date indicated on the next page. Chairman McDonough stated that Mr. Bateman made additional changes by listening to the recordings of previous meetings during which the topic was discussed. Chairman McDonough said that each member should read through each section and that changes should be decided on before moving on to the next section.

Mr. Ciolkosz read the amended Authority and Purpose section. Chairman McDonough asked whether there were any objections to the amended text. Mr. Mueller stated that the amendment answers Mr. Ciolkosz's comments during the previous meeting on this subject.

Mr. Mueller read the amended Membership section. Mr. Mueller said that the membership is discussed in the zoning ordinance. Mayor Zoldos said that now that the membership requirements are included in the zoning ordinance, the Commission has little leeway to change them in the bylaws. He said there are some requirements that are not reflected in the zoning ordinance. Mr. Ciolkosz asked whether the Board

of Zoning Appeals' membership requirements are chartered under the Planning Commission's bylaws or the Town Council's. Mayor Zoldos replied that they are included in the Town Code. A discussion followed about where the membership requirements for the Board of Zoning Appeals are located in the Town Code.

Chairman McDonough read the amended Leadership and Recording Clerk section. He asked Mr. Mueller whether he remembers signing off on plats and plans when he was chairman. Mr. Mueller said that he remembers previous chairpersons doing that. Mayor Zoldos explained that the difference involves the fact that the Town has a full-time professional planner now, whereas in the past it did not always have such a staff person. A discussion followed about this past practice.

Mr. Ciolkosz asked what would happen if there was no majority vote for a leadership position or if the vote was tied. A discussion followed about whether Robert's Rules of Order addresses this possibility. Mayor Zoldos read the rule from Robert's Rules for Dummies stating that the vote must be repeated until someone receives a majority vote for a leadership position. He said that Robert's Rules covers this and the Planning Commission should probably know what it says. Chairman McDonough said he wanted to make meetings more formal but does not want the Commission to become the House of Lords. Mayor Zoldos read the rules which states that the person receiving the fewest votes may not be dropped from consideration. A discussion followed about the proper procedure for voting for leadership positions and whether the method for voting should be included in Section 3.A.1. Mr. Ciolkosz suggested that, if a majority requirement is not met, the selection of leadership may be postponed to the next meeting or perhaps the Town Council can be asked to cast a vote. Mayor Zoldos stated that this should be decided by the Commission alone, and the discussion continued about what to do in the case of a tie vote. Chairman McDonough said the ideal solution is to have an odd number of members present, Mr. Mueller stated he does not know the best way to deal with a tie vote, and Mr. Ciolkosz said that the Commission should kick the can down the road until the next meeting in the event of a tie. Mayor Zoldos asked whether someone could abstain, and Chairman McDonough replied in the affirmative. Mayor Zoldos said the next step is to discuss this issue with Liz Whiting or Josh Bateman, or perhaps obtain the copy of Robert's Rules of Order from Mr. Bateman's office.

Mr. Ciolkosz asked what would happen if the chairman resigns, and Chairman McDonough replied that the vice chairman would step in. Mr. Mueller confirmed that the bylaws currently state this, and Mr. Ciolkosz clarified that the bylaws state the vice chairman serves when the chairman is absent or unable to fulfill his duties. He asked whether, in the case of a resignation by the chairman, Rob Gentile would serve as chairman until the next regular election or for the remainder of the chairman's term. A discussion ensued regarding this scenario. The Commission concluded that the vice chairman would serve until the next regular election.

Mayor Zoldos stated that electing leadership positions on the Town Council occurs by drawing lots and a discussion followed about how voting for leadership positions occurs. Each of the Commissioners read quietly the various provisions regarding officer elections from the sample bylaws distributed prior to the meeting. Chairman McDonough read a provision disallowing the Chairman from voting except in cases of a tie vote. Mr. Mueller read a provision requiring members to cast their vote by drawing lots. Chairman McDonough read a provision requiring elections by ballot and the announcement of the person receiving the majority of ballots cast. Mr. Mueller noted that essentially what it is saying is that the body keeps voting until someone has won a majority.

Mayor Zoldos read information about how Robert's Rules addresses the election of officers. Mr. Ciolkosz reiterated that he believes the bylaws should be amended to require the issue to be kicked down the road until the next meeting. Chairman McDonough asked how many rounds of voting should be held before the issue is deferred until the next meeting. Mr. Ciolkosz replied three and Mr. Mueller replied that it should be left open because it may take five rounds for someone to obtain a majority. A discussion followed about how the bylaws should be amended in this regard. Mr. Ciolkosz suggested amending the bylaws so that on a tie vote occurs for up to five rounds of voting, at the end of which the current chair

would announce that the motion has been rejected and the election of that officer is postponed until the next meeting. Mayor Zoldos said that no text is needed to achieve this outcome. A discussion followed about how this would occur in practice and how officers would be selected if all seven members of the Planning Commission resigned and new officers needed to be elected. Chairman McDonough suggested amending the bylaws to allow the chairman to serve in that capacity for one additional meeting in the event a chairman is not elected, and Mayor Zoldos stated his belief that text was not needed to employ such a practice. Chairman McDonough said that he has reviewed minutes historically and there were many years where there were no meetings in July. Mr. Mueller said the chairman remains the chairman until the election of officers has concluded, and Chairman McDonough concurred with Mr. Mueller's assessment.

