



To: Chair and Members, Nelson County Planning Commission
From: Tim Padalino | Planning & Zoning Director
Date: January 25, 2016
Subject: **Public Hearing for Referred Zoning Ordinance Amendments –
“Temporary Events, Festival Grounds, and Out-of-Door Accessory Uses”
(BOS Resolution R2015-68)**

Issue Introduction:

Given the recent successes and ongoing growth in the special events, tourism, and agritourism industries in Nelson County, the existing Zoning Ordinance provisions and regulations for “special events” have become outdated and insufficient. For example:

- *Lack of distinction between which activities require Special Events Permits, and which do not:*
“Special events” are not defined in the ordinance; and there are no clear boundaries for types of activities which may be exempt from the permit requirement, or which types of events absolutely need to obtain permits. This lack of clarity will continue to be a recurring issue, based on the ongoing, successful proliferation of the agritourism and events industries.
- *Lack of distinction among events of varying scale, duration, and frequency:*
The ordinance makes no distinction between small events (such as a brief daytime parade down Front Street in Lovingston) and major events (such as Lockn’ Festival or other multi-day mass gatherings). Currently, the same application procedures and same \$25 application fee apply to all events.
- *Lack of specific evaluation criteria to guide the County’s decision-making process during the review and approval/denial of Special Events Permit applications:*
Staff have done the best we can to develop processes and apply common-sense criteria on a case-by-case basis; and the results have been mostly successful. But the decision-making process should be based on clear criteria that are consistently applied to each and every event.
- *Lack of comprehensive provisions and regulations:*
The ordinance currently only contemplates a proposed special event in isolation, and does not account for multiple-date or repeat events or for how a venue or property should be regulated (especially if the special events, which are temporary, propose to include permanent improvements such as roads, utilities, structures, etc.).

Such limitations and omissions result in County staff regularly spending a significant amount of time and effort attempting to handle every inquiry, request, and application on a case-by-case basis *while also* attempting to be as fair, consistent, and accurate as possible. While this approach has worked reasonably well in recent years, it is far from perfect and it requires more time and effort of County staff than should be necessary.

Therefore, County staff believe the appropriate long-term solution is to amend the Zoning Ordinance with updated and improved provisions and regulations. A successful text amendment process would:

- benefit County staff by establishing a clear and consistent review process;
- benefit event promoters and members of the public by establishing a permitting process that is clearer, more straightforward, and more transparent; and
- benefit local businesses by establishing a large variety of activities that are exempt from permit requirements

After conferring on this matter multiple times over the course of 2014 and 2015, County staff determined that the Planning Commission (PC) and Board of Supervisors (BOS) should formally conduct a policy review of the existing provisions in the Zoning Ordinance in order to identify possible amendments. As such, (draft) text amendments were jointly developed by County Attorney Phil Payne and myself, inclusive of extensive participation and detailed input from County Administration, across multiple work sessions in 2014 and 2015. The (draft) text amendments were then presented to the BOS in August of 2015, and the Board voted to refer the amendments to the PC for formal review and recommendations.

Please see below for a summary of this text amendment review process to date, as well as a summary of the actual content of the proposed text amendments. The actual text amendments, which include modifications proposed by the PC since receiving the referral from the BOS, are enclosed.

Summary of Review Process:

August 11, 2015: BOS refers amendments to PC via BOS Resolution R2015-68

August 26: PC formally receives referred amendments and begins review

September 23: PC continues review and discusses various possible modifications

October 28: PC continues review and requests three (3) month extension from BOS for continued review(s) prior to making recommendation to BOS

November 12: BOS grants requested three (3) month extension

November 18: PC continues review inclusive of additional proposed modifications

December 16: PC continues review inclusive of additional proposed modifications and directs staff to advertise for a public hearing at the next PC meeting

January 27, 2016: PC conducts public hearing and continues review

Brief Summary of Most Recent Version of (Modified) Referred Amendments:

The enclosed Word document (dated December 17, 2015 and showing “track changes” format) contains the most recent version of the referred amendments, inclusive of modifications requested by the PC. These amendments would substantially modify the way events are regulated, such as:

- To help clarify when permits are needed (or not), these amendments identify numerous different types of events that would be specifically exempted from Temporary Event Permit requirements.
- *See proposed §24-2-A “Exempt Events.”*
- To provide for more appropriate regulations and permitting processes, three (3) categories of events would be established. The categorization of an event would be primarily determined by the number of attendees; and the different event categories would require different fee payment, application requirements, and permitting/review processes.
- *See proposed §24-2-B “Temporary Event, Category 1,” §24-2-C “Temporary Event, Category 2,” §24-2-E “Temporary Event, Category 3,” and §24-3, “Issuance of Temporary Event Permits.”*
- “Special Events Permits” would be redefined as “Temporary Event Permits,” to help avoid confusion with “Special Use Permits” and to emphasize that these are primarily meant to be temporary activities, not permanent land uses.

Detailed Summary of Most Recent Version of (Modified) Referred Amendments:

Statement of Intent: The proposed Article provides regulations designed to address temporary uses in districts where such uses would not otherwise be permissible, establishes criteria for the approval or disapproval of such temporary uses, and provides requirements for the permitting and conduct of such uses. The Article also requires for the issuance of a Special Use Permit for properties where the intended use envisions large scale events, and provides for the regulation of out-of-door activities conducted as an accessory use to certain permitted commercial uses. The Article is not intended to regulate, and does not regulate, the traditional non-commercial use of property by its owners.

