

**ROUND HILL TOWN COUNCIL MEETING**

November 18, 2010

7:30 p.m.

A regular meeting of the Round Hill Town Council took place Thursday, November 18, 2010 at 7:30 p.m. at the Town Office, 23 Main Street, Round Hill, Virginia.

**TOWN COUNCIL MEMBERS PRESENT:**

Scott Ramsey, Mayor  
Mary Anne Graham, Vice Mayor  
Clarkson Klipple  
Jennifer Grafton Theodore  
Janet Heston  
R. Daniel Botsch

**TOWN COUNCIL MEMBERS ABSENT**

Christopher Prack

**STAFF MEMBERS PRESENT**

John Barkley, Town Administrator  
Rob Kinsley, Town Planner and Zoning Administrator  
Betty Wolford, Treasurer  
Maureen Gilmore, Town Attorney

**STAFF MEMBERS ABSENT**

Susanne Kahler, Recording Secretary (minutes transcribed via tape)

**MEMBERS OF THE PUBLIC**

Craig Fredericks, resident and Planning Commission Vice-Chair  
Sarah Etro, resident and Planning Commission Chair  
Dave Bowers, Stantec

**IN RE: CALL TO ORDER**

Mayor Scott Ramsey called the meeting to order.

**IN RE: PLEDGE OF ALLEGIANCE**

Vice Mayor Mary Anne Graham led those present in the Pledge of Allegiance.

**IN RE: COMMUNITY POLICING REPORT**

Deputy Matt Bressler presented the Town Council with an updated report on the last month's activity.

Craig Fredericks wanted to thank the Mayor, Town Council and Sheriff's Department for obtaining the additional policing that was done on Halloween this year; it was quite appreciated.

**IN RE: PUBLIC COMMENT**

Craig Fredericks, a member of the planning commission wished to address the Town Council on the lighting issues of the Bank of Clarke County – a direct response to the removal of the condition regarding lighting during non-operating hours. **CAN YOU PLEASE INSERT HIS COMMENTS HERE.**

Councilperson Botsch expressed his confusion as to what the Planning Commission's actual recommendation on lighting was.

Mayor Ramsey: The Planning Commission recommended 20 foot candles during operating hours but that those would be turned off after business hours.

Councilperson Heston: Is your statement basically in conflict with what the Planning Commission is recommending? Is that an accurate assumption?

Mr. Fredericks: Yes

Councilperson Heston: So are you representing that viewpoint as a Planning Commissioner or as a citizen?

Mr. Fredericks: As a citizen

Chairperson Etro: I will make a comment. Sarah Etro, 11 East Loudoun St. I didn't realize the Bank issue was on your agenda. I'm surprised how quickly it got to Land Use and to Council. I don't know how it got to referred to Land Use. I just came because I thought you all might have questions relating to the Planning Commission's deliberations on the item and I just heard tonight there has been a lot of public discussion and there may be some misinformation. I wanted to make sure that you all had someone here from the Commission to speak,. I have not been given the authority by the Commission – we didn't discuss having a representative here to speak on this – but I certainly support having the right information for you all as you make your deliberations. I do have some personal opinions about the application but wanted to be here as a resource based on what the Planning Commission's discussions were.

Vice Mayor Mary Anne Graham: Before we go into approval of the agenda and add the Executive Session, perhaps it would be pertinent to get the Planning Commissions understandings of their deliberation.

Mayor Ramsey: If you wish to interrogate the Planning Commission during public comment I am pretty lax on things like that but we will have discussion and debate when it comes up on the agenda and I think Sarah has indicated that she is willing to be here for that so I leave it up to you whether to do it now or when that item is actually up for discussion.

Vice Mayor Mary Anne Graham: What I am thinking is I don't know how long the Executive Session will be and I don't know if they want to stick around.

Mayor Ramsey noted that the agenda for tonight's meeting had not yet been approved.

#### **IN RE: APPROVAL OF THE AGENDA**

Vice Mayor Mary Anne Graham: I move we approve the agenda with the following change – making item #5 the Executive Session to discuss legal matters.

Mayor Ramsey: So you wish to start with the Executive Session?

Are there any other alterations? It sounds like we might want to discuss the Bank's special exception as the first business item.

Vice Mayor Graham: I'll accept that

Councilperson Botsch : On the Town Park Master Plan - shouldn't that be postponed?

Mayor Ramsey: I wasn't sure we were going to get to that given the fullness of the agenda.

Vice Mayor Graham: I have some comments before we vote on it.

Councilperson Botsch: I second her motion.

