

**MINUTES
PLANNING COMMISSION REGULAR MEETING
FEBRUARY 18, 2016, 7:00 PM
TOWN HALL COUNCIL CHAMBERS**

The Regular Meeting of the Purcellville Planning Commission convened at 7:00 PM and the following attended:

PRESENT: Doug McCollum, Chairman
Theresa Stein, Vice Chair
Chris Bledsoe, Planning Commissioner
Chip Paciulli, Planning Commissioner
EJ Van Istendal, Planning Commissioner
Nedim Ogelman, Planning Commissioner
Tip Stinnette, Planning Commissioner

ABSENT: None

STAFF: Daniel Galindo, Senior Planner
Tucker Keller, Planning and Zoning Technician
MJ Elliott, Planning Intern

CALL TO ORDER AND PLEDGE OF ALLEGIANCE:

The regular meeting of the Planning Commission was called to order by Chairman McCollum at 7:00 PM. The Pledge of Allegiance followed.

AGENDA AMENDMENTS:

None

COMMISSIONER DISCLOSURES:

None

PUBLIC HEARINGS:

None

PRESENTATIONS:

- a. Conflicts of Interest – Town Attorney, Sally Hankins

Sally Hankins provided an overview/presentation on the Conflicts of Interest Act.

DISCUSSION ITEMS:

a) Conflicts of Interest

Commissioner Paciulli asked Sally Hankins about modifying an ordinance based on a single entity. Sally Hankins stated that her opinion is that it is legally permissible to take an application from a single, self-interested person who wants to do something for their property that only benefits them however makes a town-wide impact. Sally Hankins added that the body considering the application must be reviewing it from the public's view.

b) February 6th Comprehensive Plan Update Meetings

Chairman McCollum stated he appreciated the attendance of the Commissioners.

Commissioner Bledsoe noted the intent was to take pictures of the postings on the wall for the website and inquired on the status of that. Daniel Galindo stated that the pictures should be posted tomorrow.

Commissioner Van Istendal requested pictures and videos be sent to him for the drop box. Commissioner Van Istendal asked staff about preliminary data from coding on the responses written on the wall or feedback for the video.

Daniel Galindo added that the Town will have a table at the Loudoun Grown Expo and invited the Commissioners to attend and talk with people about the comprehensive plan.

The Commissioners further discussed communication methods including water bills, the website, the Loudoun Grown Expo, HOA's, Purcellville Business Association, newspapers, the Rotary and Ruritan, message boards, and a questionnaire/survey as well as feedback. Chairman McCollum talked further about an electronic survey and the ease with tabulating the results and providing reports. Commissioner Bledsoe volunteered to touch base with HOA's, and Chairman McCollum added that the Planning Commission could use their mailing list and to find out when the next HOA meeting is so a representative of the Planning Commissioner could attend and speak.

Daniel Galindo added he would talk with Emily Crowe about history on participation and check on including a notice in the next water bill. Commissioner Stinnette added that the girl scouts and boy scouts may be able to help out. Daniel Galindo requested that for the next meeting the Commissioners come up with ideas about how to get information out to the public and to add this item to the next meeting agenda for review with the group. Daniel Galindo will provide a preliminary report on the responses received by the end of the month for review at the next meeting, and he added he would share the location and format of the meeting on March 19 as soon as available.

ACTION ITEMS:

None

INFORMATION ITEMS:

None

CITIZEN COMMENTS:

None

CHAIRMAN'S COMMENTS & COUNCIL REPRESENTATIVE'S REPORT:

None

PLANNING COMMISSIONERS' COMMENTS:

Commissioner Paciulli talked about areas of the zoning ordinance that are lacking and referenced the stream under Hirst Road and the ordinance not protecting it; he also talked about looking at the tree ordinance. Daniel Galindo added that a revised flood plain district will be coming forward in preparation for the update of the flood insurance maps for the County, and added that this will cover most of the area Commissioner Paciulli referenced.

Commissioner Bledsoe referenced the Nature Generation which partners with the school and the school's environmental sciences group that may be interested in doing some research for ways to protect the area. He suggested they could provide recommendations to the staff to discuss with the Planning Commission, and he will contact them before the next meeting to determine their interest level.

Daniel Galindo talked about the list of priorities on the table for the Planning Commission and will bring it back at the next meeting for review.

Daniel Galindo noted that a copy of the revised zoning ordinance was provided to each of the Commissioners, and once the official update is received, it will be provided.