24-1. Creates definitions for Agritourism Activity; Festival Grounds; Out-of-Door, Accessory Use; Temporary Event; Temporary Event, Historical Property; Temporary Event, Non-Profit; and, Temporary Event, Social.

Please note that “Out-of-Door, Accessory Use” provides that, “The following out-of-door activities are accessory uses to a Banquet Hall, Conference Center, Corporate Training Center, Restaurant, Brewery, and Distillery: receptions, dining, and entertainment, such as musical or small band performances, which (i) are conducted in connection with the primary permitted use, (ii) do not involve amplified sound later than 9:00 p.m. on Sundays through Thursdays or later than 10:00 p.m. on Fridays or Saturdays, and (iii) hosts less than 1,000 attendees at any one time during the activity. Unless otherwise specified in (ii), all such accessory activities are limited to 10:00 p.m. on Sundays through Thursdays, and are limited to 11:00 p.m. on Fridays and Saturdays.”

24-2. Requires a Temporary Event Permit for non-exempt Temporary Events defined in this subsection as either Category 1, 2, or 3.

24-2-A. Lists Temporary Events exempt from Temporary Event Permit requirements and fees:

1. Private non-commercial functions conducted on the property of the host
2. Social Temporary Events where permitted by right
3. Historical Property Temporary Events
4. Non-Profit Temporary Events having or projecting less than 1,000 attendees at any time during the event
5. Athletic and sporting events conducted on sites approved for such events
6. Political gatherings
7. Religious gatherings
8. Out-of-Door Accessory Uses
9. Farm winery and Agritourism activities conducted between the hours of 7:00 a.m. and 7:00 p.m.

24-2-B. Provides that a Category 1 Temporary Event is any event which is neither an otherwise permitted use nor exempt and (i) for which admission is charged or at which goods and services are sold, having or projecting less than 1,000 attendees, or, (ii) is a Non-Profit Temporary Event having or projecting more than 1,000 attendees, or, (iii) is a Farm winery or Agritourism activity conducted after 7:00 p.m. and having or projecting less than 1000 attendees. Please note that this provision for Category 1 Temporary Events contains limitations on duration and amplified sound.

24-2-C. Provides that a Category 2 Temporary Event is any event which is neither an otherwise permitted use nor exempt, for which admission is charged or at which goods and services are sold, having or projecting 1,000 or more attendees but less than 10,000 attendees. Please note that this provision for Category 2 Temporary Events contains limitations on duration and amplified sound.

24-2-D. Addresses structures used for either a Category 1 or Category 2 Temporary Event.

24-2-E. Provides that a Category 3 Temporary Event is any event having or projecting more than 10,000 attendees and requires a Special Use Permit for Festival Grounds. This section also provides for automatic review of a Festival Grounds Special Use Permit by the Board of Supervisors every five (5) years, after which the Board may renew, revoke, or modify its terms and conditions. Please note that this provision for Category 3 Temporary Events contains limitations on duration and amplified sound.

24-2-F. Defines “applicant” (for the purposes of Article 24) to include the members of an applicant’s immediate family or an affiliated business entity relationship and lists factors.

24-3-A and -B. Lists six factors to be considered by the Planning and Zoning Director when determining whether a Temporary Event Permit will be issued, and contains limitations the Director may impose.

24-3-C. Provides a chart listing the maximum number of non-exempt Temporary Events which may be conducted in a calendar year by property category type. *(See enclosed amendments.)*

24-3-D. Authorizes the Planning and Zoning Director to issue a single Temporary Event Permit for more than one Temporary Event if, in the Director’s determination, the proposed events are similar enough to be eligible for this consolidated permitting process.

24-3-E. Establishes Temporary Event Permit application requirements and fees.

Please also note: in addition to the proposed introduction of a new Article 24, the text amendments would also affect (modify) the following existing sections of the Zoning Ordinance:

Article 4. Agricultural District (A-1)

Remove the following:

4-11 Administrative Approvals:

- 4-11-3: Temporary events not otherwise a permitted use may be allowed pursuant to a Special Events Permit for a specified time period. [...]

Add the following:

4-1 Uses – Permitted by right:

- Agritourism Activity
- Social Temporary Event, provided that there are no more than fifty such events in a calendar year and that any noise generated by the event is not discernible by adjoining landowners.
- Category 1 Temporary Event
- Category 2 Temporary Event
- Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

4-1a Uses – Permitted by Special Use Permit Only:

- Festival Grounds

Article 8. Business District (B-1)

Add the following:

8-1 Uses – Permitted by right:

- Category 1 Temporary Event
- Category 2 Temporary Event
- Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

8-1a Uses – Permitted by Special Use Permit Only:

- Festival Grounds

Article 8A. Business District (B-2)

Add the following:

8A-1 Uses – Permitted by right:

- Category 1 Temporary Event
- Category 2 Temporary Event
- Category 3 Temporary Event in connection with a Festival Grounds Special Use Permit

8A-1a Uses – Permitted by Special Use Permit Only:

- Festival Grounds

Article 8B. Service Enterprise District (SE-1)

Add the following:

8B-1 – Uses – Permitted by right:

- Category 1 Temporary Event
- Category 2 Temporary Event

Conclusion:

In conclusion, please contact me with any questions, concerns, or requests for assistance leading up to the January 27th Planning Commission public hearing and review of these proposed amendments. Thank you very much for your time and attention to this important subject.