The Council voted by roll call. **The motion to approve the agenda as amended passed 5-0-0.**

#### **IN RE: MOVE TO EXECUTIVE SESSION**

Vice Mayor Graham: I move that the Round Hill Town Council convene in closed session for consultation with legal counsel and briefing by staff members pertaining to actual litigation discussions regarding specific legal matters requiring a provision of legal advice by counsel as exempted by Virginia code Section 2.2-37 11 a 7. Correct Maureen?

Maureen Gilmore, Town Attorney: I don't think we are going to discuss litigation, but "matters requiring the advice of legal counsel."

Vice Mayor Graham: The following individuals are invited to attend the Executive Session:

Town Attorney, Town Administrator, Town Zoning Administrator.

Councilperson Grafton Theodore: I'll second.

**The motion carried 5-0-0.**

#### **IN RE: CALL TO ORDER**

Mayor Ramsey called the meeting back to order and thanked the public for their patience.

Vice Mayor Graham: I move that the Round Hill Town Council move out of closed session.

Councilperson Botsch seconded her motion.

**The motion passed 5-0-0.**

Vice Mayor Graham: I move that the Round Hill Town Council reconvene in public session

Botsch offered a second.

**The motion passed 5-0-0.**

Vice Mayor Graham: I move that while in closed session the Round Hill Town Council discussed only those matters that were lawfully exempted from the open meeting requirements of Virginia Code 2.2-3711 A 7 and identifying the motion by which the closed session was convened.

Councilperson Botsch seconded her motion.

**The motion passed 5-0-0.**

The Round Hill Town Council resumed their regular session at this time.

#### **IN RE: BANK OF CLARK COUNTY SPEX 2010-02**

Rob Kinsley, Town Planner and Zoning Administrator: The Planning Commission did recommend approval but with certain conditions and you have those conditions modified through today and I think we should just go ahead and let the applicant speak at this point.

John Hudson, Bank of Clarke County: We have received a copy of the modified conditions.

Mayor Ramsey: Do you have anything else you wish to address on the application? If not, you have conditions that were revised by the staff in consultations with the property owner for you and you also have the conditions that were originally prepared by the Planning Commission for you. You may choose to conduct your debate from either set of conditions; it is up to the Town Council as to how they want to proceed. We can go through them one by one. Dan (Botsch) – as Chairman of the Land Use committee you are welcome to lead the discussion.

Botsch: Actually I'd like to push it back to you. We might want to start with you giving an overview of the most recent changes.

Mayor Ramsey: On Monday I was contacted by the property owner, Mr. Albright – one of the property owners, and he expressed concerns with conditions 3, 5, 9, 10 and 13. Most of his concerns related to timing and his ability to procure the necessary documentation in advance of our vote which could occur either tonight or sometime before December 20<sup>th</sup> and he wished to have more time to procure some of the documents. He also had some objections on the wording of condition #5 relating to the offsite parking requirement and also the Main Street sidewalks - that there was no defined easement for him to sign and so we could not provide one...as well as the lighting condition which we have previously heard the applicant express their concerns about. The staff and I met and I also consulted with the Town Attorney and based on these requests I prepared some alternate conditions which tried to address the concerns of the property owner. I can go through them one by one.

On condition #3, the key change is to change the timing from "special exception application approval" to "permit." Item 5 - it was reworded to instead of requiring offsite parking for use of the basement to be more general - additional parking must be demonstrated - without necessarily requiring offsite parking. Item 9, Main Street enhancements – includes language that was previously used by the Town Council in requiring storm water dedication for future improvements that were yet to be defined. The language from that particular proffer was used almost verbatim in this proposed alternate condition because we don't know where the easements are going to be yet. #10 - changed from “special exception approval” to "issuance of occupancy permit." and then #13 - that had been discussed during the Land Use Committee meeting and Land Use recommended deletion of that condition so that was removed from the version that was shown today. That's a summary of alterations that were done. I have no deal, I have no assurances, it was merely a discussion of concerns with the property owner, staff and Town Attorney. I do not know whether the property owner concurs with these conditions or not, these were sent to him."

The Town Council is free to start with the Planning Commission version or the version shown here.

Vice Mayor Graham: Do we want to hear from the chairman of the Planning Commission? She has offered to explain the rationale of the Planning Commission.

Mayor Ramsey: You are invited to speak.

Planning Commission Chair Etro: I would feel more comfortable if you would ask me questions. Councilperson Botsch asked what a reasonable timeframe was to expect the applicant to obtain any of the easements required in the conditions.

