

**Town of Bluefield
Town Council
Joint Public Hearing
June 6, 2016**

The Bluefield, Virginia Town Council held a Joint Public Hearing on Monday, June 6, 2016 at 6:00 p.m. to receive input on a proposed amendment to the conditional use permit for the manufactured housing subdivision for Woodbridge Court located on Thistle Street in Bluefield, Virginia.

TOWN COUNCIL PRESENT

Don Harris, Mayor
Anglis Trigg, Jr., Councilmember
Donnie Linkous, Councilmember
Lee Riffe, Councilmember

ALSO PRESENT

Mike Watson, Town Manager
Matt Freedman, Town Attorney
Lesley Compton, Town Clerk
Kris Williams, Zoning Administrator
Chad Lambert, Building Administrator
Brittnie Hubbard, Bldg & Zoning Adm.Asst.
5 Members of Public

ABSENT

Don Scott, Planning Comm. Member
Kim Hernandez, Executive Asst
Shane Gunter, Police Chief
Billie Roberts, Comm. Dev. Coordinator
Jimmy Jones, Vice-Mayor
Steve Danko, Councilmember

PLANNING COMMISSION PRESENT

Don Whitt-Secretary Planning Comm.
David Smith, Vice-Chair Planning Comm.
Harry Kammer, Planning Comm. Member
Barry Perdue, Planning Comm. Member
Frank Britton, Chairman Planning Comm.

CALL TO ORDER

Mayor Harris opened the Joint Public Hearing at 6:09 p.m.

INVOCATION AND PLEDGE

Chad Lambert led the Invocation.

Mayor Harris led the pledge of allegiance.

JOINT PUBLIC HEARING

Mayor Harris welcomed everyone to the meeting and stated that our attorney would be reading the notice and would also be reading a letter for the record. He stated

after the Joint Public Hearing was closed, it would be turned over to the Planning Commission Chairman.

Mr. Freedman read the following Legal Notice that appeared in the Bluefield Daily Telegraph on Friday, May 20, 2016 and Friday, May 27, 2016.

Notice is hereby given that the Bluefield, Virginia Town Council and Planning Commission will hold a **JOINT PUBLIC HEARING** on Monday, June 6, 2016 at 6:00 p.m. in the Council Chambers of the Municipal Building at 112 Huffard Drive, Bluefield, Virginia. This **JOINT PUBLIC HEARING** is being held to receive input on a proposed amendment to the conditional use permit for the manufactured housing subdivision for Woodbridge Court located on Thistle Street in Bluefield, Virginia.

A copy of the conditional use permit amendment application and related materials may be reviewed at the Office of the Zoning Administrator during regular business hours, Monday thru Friday, 8:00 a.m. to 5:00 p.m. All interested parties are invited to appear and present their views at the **JOINT PUBLIC HEARING**. Questions and/or comments may be referred to Kris Williams, Zoning Administrator at 276-322-4626.

Mr. Freedman read the following letter received by Kris Williams dated June 3, 2016 from Woods Rogers Law Firm regarding the Joint Public Hearing and Conditional Use Permit to be including in the minutes:



MARK D. LOFTIS
(540) 983-7618
loftis@woodsrogers.com

June 3, 2016

VIA E-MAIL – williams@bluefieldva.org

COPY ALSO SENT VIA FACSIMILE – (276) 326-1204

Mr. Kris Williams
Zoning Administrator
Town of Bluefield
112 Huffard Drive
Bluefield, VA 24605-4026

**Re: Conditional Use Permit Application – Greenwood Development, LLC
Joint Public Hearing Scheduled for Monday, June 6, 2016**

Dear Mr. Williams:

This firm represents Norfolk Southern Railway Company ("NSRC"). We are writing in response to the Notice of Joint Public Hearing dated May 18, 2016, advising that the Bluefield Town Council and Planning Commission will hold a joint public hearing on Monday, June 6, 2016 to "receive input on a proposed amendment to the conditional use permit for the manufactured housing subdivision for Woodbridge Court located on Thistle Street in Bluefield, Virginia."

NSRC opposes the proposed amendment. As we understand it, the initial granting of Mr. Chopra's/Greenwood Development, LLC's rezoning request and conditional use permit for use of the property as a manufactured housing subdivision was subject to the condition that Mr. Chopra and Greenwood Development, LLC obtain permission/consent from NSRC to cross over NSRC's railroad right-of-way, and across a small wooden bridge located on NSRC's railroad right-of-way, to access the property. NSRC *has not* granted any such permission or license to Mr. Chopra or Greenwood Development, LLC, and presently has no intention of granting them any right of access across its railroad right-of-way. In fact, NSRC has repeatedly advised Mr. Chopra and Greenwood Development, LLC, through their legal counsel, that they have no legal rights to cross over NSRC's railroad right-of-way. Because Mr. Chopra and Greenwood Development, LLC have ignored these notices, and continue to trespass on NSRC's railroad right-of-way, NSRC has initiated legal action against Mr. Chopra and Greenwood Development, LLC in the Circuit Court of Tazewell County, Virginia, in a matter styled *Norfolk Southern Ry. Co. v. Greenwood Development, LLC and Rajeev Chopra*, Case No. CL15-1475.

