

**REGULAR MEETING OF THE
LURAY PLANNING COMMISSION
SEPTEMBER 14, 2011**

The Luray Planning Commission met on Wednesday, September 14, 2011 at 7:00 p.m. in regular session. The meeting was held in the Luray Town Council Chambers at 45 East Main Street, Luray, Virginia at which time there were present the following:

Commissioners Present:

Tom Potts
Clifton Campbell
Larry Hakel
John Meaney
Ronald Good
Joey Sours

Absent: Pam Flasch

Others Present:

Ligon Webb, Town Planner
Jason Spittler, Town Attorney

Chairman Tom Potts called the meeting to order and everyone joined in the Pledge of Allegiance to the flag.

APPROVAL OF MINUTES:

A motion was made by Commissioner Hakel that the minutes of August 17, 2011 be approved as presented. Motion was seconded by Commissioner Meaney. The vote was as follows: YEA: Commissioners Hakel, Campbell, Potts, Meaney, Good and Sours.

APPROVED: 6-0

Mr. Webb stated regarding the wireless ordinance, I didn't change anything from last month. As I recall what we wanted to do is define the communication towers. What I proposed was pretty much what we agreed upon. Allowable by a special use permit in M1 and B1 and we were also at the same time going to add something to M1 and B1 related to any tower or structure of a certain height needed to have a special use permit. We can still do that. I will just provide something for you at the next meeting. The Council meeting on Monday was packed full of things and in the course of last week was not able to make the changes I wanted to make to it.

We have a potential special use permit application for a bio-diesel production facility over here not where the body shop is but it is actually the building behind that. It's owned by Mr. Dovel, and the applicant is Mr. Tim Varner. It's a small operation; he said less than 50,000 gallons. He just came in the other day and we talked about it. He will

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have his application in by Friday. What he does is he takes vegetable oil from restaurants and accesses all these different places and refines it. Once it is refined, it is used for diesel fuel. I asked him if I can put it in my fuel oil. He said yes, once it's refined. The question I asked him was how do you refine it. The way he talked about the process, I don't think there is any output that is nauseous or anything; it's a pretty clean process. He has a building in an industrially zoned area, and wants to use half that building to manufacture bio-diesel fuel. What he would hopefully do is work with all the restaurants that use cooking oil and things like that and pick it up on a regular basis, take it back to the shop, refine it and sell it. I don't know a lot about it, so I'll try to learn more about it. I think he already does this at his home.

Commissioner Meaney stated it's a pretty common thing today. It's still low production, but it's coming up fast. Commissioner Potts stated there's a big recycling center in Winchester that has contracted a lot of restaurants. You see the big vats sitting out behind the restaurants where they dump it. Mr. Webb stated I was talking to the Mayor today and with his background of restaurants, I wanted to hear what a typical restaurant would produce in oil. He said a large restaurant might use 50 gallons a month. In order to do 50,000 gallons, you are going to have a lot of clients. He's excited about it and it sounds like something that is interesting. I thought what we could do is in the next three weeks, go to his shop and look at his process just to get familiar with it and see what it's like and also look at the space that he will use. I was hoping maybe a late afternoon. I'll try to find a date and have Doris call you and give you a couple of options and we can meet you at the Town Office. We will go see how he produces it and then we can look at the space he's going to do it in. He said if you make less than so many gallons per year, you don't need permits from the EPA or anything like that, so I'll just double check on that. Maybe we could try to assist him in figuring out how he could coordinate getting as much oil as he needs.

Commissioner Potts stated that Ligon might check with Rockingham County and see if there is something in their county code about diesel production and licensing and all that.

Mr. Webb stated if he comes back Friday with the application, I will try to set a couple of times up in late afternoon around 4:30 or 5:00. Maybe he can give us a run down before the next meeting on how he does it.

Commissioner Campbell stated lets go back to the cellular towers. The one that we have in the town does a fine job of keeping the property up. The power company is not doing very well. Around one fence where the tower is, they don't do anything; it's all grown up. They have people come in and mow part of what they own out there. The tower

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itself is fenced and its fine. Mr. Webb stated if we had a complaint about it, it would probably fall under the general guidelines of property maintenance, as far as grass and all that. We can definitely put it in there just to let people know. Mr. Spitler asked what property are you referring to there. Commissioner Campbell answered the sub-station. As far as the upper part where there is no electric, it was never anything done to that piece of property.