Town Attorney Maureen Gilmore said that "there is a lender involved for the property and sometimes that delays the process of obtaining all the signatures because you have to get the lender to sign off on all these documents. You are talking about a deed of ingress and egress - there is a draft of that which the owner received today. The Boundary Line Adjustment I don't think has been submitted. Again, those two would be documents that the lender would have to sign off on. If it is a local bank, it takes a couple weeks. Some of the other national banks can take a longer time. My experience has been that it does add to the time that it takes to complete the process."

Mayor Ramsey: I would like to ask the bank what their construction schedule is

Mr. Hudson: We haven't set the schedule - they have given us the idea that it is a 30-45 day

period. People have been asking us when we are going to open. We have adjusted our answer to say sometime in January.

Councilperson Botsch: I am not so concerned about the BLA. I am concerned about the easement for the sidewalks for the Main Street project. What I want to avoid is the applicant doing the build out and then it keeps on going and we have some sort of conflict on this and then the Town is put in the position of holding up the occupancy permit because these conditions aren't met.

Vice Mayor Graham: My feeling is that if we changed the timing from occupancy permit to approval of this special exception perhaps it would give the property owner impetus to try and get the ball rolling a little faster.

Mayor Ramsey: We would need to get it done by December 20<sup>th</sup> or he could potentially force action on it – that is at his discretion.

Councilperson Heston: We also have to protect the Town and the interests of the community and I think that if we push out approval of the timeline to the occupancy permit then it is less protection for the Town and less enforceable. I think that I would like to see the conditions kept as initially set forth by the Planning Commission and hope that the property and business owner will do his due diligence to get these documents into place and then go forward from there.

Mayor Ramsey: I believe the plat/lot consolidation has been taken to the Planning Commission for review?

Planning Commission Chairperson Etro: The issue is recording the documents. The reconsolidation has been approved. That is a different issue.

Mayor Ramsey: Janet had said there had been no activity. I was pointing out that there had been some activity - intermediate steps had been taken on the lot consolidation

Vice Mayor Graham: On condition #9 I would like to see the reservation of the easement changed from 5 years to 10 years just because of the fact that the enhancement project is nowhere near being completed. Just to ensure that the Town has the right to ensure an easement. That is my recommendation for #9.

Councilperson Heston: Aren't we on a deadline for the grant money?

Mayor Ramsey: We will need to seek and obtain approval for an extension.

Councilperson Botsch: Does anyone have any problem with leaving #10 as is - pushing it up to the occupancy permit. We do accept the changes in #10 pushing the BLA up until the occupancy permit?

Councilperson Heston: I do have a problem with that

Town Attorney Maureen Gilmore: From a legal standpoint, since the lot line goes through the existing building, I would recommend that it be sooner rather than later because you're going to have a site plan approved - at the latest it should be done prior the site plan approval because you are approving things to be done on a nonconforming lot - you've got a building built over a lot line - which is not a good thing. The earliest would be approval of the special exception. The latest would be site plan approval. Waiting until occupancy permit - the lot line issue should be corrected before occupancy permit stage.

Councilperson Botsch\_ I am trying to see how we can accept some of these requests from the applicant while at the same time protecting the interests of the Town. So if we don't want to wait until occupancy permit, would you be willing to say site plan approval as a deadline?

Councilperson Heston: No. It's a legal thing. As she says, we have a building over an existing line. OK, it's already there but I think we need to clean it up before we accept the special

exception.

Vice Mayor Graham: On item #3 I think it would not be unreasonable to ask for both conditions to be subject to the special exception approval.

Councilperson Heston: I see where the application was received in September so my question is what is the next step and why hasn't it gone to the next step.

Mayor Ramsey: I was told the document consolidation was in review by the lender.

Planning Commission Chair Etro: We approved it on November 9<sup>th</sup>.

Councilperson Botsch: From a timing concern, isn't this the least of the issues?

Mayor Ramsey: The impression I got is because this was already under review by the lender and it may not be perceived as affecting the value of the property and thus may not trigger a reappraisal, that it may go more smoothly than the ingress/egress easement and that the egress/ingress easement, because it may be perceived as affecting the value of the property may trigger a reappraisal and thus the additional time required to perform that reappraisal and then deal with the consequences of that reappraisal if it comes out the way reappraisals tend to come out these days. So that was the concern and the desire for time on the ingress/egress was that concern. Whether it is a valid concern or not, I don't know, I'm not a lender.

Councilperson Klipple: Time is not going to change the appraisal unless the time is 5 or 6 years from now.