It appears that Greenwood Development, LLC is now asking the Town to remove the condition that Greenwood Development, LLC obtain permission from NSRC to access the property by crossing over NSRC's right-of-way and the small wooden bridge. However, the

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(#1934142-1, 069557-00112-01)

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Conditional Use Permit Application plainly indicates that Mr. Chopra and Greenwood Development, LLC intend to continue accessing their property across NSRC's railroad right-of-way. ("I want [to] use the existing bridge"), despite the fact that NSRC has prohibited such use and has instituted legal action to prevent such use of its railroad right-of-way. Should the Town proceed to approve the requested amendment, NSRC will be forced to seek immediate injunctive relief in light of the substantial safety hazards that NSRC believes such use would create and the burdens it would impose on NSRC's railroad operations.

We are enclosing copies of correspondence sent to Mr. Chopra's attorneys, which clearly set forth NSRC's position regarding Mr. Chopra's claimed right of access, and which provide additional background information.

NSRC is confident that there is no legal right of access across its railroad right-of-way. But even if Mr. Chopra and Greenwood Development, LLC could somehow establish some right of access based on historical use that right would be limited and could not be expanded to encompass the increased traffic and burden from a manufactured housing subdivision. The type and volume of traffic incident to a manufactured housing subdivision is simply incompatible with railroad operations. Because NSRC only received the notice from the Town a few days ago, it has not had sufficient time to conduct a full safety review. But NSRC believes there is insufficient clearance from its tracks and trains for manufactured homes to be moved along and across the railroad-right-of way, and such use would therefore create substantial safety hazards. The weight of such large structures crossing the right-of-way, combined with the increase in car and truck traffic incident to a housing subdivision, would likely degrade and damage the right-of-way, increasing the likelihood of resulting track damage. Indeed, when Mr. Chopra and his counsel initially approached NSRC about the possibility of entering into some form of agreement for access across the NSRC right-of-way, these safety and operational considerations led NSRC to advise Mr. Chopra and his legal counsel that NSRC would not be willing to entertain granting any easement, license or other right of access if Mr. Chopra intended to use his property for a housing subdivision.

Additionally, the Town should clearly understand that the wooden bridge which Mr. Chopra and Greenwood Development, LLC are proposing to use was not installed, controlled or maintained by NSRC and in fact is illegally located on NSRC's railroad right-of-way. NSRC does not maintain that bridge, has no obligation to maintain it, and will not maintain it. Significantly, the bridge that was in place at the time of Greenwood Development, LLC's initial application to the Town was washed away in a flood event in July 2015. Mr. Chopra – in defiance of an express prohibition by NSRC and despite a warning that any entry on NSRC's right-of-way would constitute a trespass – proceeded to enter on to NSRC's right-of-way and to replace the bridge. NSRC does not know whether Mr. Chopra obtained the necessary permits for the construction of the bridge; does not know what engineering analysis (if any) was performed; and has no knowledge of any details of the construction. It therefore has no confidence that the bridge which Mr. Chopra installed would be sufficient for the use that is being proposed.

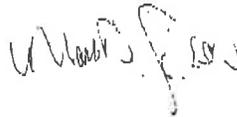
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NSRC has no interest in controlling the use that Mr. Chopra and Greenwood Development, LLC might make of their property. But NSRC assuredly does have an interest in controlling the use of its railroad right-of-way and in prohibiting uses that are inconsistent with railroad operations. The Conditional Use Permit Application plainly demonstrates that Mr. Chopra and Greenwood Development, LLC have the means, and the ability, to construct other access to the property. ("If we loose [sic] litigation then will construct new bridge.") Any approval of the proposed amendment, therefore, should be conditioned on construction of a new means of access and should prohibit the use of NSRC's railroad right-of-way as a means of access.

Please feel free to contact me with any questions.

Very truly yours,

WOODS ROGERS PLC



Mark D. Loftis

MDL:nes
Enclosures



Mayor Harris asked for any comments. He stated that the decision of the Planning Commission would be forthcoming whenever it would be convenient for them to meet and address the issues that would be raised tonight for and against Mr. Chopra's development.

Jerry Cameron, Greenwood Development stated that they came before Planning Commission some time ago to get a zoning permit and followed the procedure as they understood it and the project was started. He stated that Mr. Chopra had spent \$100's of \$1,000's of dollars and took a piece of land that was littered with junk and garbage and everything else and improved an investment. He stated that when Mr. Chopra went to put trailers in, the Town said no that he had not complied with the zoning permit/conditional use permit. He stated that in the discussions with Town Council and maybe Planning Commission, the right of way was discussed along with the excess across the railroad crossing. He stated that the Town at first said they wanted a survey done then said no, one was not needed then Mr. Chopra started and then had the flood. He stated that it was Mr. Chopra's position with representatives from the railroad there, he indicated that he needed to do something and the railroad told him to do whatever with the bridge that he wanted so he did and built the bridge at the cost to him because Aramark had their shop across there and he had to provide them with access to their property. He stated that he was not going to get into Right of Way with Woods/Rogers and that the letter that Mr. Freedman read was their position and they were in a lawsuit with Mr. Chopra on that and the Circuit Court of Tazewell County would decide. Who would get the right of way, no one knows he stated. He stated that Woods/Rogers said that the railroad would not allow anybody to use that Right of Way but for the last 70 years everybody in the Town of Bluefield has used it. He stated that if they would prevail he did not know but John Feutchenberger would address that and he was one of the attorneys representing Mr. Chopra and he felt like Mr. Feutchenberger would tell them that Mr. Chopra had a very strong position that he would prevail and it would end this problem. He stated that when the Town told them that they could not put anything over there because of this right of way issue and they have a conditional use permit that he looked into it and there was no Conditional Use Permit on file that he found, however, there was a zoning permit on file with no conditional uses. He stated that he was then told by a member of the Town that the minutes of the meeting fell back next to the Conditional Use Permit and showed that they were bound by what the minutes said. He stated that based upon that representation, they filed an amendment saying that they would put up a bond to show good faith to the Town that they would build a bridge because of the situation and that Mr. Chopra went out and spent more money from getting a right of way to go across property where he could build a bridge and have access if he could not use the current right of way and then they were told that was not good enough and that they would have to start all over. He stated that they did not think this was right and objected to this hearing. He stated that there was an Attorney General's opinion that he had provided to Mr. Freedman and in his opinion (but that he thought Mr. Freedman disagreed with his opinion) they would have a 3rd party decide on who was right on the interpretation but basically that opinion stated that once you put land thru the turmoil and going thru the zoning process and issued a zoning permit, you cannot put it thru it again because that was unjust and unfair and you could not change in the middle of

what you were doing. He stated that if there were something wrong with it, you could commend thru the Zoning and have the administrator of Planning & Zoning to go thru and come up with a solution but you do not go thru all of this again that he has already been thru once. He stated that it was not fair. He stated that there was a difference of opinion as to amending and there were 2 sections in the Town Code-first one stating before the permit is issued if you want to amend or pass or set it aside you have to take certain action and that was with relation to the zoning process not the zoning permit. He stated with relation to the permit it did not say that, it stated that you go to staff and they take care of it and that is the way it should be. He stated that you should not make a land owner of the Town of Bluefield who goes thru the process of getting all of the zoning and make him do it again. He asked how many times they were going to make him do it again and stated that each time it would be expensive. He stated that the Town has delayed Mr. Chopra over a month and he had people ready to go in there but the Town said no you do not have the right conditional use permit. He stated that they took issue with that and objected to this hearing and did not think that the Town should be able to change the rules. He stated that the permit was issued and that Town Code stated that the zoning permit would be filed with the circuit court (clerk of the Circuit Court) and would set forth the conditional uses. He stated that there was no such permit on record with the Circuit Court of Tazewell County and that they also tried to find one here and there was none. He stated that this hearing was inappropriate and they did not have any objection on working with the Town on remedying any problems that exist but to shut them down and to cost them \$10's of \$1,000s of dollars was not right. He stated that depending upon what happened that this may be a longer process than anyone wanted and that they did not want it to be a long process. He stated that the Chopra family had a lot of money in this development and he has been one of the best developers for the last several years. He stated that Rajeev took pieces of property that no one else would touch and developed them and created tax dollars and up until now there has been a good relationship. He stated that he did not know what had happened or why this position was taken but in the past they had been able to work thru their differences but there had been a line drawn in the sand and they could not get past that line and they think legally that the Town was not sound proof.