Commissioner Potts stated I think the definition needs a lot of attention. It's a permanent or mobile tower or antenna, etc. but when it gets down there to where you switch around, which you use to transmit telecommunication services or personal services, I think it is signals maybe. It can facilitate services but it's not transmitting services. Mr. Potts stated transmitting signals whereas providing transmission services. Mr. Webb stated that sounds good to me. I think what I did; I combined a couple of different definitions.

Commissioner Sours stated but this is strictly going to be limited to telecommunications or personal communications. The title cellular communications towers - what does cellular technically mean? I know what it implies to me. Mr. Spitler stated I think you just need to get rid of the word cellular. I think it's a communication tower. Commissioner Sours stated that's kind of where I was going with that. Mr. Spitler stated not only are you going to be dealing with cell service, you might be transmitting FM radio waves.

Commissioner Potts stated as he indicated at the last meeting, I would like to see some way of encouraging people looking to do it, to talk to the town about putting their cellular antenna on the town water tanks. I'm trying to figure out a way for the Town to get some money here.

Commissioner Campbell stated even with the towers that we have, these people don't want to share a tower and I don't understand that. The two that we have could be shared because one only has two dishes on it.

Commissioner Potts stated something else along that line to look at is, I believe, the County has code on licensing the towers. I believe that the County, just like we, pay business licenses if we are in business, I believe the County implemented a license fee for towers that operate within the County. That might be something you want to look at as well. I know it's not my business to get into funding, licensure and that sort of thing for the Town, but it's another way of putting money in to support what the Town's doing. I don't know whether in here somewhere we could stake out on it or whether the Town Manager and staff look at it as another avenue for generation of revenue. I'm almost positive the County requires a license. Mr. Webb stated he will look and see.

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Commissioner Sours stated, for instance, right beside my house the electric company has their tower. What does that fall under? How is that currently being handled or treated?

Mr. Campbell answered a special use permit. That connects with the tower right by the sub-station and then all of their other towers up and down 340; I think they have three other towers in Page County in the north end. The ones in town are under special use permit. Voluntarily, they asked for it and got it.

Commission Sours stated it would be nice if it was something where it was more set into the property of somebody if they are building a structure – it would be nice if it was – Of course it has been there, but for future use, it would be nice.

Commissioner Campbell stated under a special use, we could take a hard look at it and that's one of the things that a special use –

Commissioner Potts stated in paragraph E. "The Planning Commission or Town Council may, at its discretion, reasonably require", do we use the word reasonably in there? Mr. Spitler stated he would leave that in. Not to step on anybody's toes, I'm not sure how much authority the Planning Commission really has other than to recommend those things. I don't know if this is a situation where the Planning Commission has independent authority. Interestingly enough, it is an area where the County's Planning Commission has an abundant amount of authority – in my opinion, too much. Once the Page County Board of Supervisors gives you a permit for a communications tower per the County Code, you can take it back before the Planning Commission and the Planning Commission alone can amend certain parts of that permit, including things such as standards for your footprint, your tower height, the number of poles, etc. It's really amazing what they allow the Planning Commission to do and in the absence of a public hearing. I don't think it would survive a constitutional challenge for that reason, but nonetheless that is how the County Code is currently drafted. It's amazing that you can give somebody something that requires a public hearing and then modify it and we just did this at a work session. Commissioner Campbell stated make it more restrictive. Mr. Spitler stated they are not making it more restrictive, they are making less and they are upsetting a lot of neighboring property owners who want to know why this hundred foot tower is now ten feet from my property line. Your Planning Commission for the County can actually go back and reduce the setback all the way down to one-tenth of the height of the tower if you have a certified engineering opinion that says that the tower will collapse in its own footprint which are a little bit too easy to come by sometimes when you are paying your engineer. Just imagine that a hundred foot tower ten feet from your property line; you wouldn't be a little bit nervous walking the dog would you? I'm all for you guys having your say, but I'm just not sure that under the

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state and town code we have that authority and I don't think we are getting into anything there that would trigger public hearing requirements, but we still need to be careful.