Councilperson Grafton Theodore: It is unfortunate that these things were not presented to the Council until today.

Mayor Ramsey: The changes are fairly basic - they are changing the timing of a requirement. I don't think they are complicated - I think it is just a question of do you agree with it or do you not agree with it? If you do not agree with it, change it back and vote. If you do, then keep the changes. I don't think you should hold the application in limbo if you know what you want to do. We don't have to take action on it tonight, but if we don't you would be delaying the site plan process.

Planning Commission Chair Etro: By including the condition regarding usage, the Planning Commission was recognizing that the need for additional parking would have to be addressed if the basement was used. We were trying to recognize that there are alternative ways to address the parking

Town Attorney Maureen Gilmore: I think that you also want to be careful though that you are not creating a loophole for a change in use for the first, second or third floor. Take a snapshot of what uses are in there today and the proposed bank use. That is what the 19 parking spaces have been calculated on- on those uses. But what I think that the Planning Commission was seeking to do and the Town Council has expressed - is that any change to the snapshot triggers a review of parking, so if the tenants that are on the 2nd or 3rd floor - if there is a change in that use - even if it is an additional by-right use which requires additional parking- you still want to have that coming through the system again to be evaluated. And that's the way it should happen but might not.

I have tried to combine them and it depends how specific you want to be in describing what is currently on the 1st and 2nd floor. I can see Councilperson Botsch's point that if you just say that it is general office use and that is the calculation that was used, then even if a different tenant comes in, we are still going to say it is general office use so that is not a change in use.

Councilperson Botsch - It is the basement that is the issue. I understand Rob's (Kinsley) calculations on the other floors. What we have said is we aren't counting the basement as general

office use because it is just used for storage.

Mayor Ramsey: His suggestion to me was specifically the demand that he must provide offsite parking if he were to use the basement. He was comfortable with reviewing the parking requirements he was not comfortable with saying he must produce an offsite parking agreement.

Planning Commission Chair Etro: we were just trying to limit the use of the basement and if they wanted to use it in a different way, they would have to address the parking. Our intent was not to be restrictive or change the use, except for the basement. If the parking is that is on site - the 19 spaces - really only serves the first, second and third floors - there aren't too many alternatives to how he is going to provide parking for basement use. We were identifying, and in fact had the discussion in open session with the property owner, that there may some opportunities for shared parking with the Town lot.

Councilperson Botsch - I think it is clear you were trying to give the applicant a break. We weren't counting it as general office space because it doesn't generate any parking because no one works down there. The issue is if we approve this and he would use it as office space, I'm not sure we would have a leg to stand on.

Mayor Ramsey: The parking calculation was based on the first 3 floors and the applicant's assertion that it would not be used as office space, just storage. So if the property owner signs a lease to use it as office space, then it is a change in use.

Councilperson Botsch: I 'm not sure it is by our zoning laws.

Mayor Ramsey: Based on Rob's interpretation, the way he did parking calculations was that space was not contributing to the office space use, that was his assumption. It sounds like we are in agreement that if he does something down there were need to review the parking requirements. I don't understand what we are arguing about.

Councilperson Botsch: I agree with you but we need to put language in

Town Attorney Gilmore: It does say "expansion," too.

Councilperson Botsch: We can't just say "any change in use" and not define what we mean by use - we have to say any change from storage or conference room to general office use you will have to meet parking requirements. Clarkson has it (the language).

Councilperson Klipple: It was "the basement of the building may only be used for conference rooms or storage by the first, second or third floor tenants. If any other use takes place after approval of the site plan for this application, the applicant shall first demonstrate the parking requirements for the new or expanded uses are satisfied."

Town Attorney Gilmore: I think if you include both a change in use and expansion in the language then the requirements are satisfactorily set forth.

There was general consensus by the Council on the wording of condition #5.

The Council moved on to discussion of the lighting conditions.

Town Planner and Zoning Administrator Rob Kinsley said that the Planning Commission had arrived at the 20 foot candle limit because that was what the maximum was for the gas station under their special exception approval.

Vice Mayor Graham: Is that what would be lighting the ATM?

Councilperson Grafton Theodore: The canopy for the gas station is taller than what the canopy for the ATM will be.

Zoning Administrator Kinsley: So the impact of the canopy lighting of the gas station would be greater than the impact of the canopy at the bank

Councilperson Grafton Theodore noted that the canopy of the gas station is also reflective material and the material for the canopy at the bank would be of non-reflective material.

