

CLARKE COUNTY
Planning Commission
Minutes
2010 June 4 – 9:00 a.m.

A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the Town/County Joint Government Center, Berryville, Virginia, on Friday, June 4.

Chair Ohrstrom called the meeting to order at 9:06 a.m.

Chair Ohrstrom said he would like to make a few special announcements. He stated that his niece, Amira Aronavici, a government student at VCU in Richmond, Virginia was present today to watch the Planning Commission in action.

Presentation of Resolutions

Chair Ohrstrom presented resolutions to Jay Arnold and Kathy Smart, who recently completed their terms on the Commission. He read the resolutions and thanked Mr. Arnold and Mrs. Smart for their dedication and work for the Planning Commission.

ATTENDANCE

George Ohrstrom, II; Chair; Anne Caldwell, Vice Chair; A.R. Dunning, Jr., Tom McFillen, Beverly McKay, Cliff Nelson, Kathy Smart, Chip Steinmetz, and Bob Wade

ABSENT

Barbara Batterton and Richard Thuss

STAFF

Charles Johnston, AICP, Planning Director; Jesse Russell, Zoning Administrator; Alison Teetor, Natural Resources Planner, and Debbie Bean, Recording Secretary.

APPROVAL OF AGENDA

The Commission voted unanimously to approve the agenda.

Yes: Caldwell, Dunning (moved), McFillen (seconded), Nelson, Ohrstrom, Steinmetz, Smart, and Wade

No: No one

Absent: Batterton, McKay, and Thuss

APPROVAL OF MINUTES

The Commission voted unanimously to approve the briefing meeting minutes of 2010 May 4.

Yes: Caldwell, McFillen, Nelson (moved), Ohrstrom, Steinmetz (seconded), Smart, and Wade

No: No one

Absent: Batterton, McKay, and Thuss

Abstained: Dunning

The Commission voted unanimously to approve the regular meeting minutes of 2010 May 7.

Yes: Caldwell (moved), Dunning, McFillen, Nelson, Ohrstrom, Steinmetz, Smart (seconded), and Wade

No: No one

Absent: Batterton, McKay, and Thuss

Commissioner McKay entered the meeting.

The Town of Berryville proposes to acquire an easement to construct a pipe to convey treated sewage through Tax Map Parcel 15-A-13, 5273 Harry Byrd Hwy, located in the Clarke County Agricultural and Forestal District. Virginia Code Section 15.2-4313 requires the Board of Supervisors, after consulting with the Planning Commission and the Agricultural and Forestal District Advisory Committee, to review the proposed action and make finding as to the effect of the action, the necessity of the action, and whether there are reasonable alternatives.

Mr. Johnston explained this request. He stated that Virginia Code Section 15.2-4314 requires any agency of the Commonwealth or political subdivision that intends to acquire land or any interest in an Ag/Forestal District to have the Board of Supervisors, with comments from the Planning Commission and the Ag/Forestal District Advisory Committee, review such easements. He stated that the Town of Berryville has notified all landowners in the Agricultural and Forestal District, as required by code, regarding their desire to place a utility easement for a sewer outfall line on a parcel in the District identified as Tax Map Parcel 15-A-13 and owned by Philip and Mark Shenk. He stated that the Town of Berryville requested approval of an outfall line in 2008, after several options were considered, to be located along Route 7 (Harry Byrd Highway) just outside of the VDOT right of way. He said this route minimized impact on agriculturally productive parcels and parcels with streams that are located between the Town Wastewater Treatment Plant and the Shenandoah River. He stated that a Special Use and Site Plan for this route was recommended by the Planning Commission to the BOS for approval and was approved by the Board on December 15, 2009. He stated that there are five members of the Ag/Forestal District Committee present today.

Commissioner Ohrstrom noted that the Virginia Code did not require a public hearing on this matter, but asked the audience if anyone had any comments.

Commissioner McFillen, Chair of the Ag Committee stated that the committee met on Tuesday and reviewed the basic line of the easement and it does not take away any acreage of the Ag District and it still maintains use of intent of the land that is in the Ag District. He stated that the Committee determined that the proposal was not confining or restrictive in taking away agricultural acreage as it would be an underground facility in a right of way.

Bob Marshall, Environmental Consultant, stated that he feels that the Planning Commission should consider how carefully they have chosen their path of the outfall line. He stated that there are sensitive areas in which the outfall line will be passing through. He stated that if there was a leak you could have raw sewage seep into the ground water. Mr. Johnston stated that the outfall line is not carrying raw sewage; it would convey treated water from the treatment plant to the river.

