

**NELSON COUNTY PLANNING COMMISSION**  
**MEETING MINUTES**  
June 24, 2015

**Present:** Chair Philippa Proulx, Commissioners Mike Harman, Robert Goad and Larry Saunders (Board of Supervisors Liaison)

**Absent:** Commissioners Linda Russell and Mary Kathryn Allen

**Staff Present:** Tim Padalino, Director of Planning & Zoning and Stormy Hopkins, Secretary

**Call to Order:** Chair Proulx called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovingson.

**Approval of Minutes – May 27, 2015:** Chair Proulx asked if there were any further changes to the revised May 27<sup>th</sup> meeting minutes.

Mr. Saunders stated that he had a question on the minutes. He stated that the minutes were getting adjusted before the meeting; he has questioned other members of the Board; and that is not the way it should be handled. Anytime there are any changes, they should be brought before the Committee and changed then. It would give everyone the opportunity to hear all the changes, and this should be a part of the public hearing. Chair Proulx stated that she understood the concern, and does not mind changing how the minutes are handled.

There was a vote of 2-0 with Commissioner Harman and Mr. Saunders abstaining. Chair Proulx stated that she would take this as the minutes as approved, and will change the procedure as Mr. Saunders requested.

**1. Special Use Permit #2015-03: “Dance Hall” / Jose & Elpidia Gaona**

Mr. Saunders stated that he would abstain from this due to the fact that he is an adjoining property owner.

Mr. Padalino stated this was a Special Use Permit (SUP) application for Mr. Jose and Mrs. Elpidia Gaona, seeking approval to operate a dance hall, which is a permissible use in the Business (B-1) District, but only with a SUP. It was noted that this application is being made in connection with a Site Plan for a by-right use, “La Michoacana Taqueria & Restaurant” that was approved last month. The requested dance hall would be used in a space that has been designated as a “private dining area” within the approved restaurant.

The subject property is zoned Business (B-1) and is located downtown in the Lovingson Historic District, at the corner of Main Street and Route 29. The building (former IGA) is owned by Mr. Joe Lee McClellan, who has signed the SUP application. Abutting properties are zoned Residential (R-2) and Business (B-1).

Mr. Padalino noted specifics regarding the application as follows: seeking to operate a “dance hall” on Friday and Saturday nights, remaining in operation until 2:00 AM the following morning(s); and the requested use would be co-located within the **approved by-right** restaurant.

Mr. Padalino made note of the four evaluation criteria for all SUP applications as follows:

- A. The use shall not tend to change the character and established pattern of development of the area or community in which it proposes to locate;
- B. The use shall be in harmony with the uses permitted by right in the zoning district and shall not affect adversely the use of neighboring property;

- C. The proposed use shall be adequately served by essential public or private services such as streets, drainage facilities, fire protection and public or private water and sewer facilities; and
- D. The proposed use shall not result in the destruction, loss or damage of any feature determined to be of significant ecological, scenic or historic importance.

Mr. Padalino stated that during his evaluation of this SUP application, it seems to be perfectly satisfactory relative to criteria C and D. However, the proposed use appears to be questionable with respect to the first criteria A (“shall not change the community character”) and criteria B (“shall be in harmony with by-right uses and shall not affect adversely the use of neighboring property”). The reason that it is questionable is because downtown Lovington (Historic District and the County seat) is rather quiet in the evenings and at night, and is substantially residential in nature. Those factors give rise for the need for careful attention to operational issues (and potential nuisances) such as noise from amplified music at late night hours, and/or increased vehicular traffic, and/or increased social and recreational activities late at night or early morning hours within the village of Lovington.

He noted that the fact they want to operate until 2:00 AM on Friday and Saturday nights represents a substantial change, which could potentially alter the character of Lovington; and/or potentially be unharmonious with nearby by-right uses (including the multi-family Lovington Ridge Apartments); and/or could potentially adversely affect the use of neighboring properties and other residential properties in the Lovington area.