Mr. Kinsley: We also received a memorandum from Captain Noble of the Sheriff's office yesterday. Essentially the Sheriff's office is endorsing the applicant's request to allow them to use nighttime lighting for safety reasons.

Councilperson Heston: Could it the lighting be less foot candles because of the lower canopy - would it be more intense?

Planning Commission Chair Etro - I think there are 2 issues - one issue is the canopy and how bright that should be. The other issue is whether or how to light the night deposit box. Be sure you don't get them confused because the night deposit may or may not have to be lit - it doesn't have to be lit by overhead lighting - there are several different issues.

Councilperson Heston: I think with the lighting first of all, we do need to make sure it is a secure area for people to use but also I think we also have to exercise diligence in that we take the environment into account. We don't want to be adding to light pollution in the Town. Even though there are already street lights, we don't want to add to them. If we utilize those street lights to help with the lighting, then we could minimize the lighting that the bank may have to use. It might also help them with their electrical bill.

Mayor Ramsey: There is street lighting basically in each corner of the property already. There is also a street light on the Town lot that illuminates the back of the parking lot.

Vice Mayor Graham: What were you ultimately getting at for the night time lighting - what were you saying was appropriate?

Planning Commissioner Fredericks: Ten, measured at the usual distances. After operating hours, 5. Those are a property line measurement and were in line with County ordinances and anything else I was able to find, because as I said in my public comments, there is nothing from a Federal standpoint, and nothing from a Virginia state standpoint.

Councilperson Heston: The problem is measuring... which has always been the problem and determining what that is.

Mayor Ramsey: Is the Planning Commission intending to require a photometric plan as part of the site plan approval process?

Planning Commission Chair Etro: I think what we discussed is having a lighting plan. As the recommended plat that you have includes the 2 lights at the side of the building that are typically not on but are on the plat, we recommended the approval of those two lights.

Councilperson Heston: So do we want to reduce the amount or not?

Vice Mayor Graham: How did you come up with 20 foot candles?

Planning Commission Chair Etro: It was the recommendation of the Zoning Administrator based on previous applications.

Councilperson Grafton Theodore: My personal comment is that it is a safety issue and I'd rather be safe than sorry. There has been several robberies on this street, and on one street down, all of them have been hit, even the Town office has been hit. I don't see what is the drawback in having it lighter and reducing it if it is too light or reviewing it after 90 days.

Mayor Ramsey: I don't think there is a method for us to come back later and reduce it.

Councilperson Grafton Theodore: But then if we shoot too dim and someone gets accosted or assaulted, I feel like that is irresponsible as the governing body of this town.

Councilperson Heston: Well, we have to have a happy medium- enough lighting for security and business versus affecting other residents because I have had a neighbor contact me and they said

that they were concerned about the lighting and so as the governing body it is our due diligence to make sure that we have an even balance for both the businesses and the residences.

Councilperson Botsch: I agree but the problem here is no one knows how much light is enough. We had a public hearing. Nobody in the neighborhood was concerned about the lighting but at the time the condition was that it would be turned off at night, right?

Do we have a sketch of the canopies and where the lights are? Is there any way we can give general guidelines to the Planning Commission as far as the site plan? But I also don't want to pick a number out of a hat.

Mayor Ramsey: 20 had precedence because of the way we handled the gas station.

Councilperson Heston: I think it depends on the area.

Mayor Ramsey: May I suggest that we add a sentence to condition #1 that says "lighting during non operating hours shall be minimized to the extent that still satisfies safety requirements" and then leave it to the Planning Commission to apply that condition during their site plan approval.

Councilperson Botsch: Yes I like that.

Councilperson Heston: Will this include the night deposit or are we going to address that separately? Are we going to accept canopy lighting for the night deposit box or are we going to entertain alternative lighting to minimize the impact?

Councilperson Botsch and Mayor Ramsey were in favor of leaving the issue up to the Planning Commission's determination.

Town Attorney Gilmore: It reduces the Town's discretion because at the site plan stage that is a non-legislative function. As long as the site plan conforms to the list of things then it has to be approved. So while I see the value in having a more in depth discussion of the alternatives available and coming up with a solution at that point, it does leave that open to "well, we are going with the 20 foot candles and we are complying with that condition." If you are going to allow lighting at night, because of the security issue, and if you are comfortable with the 20 foot candles, which is what the gas station has, then the condition could say that it has to be reduced during off hours.

Planning Commission Chair Etro: I am not diminishing the safety issue of the night deposit box whatsoever. I am looking for some creative way to address that issue and not create an attractive nuisance that will impact the neighbors. And that is what we have not seen from the applicant.

