

PLANNING COMMISSION WORK SESSION

Wednesday, November 4, 2020 at 7 P.M.

Town Hall Conference Room

This meeting can be viewed in its entirety by accessing the video of the same date online via the Town's website at www.frontroyalva.com.

Call to Order

Chairman Jones called the work session to order at 7 P.M.

Roll Call

Present: Chairman Jones, Vice Chairman McFadden, Commissioner Merchant,
Commissioner Marshner

Work Session Business

- Planning and Legal Staff Review – Planning Commission Actions of June 17, 2020 Proposing to Amend the Town of Front Royal Comprehensive Plan and Zoning Ordinance, and related Special Use Permit FRSPU2101-2020, Solar Energy Facility, FRLP.

Town Attorney, Doug Napier apologized and took responsibility for not attending previous Planning Commission meetings where there may have been procedural questions that were unanswered. The meetings related to Front Royal Limited Partnership and legal issues will be handled by George Sonnett, Assistant Town Attorney. Mr. Napier stated he did not have a conflict of interest in the matter, but he did not want to be a distraction and would not attend the work session so as not to become a distraction.

Mr. Wilson explained the memorandum that was distributed to the Planning Commission concerning their actions to initiate amendments to the Town of Front Royal Comprehensive Plan and Zoning Ordinance. It involves three application requests that are related in the furtherance of the establishment of a solar energy facility. 1) Proposed text and map amendment to the Comprehensive plan; 2) Text amendment to the Town Zoning Ordinance, specifically the use regulations of the A-1 district to allow this type of solar facility by Special Use Permit; and 3) Special Use Permit (SUP) application for a utility solar facility submitted by Front Royal Limited Partnership (FRLP). The proposed text amendment to list the use by Special Use Permit and the Special Use Permit application had to run together in tandem because the ordinance currently does not permit this use in the zoning district.

In terms of sequencing when this eventually went forward to Town Council the text amendment would have to be heard first. If the text amendment was denied, then the SUP application would become a moot point. In reviewing the three applications in preparation of the staff report and

going back on the history of them he detected what he thought to be procedural errors and how the Comprehensive Plan Amendment and the zoning text amendment were applied for, but there are specific ways they must be initiated and certain parties that they must be forwarded to. That was the issue of the problem. Both the applicant and Town Council would have a strong interest in making sure that all procedural matters are done in the event that any of the actions were challenged. It was his finding that the Comprehensive Plan Amendment can be considered but the appropriate body to hear that request is Town Council as they are the body for initial review of Comprehensive Plan Amendments. It was his finding that a zoning text amendment can be initiated by a motion of the Planning Commission or by a resolution adopted by the governing body. Mr. Wilson then explained how the issues could be resolved.

Mr. Wilson stated that Mr. Sonnet has reviewed this and any opinions that he espouses to at the work session are shared by him.

Commissioner Merchant asked for clarification from Mr. Wilson that the Planning Commission does not have the authority to initiate a Comprehensive Plan Amendment and that is under 15.2-2229.

Mr. Wilson said yes, that was his opinion.

Mr. Sonnett said he agrees with the premise that the Comprehensive Plan Amendment should originate with the governing body.

Commissioner Merchant, Mr. Wilson, and Mr. Sonnett continued some discussion on the initiation of a Comprehensive Plan Amendment.

Mr. Sonnett stated that Comprehensive Plan Amendments are the exclusive domain or jurisdiction of the governing body.

Commissioner Merchant asked if Mr. Sonnett would put that in writing. Commissioner Merchant noted it has always been the past policy for the Planning Commission to initiate Comprehensive Plan amendments. He noted that he had looked online and found other jurisdictions, such as Frederick County, Fauquier County and Fluvanna County that do it the same way the Planning Commission has been doing it.

Mr. Sonnett stated that it may flow through the Planning Commission to get to the governing body. Consideration of the Comprehensive Plan Amendments lie with the governing body.

Commissioner Merchant explained how the procedure of requesting a Comprehensive Plan Amendment has historically been done when going to the Planning and Zoning office, noting that neither the Planning Commission nor Town Council has a formal application form for an amendment to the Comprehensive Plan. Commissioner Merchant mentioned Section 15.2204 which calls out the procedures of review that both the Planning Commission and Town Council are required to have a public hearing. What he understands is that the Planning Commission

should direct the applicant to Town Council first and then Town Council would not review it but say whether or not they wish to proceed. Mr. Sonnett agreed with that statement. Then Town Council would send the amendment request to the Planning Commission for a public hearing and a recommendation to Town Council who will then hold a public hearing. Mr. Sonnett also agreed with that.

Different scenarios were discussed regarding submission and review of Comprehensive Plan amendment requests.

Commissioner Merchant said the Planning Commission believed they were initiating the correct process in the past. He asked what the concise and clear way is to move forward.

Mr. Sonnett explained that the application would come in for a Comprehensive Plan amendment. Staff needs to get an application in place that will specify the detail that is necessary, then it comes in already packaged and transmitted on to get on a Town Council agenda to get the initial decision of whether it will go forward for review.

There was additional discussion regarding the requirement that the Planning Commission review the Comprehensive Plan every 5 years. Mr. Sonnett said the provision for that is under the law that it be reviewed every 5 years. In that case, the Planning Commission takes up that task to take it to Town Council.

With regard to the 5-year review Commissioner Merchant asked if the Planning Commission holds a public hearing or does the request for changes go to Town Council first.

Mr. Wilson explained that the Planning Commission being a public body has the authority under the code to review the Comprehensive Plan every 5 years to determine if it requires any changes or updates and then report to the governing body the results of their review. Then the governing body decides if they desire to take up those recommendations and if it does, they will give instruction to begin the public hearing process.

Commissioner Gordon referred to their by-laws noting the Planning Commission prepares and makes recommendations of the Comprehensive Plan every 5 years. What they have been working on is rewriting sections and making it current. He said that what he is understanding is that they instead prepare a report that recommends the changes be made, Town Council would affirm the changes should be made and then action would take place.

Mr. Wilson explained the process of review and actions.

Vice Chairman McFadden said the discussion has been for what the future process should be. We are talking about current and previous process and we are being told that our previous process which was not clearly mapped out was incorrect. He believes what they have heard is that there is conflicting information regarding that. In this "new" procedural process it will gum up the works and it changes the role of the Planning Commission. What he learned in the

Commissioners class he took it does not speak this way. We are a body that is supposed to make recommendations to Town Council based on applications from citizens. The Planning Commission is almost like a citizen's advocacy board making sure that when they come before Council their I's are dotted and their T's are crossed. That is the role of the Town Planner and we are supposed to advise the Planner and make recommendations based on what is the best interest of the community and Town Charter, etc. It sounds like now there is an extra layer that goes to Town Council and then Council with just an application, no input from the Planning Commission is supposed to make a judgement on whether or not it moves forward. Commissioner McFadden said it did not sound like a good process to him and if that is the future process that is being proposed he does not agree with it.

Commissioner Gordon said that what he understands is that it is not a future process but a process that should be in place and has not been followed to date and going forward we should do it correctly.

Mr. Wilson provided Mr. Sonnett a package from Hanover County. Its titled Approval Process for Comp Plan Amendment Applications and it gives a flow chart. He had reached his conclusion prior to seeing this and when seeing this he said it is spot on. Mr. Wilson explained Hanover County's process for Comp Plan amendments.

Vice Chairman McFadden commented on Commissioner Gordon's statement that we are not trying to create a new process. He somewhat disagrees with that. He would like to see a flow chart and said he is all for formalizing the process, creating official applications for people to go through, but make sure it is correctly done. The Planning Commission has done a good job staying out of the politics that happen on the Council and when these decisions come through be based in code. He expressed his concern that someone shuts it down before it has a chance to be reviewed.

Commission members continued to discuss the process of the Comprehensive Plan amendment process in length.

Commissioner Merchant said he would act on Vice Chairman McFadden's comment regarding the flow chart. Can we direct staff to create an application for both the Comprehensive Plan and a text amendment and flow chart of the process so the Planning Commission can discuss something concrete at a work session.

Chairman Jones requested that of Staff.

Commission members agreed they would like to see a flow chart and asked if Mr. Wilson could provide that at the next work session. They thought that the flow chart Hanover County has would be great.

Chairman Jones said it seemed to him that the Front Royal Limited Partnership present status should be sent to Council.

Mr. Wilson agreed that what has been submitted is sufficient and needs to go on the next available Town Council agenda.

Mr. Sonnett explained that according to the statute 15.2 2286.7.iii we are under the third path. On June 6, 2020 Mr. Vazzana, by letter, treated as a petition by Town staff requested a zoning text amendment. Under the statute he reads it as no discretion. If there is a petition by the owner addressed to the governing body or the local Planning Commission shall be forwarded to the governing body. They should go together to the governing body. The 3rd application is the Special Use Permit, and he thinks the Planning Commission should ask the applicant, if there is not a timing issue, to rest with the Planning Department until action is taken on the other matters.

Mr. Vazzana stated he was fine with resting the special use permit application.

Chairman Jones asked if the Planning Commission needed to take any action to forward the request.

Mr. Sonnett said there needs to be consensus to forward both the Comp Plan amendment initiation application and the petition to amend the text to the governing body. The consensus would be agreement on the process.

Mr. Wilson said the Planning Commission can give instruction to staff to forward the Comprehensive Plan amendment and the zoning text amendment to the Town Manager's office so it can be presented to Council at which time Council will decide which agenda it will be placed on.

There was a consensus among the Planning Commission.

There was no additional discussion.

Motion to adjourn.

The meeting adjourned at 8:01 pm.

Connie L. Potter

Connie L. Potter
Executive Assistant