He stated that with all of those considerations, he does not recommend a straight approval, but recommends that the PC consider approval with some type of conditions, as they determine to be appropriate. He made some suggested conditions, as follows: open no later than 11:00 PM; an approval limited to 18 months, at which point, the Board of Supervisor could reevaluate it; and/or to work with the Sheriff’s Office on how to comply with the County’s Noise Control Ordinance and maintain compliance with that regulation.

Commissioner Harman asked if they have an ABC license for this establishment. Mr. Padalino indicated that he was not sure but that they could obtain one in connection with the restaurant, as opposed to just the dance hall. Chair Proulx stated they do have one in the Gaona’s Charlottesville establishment.

Massie Saunders: Mr. Saunders stated the Gaona’s are supposed to be here to answer questions. He indicated that they will have to have an ABC License due to the fact that part of the inside structure is set up to have a bar.

Edgar Gaona: Mr. Gaona noted that he is representing his parents, Jose and Elpidia Gaona (the owners). He’s happy to answer any questions the PC may have.

Commissioner Harman stated that he’s very familiar with this location and that he’s glad something is being done with the building. He noted that he is personally concerned since there’s never been a dance hall in Lovington. He further noted that he’s concerned about how many times per month these dances would be done; the late hours; the volume of traffic; and the noise level. He stated he would be more comfortable with some sort of conditions, at least in the beginning – perhaps limiting it to one night a week instead of both Friday and Saturday nights.

Mr. Gaona stated that he does not have a problem with doing it only one night a week. He stated that he asked for the 2:00 AM hour so he could have a permit for that long, but does not think it will go that late. If it were to end earlier, they would close.

Chair Proulx asked about the ABC license and if it would be beer and wine license only or would it include hard liquor. Mr. Gaona stated that it would be both. For the restaurant beer/wine and mixed beverages and he's guessing it would be beer only for the dance hall.

Chair Proulx opened the public hearing at 7:14 p.m.

Joe Lee McClellan: Mr. McClellan stated that he is the owner of the building. For clarification purposes, he stated that there was a dance hall in Lovingson at one time, and that his father was one of the investors. It was in a Quanset Hut in the parking lot and the Health Department took it over and it was torn down when the Health Department moved its location. He noted that there were some rowdy events, but the Sheriff's Office was close by. He further noted that was a different environment than what is being proposed. He feels they are speaking of "Sweet 16/going out" parties. Currently, the only place to go is in Charlottesville. He stated this was, "a needed service for the Mexican community." He also noted that the previous dance hall that was in Lovingson was much closer to residential areas than what this one would be.

Bo Delk of 173 Roseland Road, Roseland: Mr. Delk stated that, "there have been dance halls in Lovingson, and they've been rowdy and they've also been mild. There are dance halls all over this County that are doing the same thing that these people are asking to do, except they are usually doing it once a month." He also stated that, "they are not selling booze, you are bringing in your own booze, but it's the same thing." He further stated that, "this has potential to be a problem for the Sheriff's Office but the Sheriff's Office should be able to handle it. The Fire Department across the street is having dances of the same type where people are coming in and they are bringing their own drinks. There are problems with some people but it gets handled and they don't get invited back."

Mr. Delk stated that, "it seems like to me, if you have a building in Lovingson that needs to be used, you have people that are willing to work with the owner and invest their money in it to try and make it a go and if you ask or put too many restrictions on them starting out then they may only be making a small amount of profit and if they make that profit only once a week, it's not the same as if they are able to make it on Friday and Saturday nights. If it gets out of hand, the Police Department should be able to take care of it. Another restaurant, they are all over the place, the Mexican restaurants in Nellysford and Amherst are very well received and there is a demand for that type of feeding, and to have one in Lovingson, I think would be a plus too." He thinks this would "bring some life into an area of town that's dead after 6:00 o'clock, except for the activities that go on at the apartments and the activities over there are probably worse than what will be going on at this restaurant." He encouraged the PC, "to look at it, give them an opportunity and not put too many strings on it and see if they can make it work."

No further comments were made; Chair Proulx closed the public hearing at 7:19 p.m.