Mr. Ciolkosz again asked whether language is needed to clarify that the vice chairman becomes the chairman and remains in that capacity until the following July in the event the chairman resigns. Mr. Mueller asked what would happen if both the chairman and vice chairman were gone in April and he was to leave as well. He suggested that, in the event the chair and vice chairman both resign, new elections be held. Mayor Zoldos said that Section 3.A. already says this, and Mr. Muller acknowledged this fact. Mr. Ciolkosz said that the practice would be that if the election of an officer fails due to a tie vote, the Commission keeps voting until someone wins a majority. If the Commission gets tired of being deadlocked, a member could simply move to adjourn the meeting. The Commission discussed how this would work in practice and how the bylaws address this issue before ultimately agreeing that no amendment to the bylaws was needed in this regard.

Mayor Zoldos read the requirements in the Town Code regarding the composition and membership of the Planning Commission. He said that the Town has never appointed an out-of-town resident to the Commission despite the requirement that not more than one such resident may be appointed to serve. A discussion followed regarding the potential for out-of-town citizens to apply for and be appointed to the Commission. Mayor Zoldos read the requirement that one Town Council member may be appointed to the Commission, and Chairman McDonough noted that the Town Council amended the Zoning Ordinance last year to eliminate this possibility. A discussion followed regarding this practice, whether the amendment was to the Town Council's rules or the Zoning Ordinance, and the need to fix this issue in the Town Code going forward.

Chairman McDonough read the rules pertaining to selection of the vice chair and recording clerk. Mayor Zoldos stated that Section 42-28 requires that Commissioners not be absent for more than three consecutive meetings or more than four meetings during any 12-month period. Chairman McDonough asked whether there was any objection to this requirement. There was none.

Mr. Smith read Section 4.A. and B. of the Planning Commission rules. Mayor Zoldos said that the General Assembly has determined that there is no real legal difference between a work session and a regular meeting. Mr. Mueller suggested striking the reference in this section to work sessions. Mayor Zoldos explained that the state code changed 2 or 3 years ago, and a discussion followed on whether to amend this section accordingly or refer to unscheduled work sessions as special meetings. Mayor Zoldos suggested striking Subsection B. altogether. Chairman McDonough agreed and there were no objections.

Mr. Smith continued reading Section 4 of the rules. Chairman McDonough asked why the Planning Commission would ever need to go into a closed session, and Mayor Zoldos replied that the only reason he could think of is because of a personnel issue. He cited as an example that, if the Commission concluded that Mr. Bateman were not doing a good job, they could recommend that Mr. Bateman be replaced with someone else. He said there are seven exemptions listed in state code from the open meeting requirements but that personnel reasons are the only ones for which the Planning Commission would need to go into a closed session. Chairman McDonough stated that there is a remote possibility that a closed session might be necessary. Mayor Zoldos cited a second example whereby the Commission could meet in closed session to recommend removal of one of its members. Mr. Mueller

said that the Commission should not have occasion to meet in closed session regarding a developer or to discuss something financial in nature. Mayor Zoldos said that the Council has met in closed session before at the request of a developer because he or she was interested in purchasing property, but that he does not know whether that can be exempted from open meeting requirements.

Mr. Smith continued reading Section 4 of the rules. Mr. Mueller said that when the Commission deleted Subsection B., that subsection contained language about meeting on Wednesdays and perhaps that should be added to C. somewhere. A discussion followed about whether the Commission should commit in the bylaws to meeting on Wednesdays. Mayor Zoldos read and explained the exceptions included in the state open meeting law and stated his view that a prospective developer looking to purchase a piece of property could lawfully meet in closed session with the Planning Commission per the Virginia Code. Mayor Zoldos cited reasons why the Town Council regularly meets in closed session including the possibility of property acquisition by the Town or litigation against the Town. Chairman McDonough asked whether there were any changes desired to Subsection E. Mr. Ciolkosz stated his view that the Commission is covered by the existing language.

Mr. Smith read Subsections F. and G. of Section 4. Chairman McDonough asked whether there was any discussion. Mr. Mueller stated that this section references a work session and asked whether that needs to be defined in the section above. Mr. Mueller summarized what is covered in this section and noted that a work session is the same as a regular meeting except that no action can be taken. Mr. Smith suggested changing the language to state that, if a quorum is no longer present, the meeting may continue but no action may be taken. He said this is easier than trying to work out the semantics by clarifying whether the meeting is considered a work session or not. Mayor Zoldos explained the difference between meetings and work sessions and stated that there is no such thing as a special work session any longer. He suggested keeping this subsection like it is.