Commissioner Campbell stated most towers is recommendation rather than – Mr. Spitler stated that's fine to leave it as long as we specify that that's the rule, but it's not going to be the heavy handed Town of Luray Planning Commission that's going to be unreasonably burdening these folks with more requirements.

Mr. Spitler stated he was curious about this. I know you guys have talked about this a fair amount now – is there going to be any reference to any of the standards or any of the issues that will be considered in terms of the actual special use permit itself or are we just going to be silent as to that in order not to sort of tie our own hands or would it be a better idea potentially to at least touch on what some of the criteria would be in terms of things like the height of the tower, the issues you often get into in this in terms of whether or not it is certified to collapse within its own footprint setbacks. I know some of that is already addressed by our code but I didn't know if you were just going to list a set of standards in terms of future Planning Commissions by thinking about these things when you issue this permit. Don't forget about these factors. It might not be a bad idea but we certainly don't want to tie ourselves down either by putting too many rules in our code knowing that you guys are going to have the discretion in each case to approve or deny the permit.

Mr. Webb stated he looked at the county's and theirs is really comprehensive and of course this is something they expect to see all the time; whereas we think it is going to be fairly minimal. Commissioner Hakel asked if there is a way to tack onto theirs. Mr. Webb stated that's pretty much what I borrowed for the few supplemental regulations I put on there but theirs is really long and comprehensive. They are going to deal with it more often than we are, so I just sort of picked out some things I thought were good regulations to live by. Mr. Spitler stated we got C and D both from the County Code, didn't we; injury, property damage insurance. Mr. Webb stated once we get a request or when we get a request, I think we do a pretty good job of trying to flush out all the potential hazards. Mr. Spitler stated I totally agree with that. My only point is that you guys don't know who's going to be in those seats ten years from now and what's going to be on their mind and you might just drop them a hint as to what they ought to be thinking about. Commissioner Campbell stated location always determines little when it comes to towers. Even in your M1 and B1 because in M1 and B1 technically you can build to the line. Mr. Spitler stated it could be as simple as where you say zoning districts allowable by special use permit in B1 and M1 zoning districts and may be conditioned upon factors such as height, setbacks, screening, fencing, footprint and any other factors as are appropriate or reasonable. It doesn't tie your hands in any way but it certainly suggests to future generations this is what you guys better be thinking about before you sign off on that permit.

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Commissioner Potts stated I don't see any need – I think to say a tower has to be removed within twelve months of cessation. I don't see at the end of the twelve months if they haven't done it, why you have to go to another three months to not do it. Mr. Spitler stated testify to that a special assessment that levied against the property will be added to the tax bill.

Commissioner Sours asked what's the rationale for the four feet. I assume it would cost a ton in digging up footers of some sort. A four feet tall base of some sort would be an eye sore. Commissioner Campbell stated there are regulations there already – state, federal regulations – I think would probably cover that.

Mr. Spitler asked Mr. Potts you just recommended that we replace ninety days with the same twelve months that is referenced in the prior sentence. Commissioner Potts stated strike out the words “90 days of the expiration of”. Mr. Webb stated it sounds good. Commissioner Potts stated on the other one, “shall be removed to ground level”. Commissioner Hakel stated why not just say “shall be removed”.

Mr. Spitler stated we were going to change to either say “the Planning Commission may recommend or the Town Council may require”. Commissioner Campbell stated we would like to put strict regulation on, but when you come back to it, how many of us would do without ourselves or our ways of communication because we can't have towers in Page County? Most of us need, or we think we do anyway, need the facility and somebody has to suffer the consequences. I think we need to take things like that under consideration because it is something that's necessary the same as the telephone.

Commissioner Campbell moved that the meeting be adjourned and seconded by Commissioner Sours. The motion carried and meeting was adjourned at 8:24 P.M.

Respectfully submitted,

Bryan T. Chrisman
Assistant Town Manager

ATTEST:
