

**MINUTES
LURAY PLANNING COMMISSION
AUGUST 15, 2007**

The Luray Planning Commission met on Wednesday, August 15, 2007, 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. Chairman Tom Potts opened the meeting.

Commissioners Present:

Tom Potts, Chair
Peyton Baughan
Clifton Campbell
Terry Dodson
Larry Hakel
Sam McNeely

Absent: Judy Suddith

Others Present:

Bryan Chrisman, Assistant Town Manager
Ligon Webb, Town Planner
Jason Spitler, Town Attorney

Chairman Potts called the meeting to order at 7:00 p.m. and everyone joined in the Pledge of Allegiance to the flag.

Approval of Minutes from July 11, 2007 Regular Planning Commission Meeting and Special Planning Commission Meeting on July 23, 2007

There being no corrections or additions to the minutes, a motion was made by Commissioner Campbell and seconded by Commissioner Hakel that the minutes be approved as presented. The vote was as follows: YEA: Commissioners Potts, Campbell, Baughan, Dodson, Hakel, and McNeely. **Approved 6-0**

Public Hearing:

- **Adoption of an Official Zoning Map**

Ligon Webb stated there have been about four changes in actual zoning of parcels since he has been with the Town. The Ramsey parcel from R-1 to R-2, two PND's and Bob Brown rezoned from R-3 to B-1. These are the changes he knows of that were made to the zoning map. Commissioner Potts asked if the official adoption and designation of an official map carry with it any responsibilities that the Commission is not currently aware of or observing. Mr. Spitler stated a public hearing will be required, and an ordinance officially adopting it, is needed.

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Commissioner Potts stated he understood there is a distinction in Virginia Code between a zoning map, and an official map. Mr. Spitler stated he was not aware of any distinction, but will look for more language on the subject. He also stated if the Commission wants to look into this matter further, they have 200 days after tonight's meeting to make a decision.

Commissioner Potts asked for public comments on the proposed official zoning map. There were no comments from the public.

Commissioner Baughan stated as he understood it, we have one small lot Ligon is going to check on to make sure we are correct in saying it is B-1. Commissioner Baughan made a motion that we recommend this zoning map to the Town Council for their adoption, subject to Ligon's research, and possible change, on the one lot. Motion was seconded by Commissioner Campbell. The vote was as follows: YEA: Commissioners Potts, Campbell, Baughan, Dodson, Hakel and McNeely. **Approved 6-0**

NEW BUSINESS:

- **Discussion concerning short-term rentals in residentially zoned areas**

Mr. Webb stated this conversation started several months ago. There had been some discussion about renting houses in residential districts on short-term basis. The Town Code is silent on this issue, and he had gotten several inquiries recently. Provided that the Town doesn't have any guidance in the zoning ordinance, or there is no private covenant that restricts it, then what remains is called the free use of the property; a person would be able to rent their house on a short-term basis for the weekend. In the B-1 district, an owner can do this because we have the provision for inns, and if you have a business license, you can rent your house as an inn if it's in the B-1 district. Otherwise, Town staff doesn't have much other guidance on the matter. He then turned the discussion over to the Commissioners for any questions they might have.

Commissioner Campbell stated that the Commission has discussed this issue before. It came up about four years ago on Wilson Avenue. Applicant's came to the Commission for a short-term weekend rental in an R-3 residential district. The request was not approved by the Commission or Council at that time, because it was in a residential area.

Mr. Baughan stated the indication seems to be if the Town doesn't have language in the zoning ordinance specifically saying such uses are not allowed in a residential zone, then the Town may open itself up to a law suit if the Town prohibits such activity.

Mr. Webb stated that the Commission can always add some use as a "special use category" if there was a special, or rare, instance where it might be appropriate to do so.

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Mr. Spittler stated that Mr. Campbell points out that people who engage in short-term leases are engaged in a business activity. One could make the same argument if someone leases their house on a monthly basis. One thing the Town may want to consider is that the current Code does not define what is a residential use, commercial use or industrial use, and the Commission may want to look at some definitions for those terms. He indicated that if the Commission looks at how to define the various uses, that will help dictate what the existing provisions, as well as any others the Commission may draft, are going to mean in the big picture of land use in the Town.

Commissioner Baughan agreed that the ordinance doesn't speak very well to those issues. The Statement of Intent for the various districts gives the reader somewhat of a definition as to what it means if a person is located in R-1 as opposed to R-5, or in B-1 as opposed to manufacturing. He thought the Town might want to tighten up some of the definitions and be a little more specific, but he doesn't think it's true to say that there's no language in the ordinance that defines what we mean by the various districts.

Mr. Webb posed the question if a community wanted to be exclusively a short-term rental community. Chairman Potts stated that the reason all of this is being addressed now is in anticipation of issues arising in the future. In the case of Massanutten, the County actually zoned part of Massanutten R-5, and it applied only to that area. The County also had written into the covenants for that area something about not using housing in these areas for rentals. Chairman Potts noted that this issue being on the Commission's agenda tonight had gotten the Town Council's attention, and at their meeting on Monday night there was quite a discussion on it. He thought the Commission needs to address this issue now, and start formulating an opinion.

Mr. Webb stated he was visited today by Mr. Snyder, Mr. Mayer and Mr. Stanard who are now in the process of purchasing the Collins Avenue development (Fair View Meadows town homes). He indicated that they have some interest in short-term rental options, and he had invited them to the meeting tonight. He then introduced all three gentlemen who were seated in chambers, and asked if they had any comments.

Mr. Snyder stated that under certain circumstances short-term rentals, if they are presented a controlled environment, should be accepted. He indicated that there is nothing here in Luray to service the families who visit Luray for an extended stay. Instead of staying a day or two, they may want to stay a week, so therefore the Town benefits in having these people here for the longer period. It might be a good idea regarding the Town's proximity to the Luray Caverns to consider doing a condominium type, short-term rental, controlled community.

Commissioner Campbell asked what he meant by controlled. Mr. Snyder stated you have a company control the rentals and manage the property. In this way, people can stay, eat their meals, and do whatever they want. It's a nicer environment than a regular hotel, and very much like home. These are now being called condo hotels. It's a cross between hotel rooms and condos. Mr. Webb stated that all such rentals could be a "special use" or even designated as R-6, a new zoning classification with specific requirements, or is it something that could be a mix of the two classes.

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Commissioner Campbell stated he felt the Commission should have a work session to discuss this issue. Also, at the same time, try to come up with some definitions for our different zoning areas and work with Mr. Spitler to get some definitions in the residential areas as well as the business areas. He didn't think the Commission should make any promises to anyone at this point until the Commission has something formal to present.

Mr. Spitler stated he would like to point out to the three gentlemen while they were here that on Monday night the Council reviewed the bonding situation for the development they are considering purchasing, and that this is the last step in the subdivision process. This has been tabled for action at the next regular council meeting on Monday, September 10 until the surety documentation is complete. He told them that the Council was very interested in having one or more of them attend this meeting.

Mr. Snyder stated they are a very green-conscious developer, and would like to increase the green space in the Fair View Meadow project to make it more environmentally friendly and also more appealing. They hoped to create a more park-like setting in that development.

Commissioner Potts stated that if the developers come in to the Commission with a proposal reducing the density of what's been approved there for construction, they will certainly find a group that will be glad to hear it. Mr. Webb stated that he had advised them that they are purchasing the property with what has been approved, and can't deviate from that. If they want to deviate from that to go up or down in density, or change the layout, they will have to come back through the Commission and present a new concept. Essentially, they will need to re-start the project through the Town's approval process.

Commissioner Potts stated he thought Commissioner Campbell had a great suggestion that we take up the issue of short-term rentals at a special work session for the members specifically to address the definition and other issues, and in the meantime have the Town staff look to see if there are other such ordinances out there. Commissioner Hakel stated that we could have Mr. Spitler draft some sample definitions. Commissioner Campbell stated that Mr. Chrisman and Mr. Webb will try to get some information from other towns. Commissioner Dodson stated that since the Town and County have lost a lot of their manufacturing industry, all the community keeps hearing about is that the development stages are moving towards tourism, and issues like these are going to be continually coming up.