Stuart Dunn, Dunn Land Surveys, asked if a resistivity test is being required for this project. Chair Ohrstrom stated that this was discussed in last Fall's review and that it was determined that if resistivity was required for every pipe and every structure it would be too much regulation. Commissioner Nelson said that resistivity would be done under the treatment plant site but not under the pipe.

Dave Tyrrell, Director of Utilities for the Town of Berryville, was present and stated that there is no way for raw sewage to leak from the line. He stated that the water that will be discharged is cleaner than water in the streams around this area. He stated that the line is tested for integrity and he can guarantee the water that is passing through it. He stated that there are detectors that are constantly monitoring the line. He stated that there would still be a lagoon on the site of sewer plant in case anything would happen to the system.

There being no further comments from the Commission or the public, Chair Ohrstrom called for a motion.

The Commission unanimously recommended approval to the Board of the proposed facility based on the following findings:

1. the location of the proposed Town of Berryville underground outfall line for treated wastewater on the property of Philip S. Shenk and Mark W. Shenk (Tax Map Parcel 15-A-13), located in the Clarke County Agricultural and Forestal District, will have no effect on the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the Ag/Forestal District and the policy of the Agricultural and Forestal District Act;
 2. the sewer outfall line is necessary to provide service to the public in the most economical and practical manner with the least impact; and
 3. there is no reasonable alternative to the proposed location of the sewer outfall line which would minimize or avoid any adverse impacts on agricultural and forestal resources within the District.
- and recommended approval of the facility to the Board.

Yes: Caldwell, Dunning, McFillen (seconded), McKay, Nelson, Ohrstrom, Steinmetz, Smart (moved), and Wade

No: No one

Absent: Batterton and Thuss

Chair McFillen of the Ag/Forestal District Committee called for a motion on this matter.

The Ag/Forestal District Committee unanimously agreed with the recommendation to the Board of Supervisors as put forth by the Planning Commission.

Yes: Arthur (seconded), Buckley, Gordon, McFillen, and McKay (moved)

No: No one

Absent: Day, Dorsey, Shenk, and Weiss

COMPREHENSIVE PLAN AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the 2007 Clarke County Comprehensive Plan so as to incorporate the recommendations of the County Green Advisory Committee as stated in its 2009 Clarke County Energy and Resource Management Policy so as to add a goal to the Comprehensive Plan and amend policy statements within Objective 4 to encourage stewardship over resources and to foster conservation of resources by the private sector. CP-10-01

Ms. Teetor explained this request. She stated that the Board of Supervisors appointed a team to work with the County Administrator to develop goals and policies which address energy efficiency, conservation and education and create a plan to reduce the County's overall environmental impact, saving tax dollars and improving services. She stated that the Committee presented the Board with an interim report that identified nine primary categories Energy Efficiency, Renewable Energy, Transportation, Land Use, Water Conservation, Recycling and Waste Management, Education and Outreach, Incentive Programs, and County Employee Management. The committee approached each category with the goal that any recommendations would be cost effective and achieve one or more of the following: a) reduce the demand for energy and other resources; b) reduce greenhouse gas emissions; c) maintain or improve our natural environment; d) promote healthy indoor environments. In addition, each recommendation should be realistically attainable, be within purview of the County to mandate or initiate, and yield measurable results. One of these Policies is recommended amendments to the Comprehensive Plan. The language suggested is that proposed by the committee. The changes are intended to make it explicit that sustainable stewardship is a County goal and emphasize the implementation of that goal with stronger policy

statements within Objective 4. This is important in order to provide support for all energy management practices proposed for implementation as outlined in the Plan. After discussion with staff and the Commission, Chair Ohstrom asked for public comments.

There being no public comments, Chair Ohstrom called for a motion.

The Commission voted unanimously to recommend this amendment to the Board of Supervisors as presented.

Yes: Caldwell (moved), Dunning, McFillen, McKay, Nelson, Ohstrom, Steinmetz (seconded), Smart, and Wade

No: No one

Absent: Batterton, and Thuss

TEXT AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

Section 3-A-1-a and 3-A-2-a, Special Uses in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open Space-Conservation (FOC) Zoning Districts so as to state that Boarding Kennels shall consist of more than five canine or feline animals, that Breeding Kennels shall consist of more than 20 canine animals, and to delete the adjective ‘commercial’ when describing ‘Breeding Kennels’.

Section 9-B, Definitions, so as to modify the definition of ‘Commercial Breeding Kennel’, so as to delete the adjective ‘commercial’ and to delete the requirement in the definition of ‘Boarding Kennel’ or ‘Breeding Kennels’ shall be allowed only as an accessory use to a Single Family Detached Dwelling and shall be located not more than 200 feet from such a dwelling so as to shift these requirements to Supplemental Regulations.