Mr. Smith read Subsections H., I., J., and K. of Section 4. Chairman McDonough asked whether there were any questions. There were none.

Mayor Zoldos began reading Section 5. He stated his view that consideration of items may exceed 30 minutes, but the presiding officer may halt discussions after 30 minutes. He continued reading Section 5. Mayor Zoldos stated there used to be a requirement on the Town Council that members explain a vote to abstain. A discussion followed regarding explanations from members with respect to their reasons for voting one way or another, whether such explanations should occur before or after a vote is taken, and scenarios in which members may change the minds during the discussion about an item. Mayor Zoldos expressed the opinion that such explanations should occur during the discussion period so as not to unduly influence a member's vote during the vote. A discussion ensued about the differences between the Planning Commission and Town Council in terms of customs and degree of formality in explaining decisions. The Mayor and Commission also discussed the methods and practices for hearing comments from the public and members of the Planning Commission and Town Council when deciding matters that come before these two bodies. Mayor Zoldos stated his view that the Planning Commission should decide matters based on the comprehensive plan and the law rather than political considerations.

Mayor Zoldos read the rules regarding public participation. Chairman McDonough explained that the Commission found it necessary to use the Council's rules for public comment when explaining them during public hearings. Mayor Zoldos read the rules for receiving written public comments and asked the Commission whether they wanted to strike the last line of Item 3. Chairman McDonough clarified that the question was whether to strike the last sentence of Section 5.E.3. Mr. Smith asked whether the limitation in the previous sentence authorizing speakers to speak for 3 minutes includes the time it takes to ask questions. Mayor Zoldos replied in the affirmative but said that individual Commissioners should avoid asking questions solely to give speakers more time to elaborate on their remarks. A discussion ensued about scenarios where this has occurred or may occur.

Mr. Ciolkosz read Section 6 regarding public hearings. Mr. Mueller read Sections 7, 8, and 9. Chairman McDonough read Section 10. Mayor Zoldos inquired as to whether the state code reference in Section 10 to the conflict of interest law was correct, and Mr. Mueller responded in the affirmative. Mayor Zoldos stated his concern about the rules regarding misconduct by a member. He cited a scenario whereby the rules in this section could be used by one member against another. He recommended that Section 10 be amended to allow the chairman to announce that a member is engaged in conduct unbecoming of a member, unless the chairman is the one who becomes unruly, in which case another Commissioner would be authorized to make such a determination. Chairman McDonough suggested that the vice chairman be allowed to determine that the presiding officer is out of order, and a discussion ensued regarding scenarios in which members could engage in misconduct or some other conduct considered out of order by other members.

Mr. Mueller said that where this currently stands is that once a member calls out the chairman, the chairman would be required to surrender the gavel and the vice chairman would have to preside over a vote as to whether the chairman is indeed out of order. Mayor Zoldos explained that if the chairman is found to be out of order, he does not have the floor and that this is the difference between his role as Mayor and that of the Planning Commission Chairman. A discussion followed about making the chairman a non-voting member of the Commission, and the Commission agreed that such a change was not desirable. Chairman McDonough stated that the Commission did decide to insert another sentence in the middle of this section to allow the vice chairman to preside over the vote when a member moves that the chairman is out of order. Mayor Zoldos suggested an amendment whereby another Commissioner would make that determination and explained how this would be applied in practice. He said that the Chairman could announce that, by rule, he is required to conduct a vote as to whether he is out of order. Chairman McDonough asked whether there was any objection, and the Commission discussed this procedure before agreeing that no changes to the rules in this regard were necessary. Mayor Zoldos suggested adding an additional bulleted item regarding misconduct so that the requirement for a vote is in relationship to all conduct unbecoming. Chairman McDonough stated that the second bulleted item will begin after the words "the Planning Commission may." Mayor Zoldos explained that adding a second subsection or bullet will prevent someone from being expelled from the Commission for misconduct before being told to stop that conduct.

Chairman McDonough read Section 11 regarding procedural changes and how the rules may be amended. He said that he spoke to Mr. Bateman for about 20 minutes and that if any changes are made, the Commission must wait 30 days before acting on them. He said that the next meeting currently has no agenda items. The Commission discussed the extent of the changes and whether to present the amendments at the next meeting to the entire Commission. Mayor Zoldos discussed the need to update the Town Code and then the Town Council's rules. Chairman McDonough said that the County Fire Marshall is considered by the code to be the Town's Fire Marshall, and a discussion followed about the role of the County Fire Marshall.

There being no additional business to come before the Planning Commission, the meeting adjourned at 8:42p.m.

Respectfully submitted,



Harriet West, Town Clerk

Date Approved: June 20, 2018

Attachments:

None