John Feutchenberger stated that he was a VA and WV attorney and resided at Box 6409, Princeton, WV. He stated that he was not trying to make this a court to decide questions of law but would like to point out several facts of things. He stated that this was the first he had heard of the letter of objection from the railroad and that it was not sent to Mr. Cameron, himself or Mr. Chopra and that it was very detailed concerning this hearing. He stated that it was interesting that the railroad would say that they have overwhelming power and would say that there has never been anything with large weight or heavy traffic that has not been on this bridge. He handed out the following picture/information:

Boston Public Library (/institutions/commonwealth:sf268508b) → Tichnor Brothers Postcard Collection (/collections/commonwealth:0p096w19r)

The Seyler Lumber Company's Plants, Bluefield, Virginia



Item Information

Title:

The Seyler Lumber Company's Plants, Bluefield, Virginia

Date:

[ca. 1930–1945]

Format:

Postcards/Cards (/search?f%5Bgenre_basic_ssim%5D%5B%5D=Cards)

Genre:

Postcards (/search?f%5Bgenre_specific_ssim%5D%5B%5D=Postcards)

Location:

Boston Public Library (/search?f%5Bphysical_location_ssim%5D%5B%5D=Boston+Public+Library)

He stated that the letter written from the railroad is open access to all of those industries that have existed since no later than 1945. He stated that the bridge may have been replaced but that the rights and usages have been the same. He stated that the bridge has been there and the property rights have existed and that they would be able to show in court that the right has created an ownership interest to the people who own the Greenwood Tract. He stated it was the same for all of the previous companies before them and for the railroad to say that Rajeev would owe $\frac{1}{4}$ of a million dollars for damage and another $\frac{1}{4}$ of a million dollars for punishment because he asked, he stated that Rajeev was a due diligent type of guy and when he looked at it and saw the bridge there and just as a matter of pure business he asked the railroad. At first he was told that the bridge was there and those were properties rights that existed for that area. He stated that if the railroad was successful in making the Planning Commission and Town council afraid of what they would incur, that Rajeev could not abandoned as a business man a $\frac{3}{4}$ of a million dollar investment and if the Town went along with it and made it happen then that would be considered under the law as taking "in other words"...if property that had a business use was taken away from him without compensation then there would have to be compensation somewhere. He stated that no one liked litigation. He stated that the current bridge was washed away and Mr. Chopra was told to replace it and as an emergency matter he did so and that Aramark (a Town paying citizen) could continue to get its trucks back and forth across the bridge. He stated that this was where they were. He stated that there was a bridge there and had been a bridge there for the last 100 years and now the railroad is suddenly saying that it is trespassing and a mobile home would not be allowed to be taken across it when huge logging trucks have been doing so for decades. He stated that it was "rederick" without any legal basis and that this lawsuit was brought back in December but they had been going back and forth between attorneys needing more time. He stated that no one considered litigation lightly and that it was a last resort. He stated that Mr. Chopra tried not to litigate but that the railroad wanted to be a "dog in the manger" and pretend like that the bridge that they do not own or the right of way that they do now own is now trespassing. He stated that this was a matter of if the Town was going to support a local business in a project that would enhance the Town's tax base, increase the Town's population or whether it was going to be afraid of the railroad. He stated that the railroad was a "big dog and a bully" but whether than can change facts over the last century or not was a question for the board.

Mr. Rajeev Chopra stated that everyone was familiar with him and that he had presented a lot of projects over the last several years and that he has had a good relationship with the Town and did what was asked of him. He stated that it started with him being asked to buy an option on the property which he did and then he came and asked that it be rezoned. He stated that there had been multiple hearings on it and the concern was that the people on the Dudley Street side did not want him to put a bridge in and he agreed that they would not do that but put the bridge in where it was now. He stated that right now he had spent over \$1 million dollars on that project and had he known he could not put in a mobile home park, he would not have spent that much money on that section and would have kept the self storage section which would have been a minimal investment to him. He stated that the basic fact was whether or not the people who would live in the mobile home park could cross the bridge. He stated to him,

they needed to let the court decide the rights and see what happened but if he were forced to build a bridge now it would be as if they were right and he was wrong. In other words, he needed to get his day in court and see what happened. He stated that as Mr. Cameron had already said, they were willing to post a bond to guarantee that they would build the bridge if they lost the litigation. He stated that they were business people and he hoped that their record in the past on all projects that they had done that he was proud of and hoped that Town Council and the Planning Commission were proud of them as well and had been an asset to the community. He stated that if they did post the bond and if that was what the board chose then they had the right to what happened in court or if they settled the case that it was still in the preliminary stages but he would not have invested the money in the water, sewer, electricity, etc. and would have stayed with his office building where he fixed the power and the self storage building and the other building and would have gotten a return on his investment. He stated that now he felt like it was putting the cart before the horse at this stage of the game. He asked that his status in the community and what he had done for the community be considered. He stated that he was a descent developer and they had never had to go behind him on any job whether erosion, etc. and he prided himself in that. He stated that if there were a problem in the past that Mike or Chad or anyone else had always come to him and he always corrected it. He stated that he felt this was where they were at and that he did not know what decision would be made but that time was of the essence because right now he had people ready to move in and had already lost some clients as well. He asked that they consider their decision the best that they could.

Mayor Harris asked if there were any more comments.

There were none.

Mayor Harris stated that this matter would be taken up by the Planning Commission.

The meeting was adjourned at 6:40 p.m.

Don Harris, Mayor

Lesley Catron, Town Clerk