Commissioner Baughan stated there are towns that thrive on short-term rentals. It falls back on the Commission to come up with the idea of which direction we should take, and recommend that to the Council. Will the Town allow some short-term rentals under controlled circumstances? Some controls the Town could put in place are on the number of people who can be in a house depending on its size, etc., so that we assure ourselves that you get families renting homes, and not 50 college kids. The whole thing has to be looked at from A to Z.

Mr. Webb stated he will set up a work session before September 15 and will contact each Commissioner to see when it suits them. He also stated that the Commission doesn't have any public hearings scheduled for September, so meeting might be a good time to talk about this issue some more.

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- **Discussion concerning landscaping requirements in the Business (B1) zoning district**

Mr. Webb stated in our business zoning district, each business has to submit a site plan in accordance with Section 515. It was brought to our attention that there was a business developed in Town, and someone commented they wished the company had put some landscaping on their site. The Town currently does not have any requirements in B-1 site plans for landscaping, but if we did have landscaping requirements in B-1, they could certainly be added to Section 515. One problem with landscaping is that it is difficult to try to come up with a set of standards that would apply to every B-1 lot and plan. Therefore, if the Town adds a landscaping requirement to the site plan portion, we would want to leave some flexibility realizing there is a difference between the Wal-Mart site plan, and the car wash site plan. There is a landscaping requirement in the PND ordinance.

Commissioner Potts stated it's one of the things he has on his checklist when we review zoning for compliance with the new Comprehensive Plan. He believes in residential areas we need to increase the size of the plants we are requiring people to put in, particularly on the street. We should look for something that has an immediate visual impact when you put a house behind it as opposed to a one gallon tree stuck out by the sidewalk. It's certainly something we need in the business area so that we don't wind up with more Wal-Mart parking lots with nothing but lights sprouting out of them. Since the Town Council has asked about it, we should look at it sooner than later or let it follow along with our review of the Comprehensive Plan. Commissioner Baughan stated he didn't see any urgency, so he advised to let it follow along with the Comprehensive Plan. Commissioner Potts stated that the Commission can address it when the group starts doing the review of its goals and objectives for the review of the Comprehensive Plan.

Old Business

Mr. Webb stated the Kaufman's have re-submitted a preliminary plat. Commissioner Potts stated that the Commission has agreed that the agenda for the Planning Commission is set ten days prior to the meetings, and that we get our packages seven days in advance of our meetings so that everybody can be prepared to be able to discuss things at our meetings. This package came yesterday, and it doesn't satisfy either one of those criteria. Given that situation, he indicated that the Commission would not take this up as an agenda item tonight. He did indicate that the Commission was going to discuss it under the public discussion portion of the agenda, which gives the applicants a chance to hear some of the concerns and discussion by others without imposing a deadline as to when the Commission can get it formally submitted to be addressed at the next meeting.

Commissioner Potts stated he would talk first because he has a lot of concerns about the proposal and the compression of time. He wanted the applicants to know if there are obstacles present and what they are. He wanted the applicants to be able to formulate their completed submittal and come back to the Planning Commission's September meeting with the plans, and address the members to put at ease many of the concerns that have been expressed.

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Ms. Bonnie Kaufman stated she had three questions.

1. Is there anyone else on the Commission who is not prepared to discuss it tonight besides Mr. Potts?

Commissioner Dodson stated he would like to come out and look at the property. He received an e-mail about it. Commissioners McNeely and Hakel stated they felt the same way. Commissioner Baughan stated he was disappointed regarding one of the items the Commission discussed with you the last time. He indicated that it was the desire of the Commission to see some sort of master plan of the other adjacent properties you own. Ms. Kaufman stated that the plan they had before them was the Master Plan. Commissioner Baughan asked there are no other properties that the Kaufman's own. Ms. Kaufman stated there are other properties they own, but they are not going to develop them. Commissioner Baughan asked if they don't plan to develop them in the future. Ms. Kaufman answered no, sir. Commissioner Hakel asked then what is the subdivision stub road there for. Ms. Kaufman answered that it must be there as a right of way because of other properties that are behind it and it is required by the County. Commissioner Baughan asked do you own those properties. Ms. Kaufman answered, yes sir, I own all the properties. Commissioner Baughan stated he still is disappointed that you are not presenting us with some sort of master plan of all the properties. He's working on the assumption that one of these days you will be back with another piece of land for us to approve and he would be more inclined to look at the whole thing now.

Ms. Kaufman stated with her rights, she stated this is old business. This is not new business and an e-mail went out at least - (she asked Mr. Webb how long ago). Mr. Webb stated he had received a lot of e-mails from her, and asked which one. Ms. Kaufman stated the last one that went out with the information to everyone on the planet, and to the Town Council. Mr. Webb stated this plan before the Commission is what he received this past Monday afternoon. Mrs. Kaufman stated that she sent an e-mail out to Mr. Webb, and that he had assured her that he had sent the plan sheet to everybody. It explained every intention, and everything we are doing, and specifically invited everyone on the Planning Commission to see the property. Commissioner Potts stated Ligon did send it to him (and the others) and sent them a copy of the Loudoun County zoning section forwarded by Ms. Kaufman which is irrelevant when talking about what is required within the Luray zoning ordinance. Private drive ways are not currently authorized in the Luray zoning, and he indicated that two of them are shown on the latest plan sheet. Ms. Kaufman stated before the Commission decides to postpone action, would the Commission allow their engineer to say something because the members don't know what's being presented before the Planning Commission tonight. Commissioner Potts stated that the Kaufman's were not on the agenda, it is not an old business issue; it is a new (and altered) submission and if you want to do a new submission, your time to do it is in September. Ms. Kaufman said the Commission wanted the master plan and that's what they provided. Mr. Webb stated Mr. Baughan was talking about the adjacent properties. Ms. Kaufman stated the Master Plan includes the left side properties.

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The Kaufman's engineer, Scott Sellers, stated he would like to know why the Commission wants to see what's going to happen to the rest of the properties. Ms. Kaufman stated that the Commission is procrastinating, and it's really more than taking our rights away but because we told you very clearly and I don't know how else we can explain to you that nothing else is going up except for what we have shown on this plan. Commissioner Potts told her to put it in writing in your application as a condition for the application with the new preliminary plat site plan submittal. Mr. Webb stated the Town Code clearly states that we can take into consideration the general development of an area that is adjacent property, and this review is also consistent with the Comprehensive Plan. Commissioner Campbell said the site plan shows a lot with a question mark. He wanted to know who owns that lot. Ms. Kaufman stated it's an adjacent property owner. Mr. Kaufman stated that information does not affect the Master Plan, sir. Commissioner Campbell stated he was asking who owns that piece of property. If the Kaufman's own that piece of property, then he has a concern. Ms. Kaufman stated they do not own that. Commissioner Campbell stated we don't like cul-de-sacs to start with, and on the original plat for this piece of property there was a street that came out there and it came out to Eden Road. The Kaufman's engineer stated that accessed up farther on the parcel. Ms. Kaufman stated you are talking about Old Ice House Road. She indicated that has nothing to do with this development.

The Kaufman's engineer stated he will do the package as requested by the Commission, and will give you the whole layout of all the lots. Mr. Webb stated the plan shows a stub road there, it is zoned R-2, and the Code clearly allows for the Town to consider adjacent properties regarding development. Another thing we also need to consider is that if the property is eventually developed to the north of the site that also will have an effect on the type of entrance you have there, whether it be a left turn lane or right turn lane on the main road. That issue was brought to Mr. Webb's attention this afternoon. Ms. Kaufman stated there will be no more development as long as they own the properties. Mr. Webb stated that the Kaufman's might not always own the parcels, and somebody can buy the land and develop it by-right. Ms. Kaufman stated everybody has the right to do whatever they want. Mr. Webb stated no they actually don't have the right. Ms. Kaufman stated she couldn't tell you what's going to happen fifty years from now. Mr. Webb stated that's one reason why this body is the Planning Commission. We are trying to plan for future events. Ms. Kaufman stated you are dragging this process out on me, and it's impossible for me to answer what is going to happen to the land, and I have told you as long as we own this land and we have invested \$6,000 and are in the process of putting a horse fence all around that property to make sure nobody develops that land. Mr. Webb asked if the land had been placed in a conservation easement. Ms. Kaufman stated it has been as far as they are concerned (but not formally). Mr. Webb asked if the Kaufman's could show that there was no possibility that it would ever be developed. Ms. Kaufman asked if the Commission was telling them that they have to do something so that nothing can ever be built on there. Mr. Webb stated the fact that you have undeveloped property to the north makes a big difference in things. Ms. Kaufman stated other public roads access the property. Commissioner Baughan stated if you do not wish to demonstrate to us what you might conceive as a master plan for that land because you are taking the position that you will probably never develop it, then you will probably force us to make our own assumptions. Ms. Kaufman stated what the Commission is saying is that she has no integrity with what she has said, and they think she is trying to deceive them.