Chairman McCollum talked about the Tree and Beautification Committee and added that Town Council is looking to revitalize that committee.

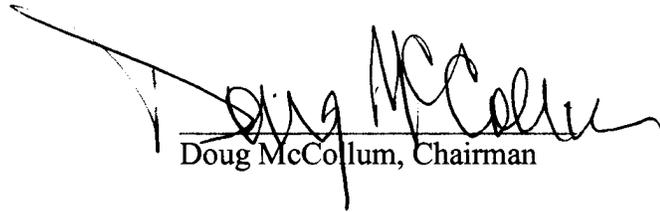
APPROVAL OF MINUTES:

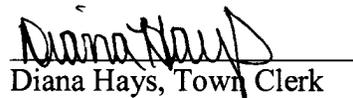
- a) February 4, 2016 Regular Meeting and Work Session

Commissioner Bledsoe made a motion that the Planning Commission approve the minutes for February 4, 2016 wave reading. The motion was seconded by Commissioner Stinnette and approved unanimously.

ADJOURNMENT:

With no further business, Commissioner Ogelman made a motion to adjourn the meeting at 8:46 PM. The motion was seconded by Commissioner Van Istandal and approved unanimously.


Doug McCollum, Chairman


Diana Hays, Town Clerk

Conflict of Interest Act

Presentation to the Town Planning Commission

February 18, 2016

Seek Legal Advice

- The Conflict of Interest Act is a very detailed chapter of the Virginia Code, containing many prohibitions that exist only under specific facts. The fact-dependent nature of the Conflict of Interest Act can cause seemingly similar cases to have different outcomes under the Act.
- Because of this, I encourage you to seek an opinion from the Town Attorney when you encounter a circumstance that resembles any of the circumstances I am about to describe. Popular opinion about when a Conflict arises often proves to be incorrect when the facts are analyzed under the Conflict of Interest Act.
- My goal tonight is to provide you with an overview of the Conflict of Interest Act, so that you will know when to seek legal counsel about the specific facts of your case.

Prohibitions

COIA addresses:

- Prohibited Conduct
- Prohibited Contracts
- Prohibited "Personal Interest" in a transaction

Prohibited Conduct

Va. Code §2.2-3103

- Use for his own economic benefit or that of another party **confidential information** that he has acquired by reason of his public position and which is not available to the public
- Accept any money, loan, gift, favor, service, or business or professional opportunity **that a reasonable person would consider influential** in the performance of official duties. [This provision does not apply to political contributions.] Factors a "reasonable person" might consider: timing of gift, nature of gift, interests of the gift giver, relationship between planning commissioner and donor
- Accept any **honoraria for any appearance, speech, or article** in which you are providing expertise or opinions related to your role as Planning Commissioner
- Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain.
- Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law

Prohibited Conduct

Effective January 1, 2016

- No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of \$100 or any combination of gifts with an **aggregate value** in excess of \$100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a **lobbyist** registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a **lobbyist's principal** as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a **party to a contract** with the local agency of which he is an officer or an employee. Gifts with a value of less than \$20 are not subject to aggregation for purposes of this prohibition. Va. Code 2.2-3103.1
- Notwithstanding the provision above, such officer or a member of his immediate family may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess of \$100 when such gift is accepted or received while in attendance at a **widely attended event and is associated with the event**. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117. "Widely attended event" is defined to mean one at which at least 25 persons have been invited to attend, or there is a reasonable expectation that at least 25 persons will attend, and the event is open to persons who share a common interest, or who belong to a public/civic/charitable/professional organization. Example: At a black-tie dinner for the association of engineers, you win a drawing for an IPAD. COIA would allow you to keep the IPAD, but you must report the IPAD on your Statement of Economic Interests. Va. Code 2.2-3103.1
- If you accept a gift or gifts in excess of \$100, you will not be in violation of the above provisions if you return the gift, donate the gift, or pay for the gift. 2.2-3103.2

Advice on Prohibited Conduct

- View all personal gifts, opportunities, and interactions through the eyes of a "reasonable person."
- It does not matter what you "know" about yourself and your integrity; what matters is how an outsider is likely to see things.
- If any of your personal friends are lobbyists, or have jobs at a company that contracts with local government, then your position as a Planning Commissioner could affect how you are allowed to interact with that personal friend.