Mayor Ramsey: So I would like to make the suggestion to move our debate back to timing.

Councilperson Botsch: Do we want to do a straw poll to see where we are - special exception, site plan, or occupancy?

A straw poll was taken of Council members and consensus was site plan.

Vice Mayor Graham: I'm sorry people, but we lose jurisdiction if we go with site plan.

Town Attorney Gilmore: What happens is that is just when he has to have it recorded and given to you by, so that is... and one of the things I added at the end which should be done anyway is that these conditions are incorporated into the site plan review and approval process.

Vice Mayor Graham: What remedy do we have, Maureen, if the applicant doesn't apply for the easement?

Maureen: In condition #9? You can bring an action to enforce the condition. It is a condition of the special exception so it would be a zoning violation not to comply with it. In your administration and enforcement there is a general section that says, the Zoning Administrator has all things open - remedies available including injunction. You could get a mandatory injunction. I understand you are likely to prevail on the permit. It is not really a contract but there are

conditions that can be enforced. They are not like proffers.

Mayor Ramsey: We are now on condition #10. Maureen has said that the BLA condition needs to be no later than site plan.

Town Attorney Gilmore: Because you have an existing non-conformity. As long as it is submitted by the site plan stage, you are saying that due process has begun. Again, I think we are dealing with an unknown - we don't know how long it will take the lender to approve it. I would like to see it done by the special exception stage.

Councilperson Botsch: What concerns you about pushing it to site plan?

Town Attorney Gilmore: Will there be another delay and will there be an allegation on the part of the owner that you don't have the discretion to hold back on it because it is not on your site plan - in your ordinance it isn't one of the conditions of the site plan.

Mayor Ramsey: But this is a non-conforming structure under the current lot configuration. Is the canopy considered an expansion of the non-conforming structure?

Town Attorney Gilmore: I guess we would have to look at the definition of the zoning ordinance. Is that something you want us to research? I don't feel comfortable determining that right now. This is the first time I have seen the lot line issue.

Mayor Ramsey: They won't be able to perform any additional exterior work until they get their site plan approved. And we issue a zoning permit at site plan approval.

Town Attorney Gilmore: Then that would be acceptable having it at site plan stage.

Councilperson Botsch: So Maureen, you are certain that we would have all the leverage at site plan that we would have at special exception?

Town Attorney Gilmore: Again that's why condition #13 becomes even more important. #13 being that these conditions must be incorporated into site plan.

A straw poll was taken and again the consensus of the Town Council members was in favor of site plan.

The Council returned to discussion of the lighting issues. A straw poll was taken as to whether the Town Council should come up with a specific lighting measurement or give general guidelines to the Planning Commission to make that determination.

The issue was deadlocked after the initial straw poll.

Councilperson Botsch: Why don't we discuss this? My thinking as to giving general guidelines is that I am not very comfortable with that but I don't think any of us have a clue as to what candle is appropriate.

Mayor Ramsey: I just feel like we want to provide as much certainty as possible. You are dealing with subjectivity here

The Council reviewed Mr. Frederick's research findings from his statement earlier in the evening.

Mayor Ramsey: How about the wording "no greater than 10 foot candles at night, 20 during operating hours and they can get a photometric plan that demonstrates that and then they can focus their discussions on other areas that need work.

The Town Council members reached a consensus that this language was acceptable on a second straw poll.

The condition now reads: "Maximum illumination during non-operating hours shall not exceed 10 foot candles as measured horizontally at grade level. During non-operating hours, illumination shall be limited to the night deposit box and ATM."

The Town Council recessed for five minutes so that Zoning Administrator Rob Kinsley could prepare a clean copy of the changes to the conditions.

Mayor Ramsey called the meeting to order. "I would entertain a motion to skip all reports as well as review of the Town Park Master Plan. We should have Dave Bowers from Stantec discuss the Main Street enhancement project and we do have the Town Attorney here to give us an update on the Western Loudoun Sheriff Substation. Is there any objection?"

There was none.

### **IN RE: PROPOSED LEASE AGREEMENT FOR SPRINT WIRELESS**

Town Administrator John Barkley: We are just asking Mr. Mayor for Council to do the same thing it did with the last T-Mobile lease agreement and allow the Mayor and Town Attorney to negotiate the lease agreement with Sprint and the Mayor to sign upon Attorney approval. We have received a draft agreement and it deviates a little bit from the template that we used from the original Verizon lease, with the appropriate escalations included for that endorsement by the Town Council as we did with T-Mobile.