Section 3-C-2-1, Supplementary Regulation for Home Occupations, so as to include in the AOC and FOC Zoning Districts, commercial boarding or breeding kennels as home occupations limiting the size of a Breeding Kennel to 20 canine adult animals and limiting Boarding Kennels less than five canine and/or feline adult animals;

Section 3-C-2-gg, Supplementary Regulation for Commercial Boarding Kennels and Breeding Kennels so as to shift use and setback regulations for such uses from the definition section of the Zoning Ordinance to this section. TA-10-04

Mr. Johnston explained this request. He stated that Mr. Russell has been working on revising this amendment along with a committee comprised of Alice Harrington (Virginia Federation of Dog Clubs and Breeders), Susan Markley (local dog breeder), Gwen Hales (local dog breeder), Richard Thuss, and Cliff Nelson.

Commissioner Smart said that section 3-C-1 and 3-C-2-gg the wording is confusing; she felt that commercial boarding kennels and breeding kennels should be separated. Commissioner Dunning stated that the wording under Section 3-C-2-1 is misleading. He thinks the word commercial being left off is a mistake. Mr. Johnston stated that this language was in the item description only but in the actual text the uses are listed separately. Mr. Russell stated that currently in the zoning ordinance you can have 19 dogs without a special use permit. Commissioner Wade said that means you can have 18 females and one male. Mr. Russell stated that the committee came up with the wording and that he is not a part of the committee he is only the staff person. Commissioner Dunning stated the setbacks are very important. The Commissioners had concerns about the setbacks and the noise factors. Chair Ohstrom stated that it appears this amendment still needs some work and should be further reviewed. After discussion with

staff and the Commission, Chair Ohrstrom asked for public comments.

Sharon Howse, resident of Clarke County, and President of the Shawnee Kennel Club, stated that the concern of the club is that at least five members had signed up to be on the committee and no one was considered. She said the members felt they did not have a voice in this matter and were not represented.

Jerry Howse, resident of Clarke County, said that at the last Planning Commission meeting there was about twenty-one people that attended the meeting representing the Shawnee Kennel Club. He said he had four points he would like to address:

1. He stated that the definition in the ordinance allows for boarding and breeding kennels. He said that he is a hobby show dog person and that he has a kennel for the purpose of showing dogs. He asked the Commission how the proposed ordinance would impact him since he is not breeding or boarding.
2. He said that he is unsure what the zoning regulation is trying to address. He stated that if the concern is noise why not just say so and also add that all kennels be required a set back minimum of 175 feet unless there are 20 or more dogs then it would be a special use permit.
3. He stated if the problem is to prevent puppy mills then specifying the amount of dogs you can have is ridiculous. He stated that it should be changed to the maximum number of litters you can have.

Mr. Johnston stated that this would not impact Mr. Howse as the proposed ordinance states boarding and breeding not hobby.

Connie Fisher, resident of Clarke County, stated she worked on a similar problem in Loudoun County when she was a resident there regarding kennel licensing. She stated that she shows and occasionally breeds her dachshunds. She stated that she had also signed up for the committee. She said that she realizes we are not addressing hobby operations but she does not want to be thrown into a breeding kennel operation when her sole purpose is to show her dogs. She stated that she is licensed in the County for up to 20 dogs but said she does not have near that many dogs. She said she feels the wording needs to be easier to understand.

Commissioner Dunning said we should see what the neighboring counties are doing in this matter.

Ellen Rivers, a resident in Frederick County and a member of the Shawnee Kennel Club said she is interested in any kind of dog legislation. She said that any dog legislation could spread like a forest fire in a high wind from one county to another. She said she feels this proposed ordinance lacks definition. She provided a copy of a guide for the Commissioners on what needs to be clarified. She said that litters and the size of dogs should be considered. She said we need a kennel person involved on the committee and also a knowledgeable breeder.

Susan Markley, Clarke County resident, dog breeder and a member of the committee that was chosen to review this proposed text amendment explained how the wording was determined for the proposed amendment. She stated that when you put commercial in front of breeding it is a red flag. She stated that for future people moving into the area we need to have a regulation and we currently do not have anything.

Alice Harrington, Virginia Federation of Dog Clubs and Breeders, and member on the committee stated that she had copies available for the Commission of the Virginia State regulations. She said that commercial breeding is not a problem in Virginia anymore because the state law has fixed that. She stated that she thinks that the problem is the noise issue.