Chair Proulx noted that she had talked with the Sheriff about this proposal. She stated that he pointed out that they did close one [dance hall] down in Lake Nelson as a public nuisance. She further noted that if it becomes an ongoing issue, the Sheriff's Department can take steps to have the dance hall portion closed down, should it become necessary. She does not anticipate that happening. She indicated that she does not have a problem with operating on both Friday and Saturday nights, but does have a problem with the 2:00 AM time and prefers midnight. She further indicated that she would like to see this specific to the Gaona's, and run for the term of their lease for this specific building, and not have it be an open-ended dance hall permit.

Commissioner Goad noted that he has an issue with approving it for the leased time or for 18-months. With making a large investment, putting a timeframe on it, they may have trouble making it. If Mr. McClellan sells the

building, they could come back for another review at that time. He is not worried about the residential proximity because the apartments are probably the closest and the noise would probably be drowned out by Route 29, and any vehicular traffic would not be going through Lovingston. As far as the 2:00 AM closing, he does not have an issue with that, and feels most trouble would happen between midnight and 2:00 AM. Having something in that building would be very beneficial.

Mr. Massie Saunders stated if, “everyone seems to be good with the original proposal, then we will stay with that for right now and see what happens at the Board of Supervisors meeting.”

**Commissioner Goad moves that the Planning Commission recommend approval to Special Use Application #2015-03 “Dance Hall” by Mr. Jose and Mrs. Elpidia Gaona and impose the conditions that were included in the application, along with the condition that the Special Use Permit be specific to the Gaona’s lease at the business. Commissioner Harman provided a second; the vote 3-0 with Mr. Saunders abstaining.**

**Other Agenda Items:**

**1. Presentation: “Rural Long Range Plan (RLRP) update” – Mr. Will Cockrell, Program Manager, Thomas Jefferson Planning District Commission (TJPDC):**

Mr. Will Cockrell, TJPDC introduced Mr. Chip Boyles, Executive Director of TJPDC. Mr. Boyles thanked the PC for having them. He noted that they had “begun the process of reaching out to all the local governments because there are so many changes coming with VDOT’s transportation funding for the future. The earlier we can start communicating, I think the better all of us will be.”

Mr. Cockrell asked how many of the Commissioners’ had heard or know about House Bill Two and proceeded to provide an update on the Rural Long Range Transportation Plan (RLRP). He indicated that this is very early in the process. Their first step is to go around and talk to all the Planning Commissions.

He indicated that there are about twenty (20) RLRP plans across Virginia, which are done by Planning District Commissions (PDC); also known as Regional Councils of Government. The RLRPs were developed by VDOT in the early-mid 2000’s to have a better inventory of transportation needs in the rural areas. There are twenty-one (21) PDC’s in VA; Northern Virginia does not have Rural Transportation Program. The Metropolitan Planning Organization (MPO) has its own transportation plan, and they use federal dollars for those transportation projects.

He noted that the RLRP was approved in 2010 and listed its’ intentions as follows:

- Identify transportation deficiencies in the region;
- Assist with the Comprehensive Plan updates and development;
- Help local officials and staff evaluate land use decisions based on the transportation needs in the community;
- Help establish programming; and
- Provide content and guidance for statewide transportation plans.

The final section was done by consultants in 2010, which is where all the transportation deficiencies are identified and are listed in the plan. In terms of opportunity for improvement, the first element to improve is awareness that the plan exists. It is not user-friendly, it’s unclear, it does not meet all the stated purposes as described, and it doesn’t provide guidance on land use policy with the Comprehensive Plan that it claims it should. The other

element is a change in the process of how plans are submitted. This year, before a project is submitted the following will be required: cost estimates; a schedule; and a very detailed project description. In a meeting when asked where the funding would come from, they were told, "you're just gonna have to get creative on how you are going to study these projects and find these estimates, before you even submit it." He stated that meant the County would need more resources and assistance. He believes this can be built into the plan, which would help the County, now, the next year and years to come. He noted that they are updating the project list, and it has been five (5) years and there have been changes, especially in Nelson County. Currently, the plan only addresses roadway issues, it does not address rail; freight; or JAUNT services. The Route 151 study seemed to be a great success and there have been safety projects identified in that plan that have been recently funded. He suggested doing another study in three (3) years. Another thought is to have a step-by-step guide to assist through the project process.