Reporting Gifts

- If you or a member of your immediate family receives a single “intangible gift” valued at more than \$50, or a combination of “intangible gifts” from a single source valued at more than \$50, then you must report the gift(s), the identity of the gift-giver, and the value of the gift(s) on Schedule E of the Disclosure of Economic Interest Form.
- If you or a member of your immediate family receives a “tangible gift” of any value, then you must report the gift(s), the identity of the gift-giver, and the value of the gift(s) on Schedule E of the Disclosure of Economic Interest Form.

Prohibited Contracts

Va. Code § 2.2-3109

- In broad terms, a conflict of interest can arise if you have a personal interest in a contract of the Town, either because you personally contracted with the Town, or because you are employed by an entity that contracted with the Town.
- Specifically, the Code prohibits an officer of a local governmental agency from having a personal interest in a contract of *that agency*. For example, if the planning commission were to fall within the definition of a “governmental agency,” then the Conflict of Interest Act would allow a planning commissioner to have a personal interest in a contract of the Town, so long as such contract was not a contract touching upon the planning commission and such contract was competitively procured.
- Given the nuances governing prohibited contracts, and the numerous exceptions set forth in Va. Code § 2.2-3110, my advice is to seek legal counsel anytime you or your employer, or your spouse or your spouse’s employer, is seeking to enter into an agreement or contract with the Town or any of the Town’s departments, committees, commissions, or boards.

Personal Interest in a Transaction

Va. Code §2.2-3112

- The Conflict of Interest Act prescribes certain conduct by officers who have a personal interest in the transaction pending before them.
- A planning commissioner has a “personal interest in a transaction” when he, or a member of his immediate family, (i) is the subject of the matter before the planning commission, or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the planning commission’s action on the matter.
- A transaction includes any matter being considered by the planning commission, on which official action is either contemplated, or taken.

Participation Despite Personal Interest

An officer who has a personal interest in a transaction may nonetheless participate in the transaction if he declares the “personal interest” and:

1. His personal interest stems from his membership in a group of three or more persons, and it is the group that is directly affected.
2. His personal interest stems from his employment with a company. For example, if an applicant before the planning commission is a client of a company that also employs a planning commissioner.
3. His personal interest stems from being a resident of the Town, who will be affected in the same manner as the public.

Personal Interest in a Transaction

Va. Code §2.2-3112

- If one of the three criteria are not met that allow for participation, then the officer must disqualify himself from participating in the transaction.
- Disqualification means that the officer may not discuss the matter with other Town officers or employees at any time, may not vote on the matter, and may not attend any closed meeting to discuss the matter.

Perception

While the Act may not disqualify an Officer of the Town from participating in a transaction, the Officer may nonetheless elect to recuse himself. The Attorney General often closes his conflict of interest act opinions with a statement concerning the purpose of the Act, reminding the recipient that there is a personal decision to be made. He writes:

Our system of government is dependent in large part on its citizens' maintaining the highest trust in their public officials. The conduct and character of public officials is of particular concern to state and local governments, because it is chiefly through that conduct and character that the government's reputation is derived. The purpose of the conflict of interest law is to assure the citizens of the Commonwealth that the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts. To this end, the Act defines certain standards or types of conduct that clearly are improper. The law cannot, however, protect against all appearances of conflict. It is incumbent on you, therefore, to determine whether your participation in the [transaction] will present an appearance of impropriety that you find unacceptable and that will affect the confidence of the public in your ability to perform your duties impartially.

COI Adv. Op. No. 94-A15 (1994).

Violation of COIA; Penalties

Va. Code §§2.2-3121; 2.2-3124

- A person who knowingly violates COIA is guilty of a **Class 1 misdemeanor** (there are higher penalties for violations by members of Town Council.) Class 1 misdemeanors can be punished by confinement in jail for not more than twelve months and a fine of not more than \$2,500.
- A local officer shall not be prosecuted for a knowing violation if the alleged violation resulted from his good faith reliance on a written opinion of the Commonwealth Attorney, the Town Attorney, or the State Conflict of Interest Advisory Council. As of January 1, 2016, these written opinions are public records and shall be released to the public upon request.
- If violation of COIA involves improperly accepting a gift, then in addition to any fine associated with the Class 1 misdemeanor, the violator shall have to pay a fine equal to the value of the gift, and shall have to forfeit the gift.
- Knowing violation of COIA constitutes **malfeasance in office** and, if convicted, the court may order the violator to forfeit his public office.

Ask Your Town Attorney!

I am at your service. I am happy to give advice and issue opinions concerning your particular facts. By obtaining an opinion, Town officers protect themselves from prosecution under COIA.