Mayor Ramsey:: So we are seeking the same financial terms as we did with T-Mobile?

Town Attorney Gilmore: Actually, Sprint has offered a 4 percent increase per year.

Mayor Ramsey: Are they seeking to get the lease agreement done before they go to the County?

Town Attorney Gilmore: Since you are recommending that they get County zoning approval before we sign a lease agreement with them, this is really not imminent. Why don't we wait until circumstances develop more before I seek any authority from the Council?

### **IN RE: MAIN STREET ENHANCEMENT PROJECT**

Town Administrator Barkley: I have a resolution for the Town Council to consider this evening concerning having the Town go back to VDOT and requesting an amendment to our Phase 1 application for enhancement grant funding. In the midst of our consultation with our new Town engineer, we have found a few problems with the original application for grant funding and we have decided that we want to recommend to the Town Council that we put in for another round of funding. Our deadline unfortunately is December 1st. All we need for practical purposes is for the Town Council to approve a resolution allowing us to go forward, for the staff to go forward for an application for further grant funding which based on some of the storm water elements we are dealing with as well as the easements issues... as much as we were approved in for 2007 - roughly 300-400K in additional grant funding can be requested. We will come up with a number before December 1st as recommended by Mr. Bowers and we will move forward from there.

Mayor Ramsey: At this point, Stantec has determined that certain estimates were left out - easements, retaining walls and the storm water issue seems more complicated than what was designed by Anderson.

Mr. Dave Bowers: If we have to pay for all the easements that are shown on the original application, 150,000. We are 60,000 short on storm sewer and then retaining walls are about 45,000.

Mayor Ramsy: So what the engineer and the staff are recommending is that we seek to amend our grant application to increase the total amount of the grant. If we do so though, we need to pass a resolution like this saying that will still pay the 20 percent if they amend it and we will

still be on the hook if we decide to cancel the project. So that is what the resolution before you. The issue is if we do add 300,000 to the project funds, that is essentially committing us to the additional 60,000. Our budgeted portion of the project will need to increase if we seek more from the State.

Mr. Bowers: This year our potential to gain the money is greater as the State is only granting money to existing projects rather than new projects.

Mayor Ramsey: We have the capital reserve funds. The risk is that the at some point the costs get so high that we decide to cancel the project

Councilperson Botsch: The way state budgets are, if we can get grant funding we should do it. I make a motion that we approve Resolution 2010-06 – Main Street enhancement project endorsement.

Councilperson Heston seconded his motion/

**The motion carried 4-1-0 with Mary Anne Graham voting no.**

### **IN RE: WESTERN LOUDOUN SHERIFF'S SUBSTATION**

Town Attorney Maureen Gilmore met with the Assistant County Attorney last Tuesday.

According to Ms. Gilmore, he seemed to be amenable to the idea of a fee simple conveyance of the well site and the land needed to comply with zoning requirements if the Town were able to agree with reservations such as if well is not developed within a certain number of years than the property would revert back to the County. "He suggested 5 but I didn't want to commit the town to a number until you give me an idea and of course we still don't have a site yet. It is hard to judge how long it would take to bring it into development and the system. I think what you would want to do, my recommendation is that you secure it get it deeded over to you, bring it into Town and start doing something about it," Ms. Gilmore said.

Mayor Ramsey: I am not sure that we would develop that well outside of Town anyway and so if they can be induced to see it that way... I think that their concern is that they stay outside of Town and they may need alternative water sources. If we bring them in Town we are obligated to serve that property.

Attorney Gilmore: Would your suggestion be that the reservation would expire if the entire property were not brought into Town?

Mayor Ramsey: They want five years but I don't think they care about 5 years if they stay outside of Town. If we get the property into Town then we get the fee simple right away at the time of the BLA and there is no sun setting or anything else. We are obligated to serve that property anyway and they are not allowed to develop alternative water systems anyway. We would word it in a way that says if you don't get brought into Town these guidelines apply. If you do get into Town then the property transfers fee simple because at that point we are obligated to serve them and they can't do their own well so it is useless to them. What the number of years is I don't know.