Commissioner Harman noted that he had heard from others and wanted to know if Route 29 could be added somewhere in the 5-10 year plan. Since there is no interstate, many depend on Route 29, could there be some sort of limited access highway to make it a safer road. Mr. Cockrell stated that it was in some of the other plans but that it could also be mentioned in the plan, and further noted that it is also a priority for the State.

Chair Proulx asked about what projects came out of the 2010 study. Mr. Cockrell and Mr. Padalino stated that there was the Route 151 Corridor Study, and there were two projects involving intersection improvements along Route 151 (at Afton Mountain Road/Avon Road and at Rockfish School Lane). Chair Proulx also mentioned that there are several informal "ride sharing" parking areas in the County, and it would be helpful if something like that could be facilitated more formally.

Mr. Cockrell noted that he wanted to give recognition to Rick Youngblood (VDOT-Lynchburg) who was very adamant about getting funding for projects for Nelson County.

## **2. Referral of proposed ordinance amendments re: "brewery" and "limited farm brewery":**

Mr. Padalino stated that these were a set of proposed amendments that were referred to the PC by the BOS. He presented a staff report to the BOS this month with regards to how the definition for "brewery" is currently very narrow. There are types of breweries that produce beverages other than beer, and Nelson County is host to one of them. He noted that Mr. Ethan Zuckerman, co-owner/operator of "Barefoot Bucha" in Afton, is present at tonight's meeting. They brew "kombucha" which is a fermented tea that can be alcoholic or non-alcoholic beverage (theirs is non-alcoholic). They are looking to relocate and expand their operation within Nelson County. The way "brewery" is currently defined in the Zoning Ordinance, it does not accommodate their facility. Their existing operation is currently permitted as a Home Occupation.

The proposed amendment would redefine Brewery as, "*A facility for the production of beer or other fermented beverages.*" He noted that he does not see where this would create any unintended consequences, and it would help an existing Nelson County business. If the PC and BOS agreed with this change, it would also affect the definition for "Farm Brewery, Limited".

The Commissioners and Staff discussed the definitions (*Brewery* and *Farm Brewery, Limited*) and how to better define them. Issues of concerns were the difference between "fermented" and "brewed" beverages; alcoholic and non-alcoholic and if they would be combined; and keeping the language consistent with both definitions. It was determined that Farm Brewery, Limited would be left as proposed as stated in the Staff Report. The definition for Brewery would be proposed as follows:

*Brewery: A facility for the production of brewed beverages, including beer or other fermented beverages, but not to include wine or other distilled spirits.*

Chair Proulx noted that she wanted to address the question of whether or not “water” is considered an eligible ingredient. She does not think it is appropriate; it is not something that someone grows or raises; and does not think it should be taken into account for percentages. Mr. Padalino indicated that he had spoken with some local brewers, and they had emphasized the difference in the end products when using water from a well versus that of municipal water. It appears that in the beverage industry, water is a critical component. Chair Proulx indicated that if such an interpretation was used, a facility could meet the minimum required percentages and not have to grow anything, and is therefore a way to circumvent the intent of the farm aspect. Mr. Padalino noted that this issue would come up again if “Barefoot Bucha” decides to move forward and it could be addressed at that time.

**Commissioner Goad moves that the Planning Commission asks that the Planning Department Staff to advertise the amendment regarding Breweries and Limited Farm Breweries in the Zoning Ordinance for public hearing at the beginning of the Nelson County Planning Commission. Commissioner Harman provided a second; the vote 4-0.**

### **3. Final draft of proposed ordinance amendments re: “off-farm retail ag sales”:**

Mr. Padalino noted that minimal modifications have been made since the previous meetings. He incorporated the requested changes that were made by the PC. The Commissioners’ and Staff discussed the changes that were incorporated.

Commissioner Harman asked for clarification on what Code 114 and lower means. Mr. Padalino stated that those were a classification by VDOT. He said the lower classification by VDOT means a busier road, and would have higher restrictions (examples include Route 29, Route 151, Route 6, and Interstate 64). He further noted that this information could be found on VDOT’s website.

Chair Proulx asked about item (ii) “Proposed frequency and duration...” for the Wayside Stand, Class A. Mr. Padalino stated that the blanks were left open-ended at the previous meeting. He indicated that it could be handled several ways as follows:

The PC could choose (a, b, c, or d); the PC could recommend that those blanks be assigned numbers; or the PC could recommend that it be left open-ended and the applicant for the Wayside Stand fill in the blanks and let the Planning & Zoning Director see whether it’s acceptable or not.

The Commissioners and Staff discussed the proposed recommendations for setbacks, renewals, fees, and Business Licenses. It was decided that the proposed language would be left as-is, to advertise for a public hearing, and the BOS could put conditions on it, if they see fit. Mr. Padalino suggested that there could be something added to the permit application to require the applicant to provide a copy of their Business License.

**Commissioner Harman made a motion to direct Planning and Zoning Director to advertise for a public hearing. Commissioner Goad provided a second; the vote 4-0.**

### **4. Introduction of possible ordinance amendments re: “floodplain development” Special Use Permits:**

Chair Proulx asked for clarification on how construction in a floodplain was moving from the Board of Zoning Appeals (BZA) to the BOS and why this is coming up. Mr. Padalino indicated that this came about due to him reviewing the process of what that Atlantic Coast Pipeline (ACP) would have to apply for, knowing this is a very high profile and divisive issue. It's very atypical of the BZA to review and approve Special Use Permits (SUP). He noted that there are only two (2) SUP that do not go through the PC & BOS hearing process. Those are as follows: if one wants to build a shed before a dwelling, and any floodplain development. He further noted that he is not sure of the history of how the BZA was designated as the approving authority for those reviews. He feels that authority should reside with the governing body.

Mr. Saunders stated that the federal government would have the last say so. Chair Proulx asked if there would be anything in the State Code that would offer a reason to why it was up to the BZA's review, and if this would affect the National Floodplain Insurance. Mr. Padalino stated that he has reached out to the Floodplain Program Planner at DCR to see if other localities have their BZA do the same, but has not received a response.

Mr. Saunders stated that he believes this should go before the BOS first and then it be sent back to the PC; the Commissioners agreed. Mr. Saunders stated that he would gather any history and let the PC know his findings.

5. **Bylaws:** Mr. Saunders suggested that a full board be present to make any recommendations; the Commissioners agreed. Commissioner Harman asked if the BOS member be a voting member. Chair Proulx stated that this was the way it has been done in the past, but even if he or she chose not to vote they would be a part of the quorum.

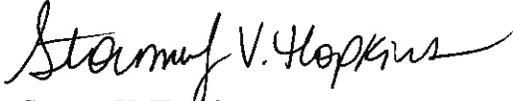
**Board of Supervisors Report:** Supervisor Saunders provided the following:

1. Approved the 2015-2016 budget with no increase in taxes.
2. There was an older bus that was too expensive to repair and it was donated to the James River Park.
3. Hoping that the architects for the courthouse will present to the Board at the July meeting for approval so it can go out for bid.
4. Phase 1 of the Blue Ridge Tunnel is complete. Working on Phase 2 and Phase 3 of the Blue Ridge Tunnel. Wants to do Phases 2 & 3 together and the State is 95-98% okay with that. They are meeting with the VDOT Commissioner in Lynchburg the first week of July. Still waiting on another grant to get the West end of the Tunnel.
5. Working to sell or lease the Lovingson Health Care Center. Another offer has been received.
6. The Tire Amnesty Program on June 20<sup>th</sup> and 27<sup>th</sup>. Each household could take up to 25 tires to the landfill at no charge.

**Adjournment:**

At 8:29 P.M. Commissioner Harman made a motion to adjourn.

Respectfully submitted,



Stormy V. Hopkins  
Secretary, Planning & Zoning