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Commissioner Baughan stated the Commission knows that it is very likely that the property beyond is going to be developed. The Commission is pretty confident that the property the Kaufman's own will be developed one of these days.

Ms. Kaufman stated if there's anything she can do about keeping the property undeveloped, the Commission better believe she will be protecting it, which is why they have just put a horse fence, and it has become a horse farm. All that property is being protected as a horse farm and green land, which is why we have all open space and had you read the web site, you would know these things.

Commissioner Campbell stated as far as horses being on the property, that's illegal. As far as our zoning ordinance is concerned, that property was there without horses for two years or more, so it's not grandfathered in for such a use. Ms. Kaufman stated there are 10 acres of houses that adjoin this property. Commissioner Campbell asked if those houses were in the Town of Luray. Ms. Kaufman stated she had already covered the horse issue with Ligon and Mr. Black. She had been advised that horses are allowed to graze on town property. She claimed the Commission, and Town staff, keep coming up with obstacles, and more obstacles, that are preventing her project. Mr. Webb stated we are not getting too far off course here, and asked what the Commission's desire on this issue was. Commissioner Campbell stated he felt that the Commission should table it. Chairman Potts stated that it should be submitted in full detail for discussion at the September meeting. The Kaufman's engineer stated he will abide with Mr. Potts. Commissioner Potts stated among the things he wants the Kaufman's and their engineer to look at is the issue of whether Fair View Road is going to require a left turn lane. Mr. Webb stated based on the development potential of the adjacent properties, he believed that a Traffic Impact Analysis may be necessary. Commissioner Potts stated that Mr. Webb is to get with VDOT and find out for sure. Mr. Webb stated the project may or may not warrant such a study.

Commissioner Potts stated to be sure that the Kaufman's are provided with a copy of the subdivision ordinance so that they will know what has to be with the plan when they submit it. Also make sure that what the Kaufman's want us to consider is submitted in writing as part of the plan submission packet.

Commissioner Campbell stated he wanted to hear something first – Ms. Kaufman stated Mr. Webb had told her it was legal to have horses in town. He wanted an explanation of this because he knows very well it's not legal, and if Mr. Webb said that then he's going to be upset. Mr. Webb stated that issue was discussed between Ms. Kaufman and Mr. Black. He said he had never talked to her about horses at all. Mr. Spitler stated Mr. Black did not tell her that. He indicated that he had a number of conversations with Mr. Black about that issue. There is no agriculture zoning in the Town of Luray. Mr. Spitler stated the Code provides that the use is discontinued even if one is talking about different agricultural uses, it doesn't matter if they have continued to use the property to make hay every year, enforcement on the property after two years will occur, and whatever rights they may have had vested in prior zoning, and formerly not being incorporated by the Town, is null and void. Commissioner Campbell stated it comes under our ordinance regardless, and such a use is not permitted.

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Commissioner Potts stated we need to make sure that the package submitted to us actually complies with what the Town Code says (Section 515?). For example, when it says "give the names of all the adjacent property owners" make sure the information is there. Mr. Spitler stated he would appreciate it if the Commission would ask the Clerk to pull what was said regarding the agriculture use of the property that came from the town staff into the notes and minutes of this meeting.