There being no further public comments, Chair Ohrstrom called for a motion.

Chair Ohrstrom suggested that he would arrange a committee meeting to go back and review this amendment further.

The Commission voted unanimously to postpone action and continue the public hearing until the 2010 July 2 meeting.

Yes: Caldwell, Dunning (moved), McFillen (seconded), McKay, Nelson, Ohrstrom, Steinmetz, Smart, and Wade

No: No one

Absent: Batterton and Thuss

COUNTY CODE, ZONING AND SUBDIVISION ORDINANCES TEXT AMENDMENTS
– SET PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

Section 6-H-5, Site Plan, “Curb and Gutter”;

Section 6-H-8, Stormwater Management; and

Section 6-H-15, Sinkholes and Karst Features; and

the amendment of the County Subdivision Ordinance:

Section 8-1, Drainage.

and the amendment of the County Code so as to add Section 147, Stormwater Management.

TA-10-06

Mr. Johnston explained this item. He said that these amendments are proposed as part of a major change to the stormwater management regulations in the County. He said that the proposed change would add a new County Code Section 147, Stormwater Management that will be in compliance with the proposed new state stormwater management regulations. He said that also included with the Code amendment is a design manual that provides a technical reference for engineering details and plan requirements that are outlined in the code. He said that a detailed review was completed by Rick Travers and Elizabeth Adamowicz of Chester Engineers to insure compliance with State regulations and that the regulations can be correctly interpreted and applied to future stormwater management needs in the County.

Elizabeth Adamowicz and Rick Travers with Chester Engineers were present and gave a presentation on the proposed changes. Ms. Adamowicz said it is an attempt to reduce or eliminate negative impacts of development on the environment. Mr. Travers went over the evolution of stormwater and water resources and answered questions from the Commission.

After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing on this matter for the next regular meeting of the Commission on 2010 July 2.

Yes: Caldwell (moved), Dunning (seconded), McFillen, McKay, Nelson, Ohrstrom, Steinmetz, Smart, and Wade

No: No one

Absent: Batterton and Thuss

Board/Committee Reports

Board of Supervisors

– **Pete Dunning**

Commissioner Dunning stated that a public hearing was set for 2010 June 15 for CornerStone Power Development LLC. He said that a public hearing was set for the County Code Text Amendment regarding Water and Wastewater and Septic Systems. He stated that the Planning Application Fees Amendment was passed.

Sanitary Authority

– **Pete Dunning**

Commissioner Dunning stated he thinks the CCSA over estimated rate of growth of homes in Boyce. It was thought there would be around 11 to 12 new homes this year but it looks like it will be more like 3 to 5 as people have tightened their belts and are not spending.

Board of Septic & Well Appeals

– **Pete Dunning**

Commissioner McKay stated that a variance from the Septic Ordinance to use an alternative onsite sewage system for the reserve area on property owned by Robert Walker was approved on 2010 May 27. The property is located in the 2500 block of River Road.

Board of Zoning Appeals

– **Anne Caldwell**

No Report

Historic Preservation Commission

– **Cliff Nelson**

Commissioner Nelson stated that a Certificate of Appropriateness was approved for Dawn Cockrell and James Doss for an addition to the structure located at 290 White Post Road on 2010 May 11. He stated that the annual historic preservation awards luncheon was held at the Battletown Inn on 2010 June 1. He said the following three awards were presented:

1. The Millwood Country Club, Stewardship Award, for the maintenance and rehabilitation of The Clubhouse;
2. Robert W. Steig, Jr., Leadership Award, for his efforts in protecting the historic resources of Clarke County and the Shenandoah Valley; and
3. Randall & Sharon Vinson, Certificate of Merit for the rehabilitation and preservation of the Berryville Pharmacy Building on Main Street.

Mr. Nelson stated that the next meeting of the Historic Preservation Commission is scheduled for 2010 September 28 at 8:30 a.m.

Conservation Easement Authority

– **George Ohrstrom, II**

Ms. Teetor stated that they have received a farmland protection grant for a portion of the Buckley farm for \$329,000.00. She stated that they have closed on eight easements since February.

Staff Reports

Natural Resource Activities

– **Alison Teetor**

No report.

Enforcement Officer

– **Nancy Olin**

Ms. Olin's progress reports for 2010 April 28 thru 2010 May 27 were reviewed

There being no further discussion to come before the Planning Commission, the meeting was adjourned at 11:35a.m. until the next regular scheduled meeting on 2010 July 2.

George L. Ohrstrom, II, Chair

Charles Johnston, Clerk

Minutes prepared by Debra L. Bean, Recording Secretary