Vice Mayor Graham: I suggest ten

Attorney Gilmore: 10 is a popular number. There seems to be a desire to keep any land use process tasks out of the water/sewer agreement. I think there were enough explanations given, I think I have persuaded them to take the special exception language out of it although when I asked while it was there, their responses was "someone told me to out that in there, I am not sure why." The Zoning Administrator can't make a predetermination like that. If the property is brought into Town and the Town gets its well lot, then it is not going to matter anyway because it

will fall into Town zoning. Citing some of the more detailed revisions about who has responsibility for the lines that serve just their facility, because remember we had originally written it so they were responsible for maintaining all those - what we would refer to as private laterals even though they serve the public facility they are still private - they are maintained or operated by the Town. In distinguishing that from any mains basically that run through Town owned and are Town maintained lines so there is a better understanding of that.

Mayor Ramsey: We still want them to build their laterals to be upgradable to a main.

Attorney Gilmore: And we have that

Councilperson Heston: Is there a timeframe for the build-out?

Town Administrator John Barkley: 18 months is last I heard.

Attorney Gilmore: We haven't heard anything more on a well site?

Mr. Barkley: Nothing definitive other than they moved it from the northwest quadrant to the northeast quadrant.

Mayor Ramsey: We don't want to let it drag too much with just the lawyers because these engineering issues of "where is the well site," I'm not sure they're being worked diligently by the County while the lawyers are talking and so if we have another meeting with the decision makers we can prod them to resume due diligence in finding us a site because I suspect that they have sort of suspended that work.

Councilperson Heston: My concern would be if they are moving that quickly on the project to completion, whether the Town would be ready to put into place a BLA. That is something that we diligently need to look through and plan.

Mayor Ramsey reviewed the conditions that the Council had made during the evening's meeting.

Attorney Gilmore: On condition #1 just to make it clear - insert "during operating hours." I think that might carry through just to make it clear - just to make the distinction. I also added a sentence at the end. The applicant shall submit a lighting plan as part of the site plan application for review and approval by the Planning Commission. I think that may carry through your desire that the Planning Commission review the lighting plan and you want to give them some guidelines. It currently reads: "the maximum average illumination." After "illumination" I inserted "during operating hours" and then continue...I am just distinguishing between operating and non-operating hours. On #5 did you decide that you were going to look at the uses at the time of site plan approval? That's your snapshot or at the time of special exception?

I said special exception application. "After approval of this application"...covers the bases and then I also added a last line "the applicant shall first demonstrate that parking requirements for the proposed new or expanded uses are satisfied" - so insert "proposed."

Mayor Ramsey: I'll recap the changes so you know what you're voting on. Second sentence of item #1 - the maximum average illumination during operating hours shall not exceed 20 foot candles and then insert the new sentence: "the applicant shall submit a lighting plan as part of the site plan application for review and approval." In the second sentence we are deleting the words "site plan" and instead using "after the approval of this application."

In the last clause change it to "proposed" new or expanded uses

On condition #9, it should read, "within 90 days of the **TOWN'S** request."

On condition #10 - we are striking the second sentence.

If everyone is prepared, I'll seek a motion.

Councilperson Botsch: I move that we approve the Special Exception application for the Bank of

Clarke County (SPEX 2010-02) according to the proposed conditions as amended by the Town Council on November 18, 2010.

Councilperson Klipple seconded his motion.

**The motion passed unanimously 5-0-0.**

**IN RE: APPROVAL OF MINUTES Town Council Meeting September 16, 2010**

Vice Mayor Graham moved that the minutes be approved as amended.

Councilperson Heston seconded her motion.

**The motion passed 5-0-0.**

**IN RE: APPROVAL OF MINUTES October 21, 2010 Public Hearing**

Vice Mayor Graham moved to approve the minutes as amended.

Councilperson Heston seconded her motion.

**The motion passed 3-0-2 with Councilmembers Klipple and Botsch abstaining.**

**IN RE: APPROVAL OF MINUTES October 21, 2010 Town Council Meeting**

Vice Mayor Graham moved to approve the minutes as amended with minor changes.

Councilperson Heston seconded her motion.

**The motion passed 3-0-2 with Councilmembers Klipple and Botsch abstaining.**

**IN RE: COUNCIL COMMENTS**

Councilperson Botsch: After seeing how we went through the special exception tonight, I really think we should think twice next time before we have a joint public hearing. I felt like this application the whole way through wasn't as well prepared as it should have been and it showed tonight. Some of that was timing. I think if it was spread out a little bit more we would have been better prepared for this and I also think that we made significant amounts of changes particularly with the overnight lighting. I know no one commented on that but the original conditions on that special exception had the lights off all night.

**IN RE: ADJOURNMENT**

With no further comments or business, Mayor Ramsey adjourned the meeting.

Respectfully submitted,

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Scott Ramsey, Mayor

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Susanne Kahler, Recording Secretary