Commissioner Potts stated one of the things he would like for Mr. Spitler to do is tell him whether the Town planning staff is obliged to receive an incomplete or defective application. Mr. Spitler stated that staff is not obliged to take any action on anything that you have not received at least seven days in advance of your meeting. Commissioner Potts stated if Mr. Webb receives a package which is incomplete, lacks product and all that, may he return it and refuse to accept it. Mr. Spitler stated he didn't think Mr. Webb could refuse to accept it, but by the same token he didn't think Mr. Webb has to accept it as a package if it's not complete, and he thought we should preserve it in our records because it is not considered a filing if we don't do everything. Commissioner Potts stated he is more concerned that it doesn't go on the agenda if it's not complete. Mr. Spitler stated he didn't think there is a problem at all with the Commission having that understanding with Mr. Webb.

Commissioner Potts stated the Commission should discuss the issue of the proposed recycling center. The subject was not presented to the Town Council this month, but will be presented next month. Since the Commission's review and approval, a whole group of issues have arisen; noise pollution being a primary one. During the Council meeting, there was talk about a previous operator having a mulch grinding station outside of Luray that rumbled noise that could be heard at Mr. Lancaster's house. The primary issue was that the unique low-frequency rumbling whine of the mulch grinder could be heard for miles. Mr. Potts stated he sits at Council meetings, and other meetings, and tries to listen as carefully as he can. During a previous meeting, he heard the statement that Anderson headquarters has told the local Anderson operation to reduce its budget by a whopping amount, or else. He indicated that he didn't know what "or else" means, but it may mean that the company would be forced to alter operations. The Commission needs to know whether in fact that's true. Anderson submitted a letter indicating the need for such a recycling center locally, and that such an operation will benefit them greatly. Chairman Potts was unsure if other people in the community understood, or appreciated, the "or else" comment, but he has not heard that statement since that initial meeting. Finally, during the Council meeting, there was a whole lot of unvoiced, but implied, concern for the residential neighborhoods with the additional truck traffic in and out during the day, and possibly the night. Chairman Potts felt that there would indeed be additional truck traffic. He further indicated that if the Town Council does not want the Commission to approve industrial operations in the industrial zone of the town, the Commission needs to know that so when we do the next Code review, and the next modification to the zoning map, the Commission can strip Industrial Zoning out and not have any within Luray. He emphasized that the Commission tries to balance between creating jobs, preserving jobs, using the industrial territory, and making sure we don't lose what industry we have. Chairman Potts stated that it seemed sudden that we as a

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Town are worried about whether trucks driving past communities (that probably should never have been located adjacent to an industrial area) have become a primary issue for the Town to turn away a plant that plans, or promises, to have jobs.

On the 27th of August members of the Town Council, the planning staff and Mr. Potts are going to see a recycling operation in Loudoun County, and see how it functions. There was also discussion at the Monday night Council Meeting of the fact that the operator will be bringing demolition wastes into the site. Chairman Potts indicated that possibly the council member misheard, and this issue may be incorrect. He understood that the majority of what the operator will be doing is the waste from EMCO, and that they were taking their demolition stuff to Harrisonburg for processing. He did not believe that the recycling center would be bringing demolished buildings to the Luray site for grinding and processing (if approved).

Commissioner Campbell stated that according to what he was told, all processes and storage will be handled indoors, and they are going to build more buildings as they need them. Commissioner Potts stated there is concern that wherever the grinder sits on cement, it's going to cause a low rumble that will be heard far beyond the property lines.

Mr. Baughan stated he believed the applicant's statement that night was that no one would be able to hear their operation beyond their property line. If noise control is something the Town stipulates as a condition on their operation, then he thought that issue would be alleviated. Commissioner Baughan pointed out that there will be some amount of noise expected in an industrial zone.

There being no further business to come before the Commission, a motion to adjourn was made by Commissioner McNeely, and seconded by Commissioner Dodson. The meeting was adjourned at 8:17 P.M.

Respectfully submitted,

Bryan T. Chrisman
Assistant Zoning Administrator

ATTEST:
