

**CLARKE COUNTY
PLANNING COMMISSION
MINUTES
2009 December 4 – 9:00 a.m.
Main Meeting Room**

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

COMMISSION ATTENDANCE

Present

George L. Ohrstrom, II, Chair; Anne Caldwell, Vice Chair; Jay Arnold, Barbara Batterton, Cliff Nelson, Kathy Smart, Richard Thuss, and Chip Steinmetz.

Absent

A. R. Dunning, Jr., Beverly McKay, and Bob Wade

STAFF

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

CALL TO ORDER

Chair Ohrstrom called the meeting to order at 9:05 a.m.

APPROVAL OF AGENDA

The Commission voted unanimously to approve the agenda as presented.

Yes: Arnold, Batterton (moved), Caldwell, Nelson (seconded), Ohrstrom, Smart, Thuss, Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

APPROVAL OF MINUTES

The Commission voted unanimously to approve the regular minutes of 2009 October 2.

Yes: Arnold, Batterton (seconded), Caldwell, Nelson, Ohrstrom, Smart (moved), Thuss, Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

The Commission voted unanimously to approve the briefing minutes of 2009 November 3.

Yes: Arnold, Batterton, Caldwell (moved), Nelson, Ohrstrom, Smart, Thuss (seconded), Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

The Commission voted unanimously to approve the regular meeting minutes of 2009 November 6.

Yes: Arnold, Batterton (seconded), Caldwell, Nelson, Ohrstrom, Smart (moved), Thuss, Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

DETERMINATION OF A UTILITY AS BEING IN ACCORD WITH THE COMPREHENSIVE PLAN

The Town of Berryville requests approval of a Public Utility Facility: an outfall line conveying treated effluent from the Berryville Waste Water Treatment Plant (362 Parshall Road) to the Shenandoah

River (approximately 150 feet north of the Robert W. Smalley Sr. Bridge at Castleman's Ferry, [Route 7 bridge]), as a use that is in substantial accord with the adopted Clarke Comprehensive Plan per Code of Virginia §15.2-2232, for the portion of the outfall line located along and in the public right of way for Harry Byrd Highway (Virginia Route 7) through Tax Map Parcels 16-A-22, 36A, and 40 (substantial accordance with the Comprehensive Plan for the location of the outfall line through Tax Map Parcels 15-A-8, 11, 13,17C, 18, 20, 21; 15-3-8; and 16-A-33 and 36 has been previously the subject of an action by the Planning Commission), located in Battletown Magisterial District, zoned Agricultural-Open-Space-Conservation (AOC).
SUP-08-02 (aka SUP-04-01)

3b. SPECIAL USE PERMIT – PUBLIC HEARING

The Town of Berryville requests approval of a Special Use and Site Plan for a Public Utility Facility: an outfall line conveying treated effluent from the Berryville Waste Water Treatment Plant (362 Parshall Road) to the Shenandoah River (approximately 150 feet north of the Robert W. Smalley Sr. Bridge at Castleman's Ferry, [Route 7 bridge]), for the portion of the proposed outfall line located along and in the public right of way for Harry Byrd Highway (Virginia Route 7) through Tax Map Parcels 16-A-22, 36A, and 40 (the Special Use and Site Plan for the location of the outfall line through Tax Map Parcels 15-A-8, 11, 13,17C, 18, 20, 21; 15-3-8; and 16-A-33 and 36 was previously the subject of a public hearing and action by the Planning Commission), located in Battletown Magisterial District, zoned Agricultural-Open-Space-Conservation (AOC).
SUP-08-02 (aka SUP-04-01)

Mr. Johnston explained this request. He stated that the Town of Berryville has revised its request for approval of an outfall line conveying treated effluent from the Town sewage treatment plant to the Shenandoah River. He said that this revised request shifts the eastern .75-mile portion of the proposed line to the north side of Route 7 so to avoid property south of Route 7 that is in permanent conservation easement. He said the Code of Virginia specifies the determination of conformance with a Comprehensive Plan to be the responsibility of the Planning Commission. He stated that the Commission had determined last year that the westerly 3-mile portion of this request is in compliance with the Comprehensive Plan and now the Commission is being asked to determine that the relocated easterly segment conforms with the Plan. The Commission discussed the impact of the construction of the line on the trees located on the McKown/Casey property line. Mr. Johnston stated that on December 3rd, Commissioners Arnold, Batterton, and Thuss walked this property line and determined that there were no large hardwood trees on the McKown side property line, where the outfall pipe will be buried and that almost all of the trees that are present were on the Casey side of the line.

Commissioner Thuss stated that he had received a letter from Bonnie Appleton, PhD., Professor of Horticulture and Agriculture at Virginia Tech. He said in her letter she agrees with the recommendations of Whitman, Requardt & Associates (the Town's engineer) for pruning the tree roots.

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

Dean Westman, Whitman, Requardt & Associates, consulting engineer for the Town of Berryville, was present and stated that the facilities are all at or below grade and would not be visible and that there would be no smell from the water, as it would be cleaner than the Shenandoah River. He gave a brief discussion regarding the silt fence, which is lining the limits of disturbance of this project. He said that it allows trucks to move thru the work area without too much disturbance. He said that there would be a single crew working on this project so that the amount of sediment disturbance will be limited. Commissioner Caldwell asked who would be monitoring the required conditions. Mr. Johnston stated that Nancy Olin,

County Enforcement Officer would be monitoring the activities. Commissioner Nelson questioned if there is a sinkhole on the Moore and Dorsey property. Mr. Westman stated they are not sure if it is an actual sinkhole but that the Town will inspect the area monthly and if there are any depressions an engineered remedy would be developed at that time.

Dave Tyrrell, Public Utility Director for the Town of Berryville, was present and said they would place the line 15 feet from the property and that tree roots would be cut (and not torn by a back hoe).

Ron Fry, property owner on the west bank of the Shenandoah River, expressed concerns about the smell and if there will be a filtration system. Mr. Tyrrell said the water is filtered and would be extremely clean and that there should not be any odor. He stated that the water is not drinking water but it is not sewage. He stated that the new line is a 100% improvement over the current discharge.

Carolyn Gordon, property owner on the east bank of the River, said her property is protected by an easement with the Virginia Outdoors Foundation. She stated that she had spoke with the engineer regarding the structure for the water that is coming into the river. She said the structure is a four-foot wide step with a 24-inch pipe above it where the water goes into the river. She said she would like to request that the structure be covered in a plant material to make it more visually attractive.

Mr. Westman commented that the area would be protected by grading and riprap (rock) for approximately 100 feet. He said that the bank is relatively step along the river and they have made a trench, which is to be covered by riprap on both sides. He said this will have a visually pleasing aspect and that it will blend in with the existing surroundings.

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

The Commission voted unanimously to approve the determination of a utility as being in accord with the Comprehensive Plan

Yes: Arnold, Batterton, Caldwell (moved), Nelson, Ohrstrom, Smart (seconded), Thuss, Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

The Commission voted to recommend approval of this request to the Board of Supervisors.

Yes: Arnold, Batterton (seconded), Caldwell, Nelson, Ohrstrom, Smart (moved), Thuss, Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

TEXT AMENDMENT – PUBLIC HEARING

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

Section 7-C-3-(d), Water and sewage disposal systems, so as to require approved septic systems and 100% reserve systems for all existing homes when subdivided.

Section 10-D, Boundary Line Adjustments, so as to establish criteria for the showing well and on-site sewage disposal systems on Boundary Line Adjustment plats. TA-09-09

Mr. Russell explained this request. He stated that this proposal is to amend the Subdivision Ordinance so as to provide for an approved primary and 100% reserve drainfield for existing dwellings involved in a

subdivision and regulating the transfer of structures containing facilities requiring septic disposal systems. After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

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

Commissioner Arnold left the meeting.

The Commission voted unanimously to recommend approval of the above text amendments as written to the Board of Supervisors.

Yes: Batterton, Caldwell, Nelson, Ohrstrom, Smart, Thuss (moved), and Steinmetz (seconded)

No: No one

Absent: Arnold, Dunning, McKay, and Wade

TEXT AMENDMENT – SET PUBLIC HEARING

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

Section 9-B, Definitions, so as to modify the definitions of the terms ‘Kennel’, ‘Commercial Boarding Kennel’, and Commercial Breeding Kennel’, so as to replace the references to dogs, cats, or canine/feline animals with the term ‘companion animals’ and to combine the terms ‘Commercial Boarding Kennel’, and Commercial Breeding Kennel’. TA-09-14

Commissioner Arnold returned to the meeting.

Mr. Johnston explained this request. He stated that after a public hearing at its October 20th meeting, the Board of Supervisors voted 4-1 (yes: Byrd, Dunning, Hobert and Staelin; no: Weiss) to deny an amendment that addressed the regulation of Boarding and Breeding Kennels. He stated that this revised amendment attempts to address the concerns raised by the Board. He said this amendment combines the terms Commercial Boarding and Commercial Breeding Kennels, as did the previous amendment, but establishes five adult animals dogs as the threshold at which the approval of a Special Use would be necessary and provides that such activities with less than five adult animals would be allowed as a Home Occupation. After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing for this amendment for the next regular meeting of the Commission on 2010 January 8.

Yes: Arnold, Batterton, Caldwell (moved), Nelson, Ohrstrom, Smart (seconded), Thuss, and Steinmetz

No: No one

Absent: Dunning, McKay, and Wade

TEXT AMENDMENT – SET PUBLIC HEARING

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

Sections 3-A-1-a-3 and 3-A-2-a-3, Special Uses in the AOC and FOC Zoning Districts, so as to change the term: “Retail Stores and Shops” to “Retail and Service Businesses”; and

Section 3-C-2, Supplemental Regulations for Uses in Various Districts, so as to add a section for Retail and Service Businesses that are permitted as special uses, stating that outdoor storage is not permitted and that the area allowed for outdoor display at Retail and Service Business is limited to a percentage of the square footage of the structure housing the business.

TA-09-15

Mr. Johnston explained this request. He stated that after a public hearing at its October 20th meeting, the Board of Supervisors voted 3-2 (yes: Byrd, Hobert and Staelin; no: Dunning and Weiss) to deny an amendment that addressed the regulation of outdoor display at retail businesses allowed in the AOC and FOC Zoning Districts. He stated that this revised amendment attempts to address the concerns raised by the Board. He said this amendment limits the outdoor display area to a percentage of the square footage of the structure housing the business.

Commissioner Thuss had concerns regarding the outdoor display area. He said that if someone has a new business and only wanted to build a small 100 square foot building this amendment would prohibit them from doing that. After discussion with staff and the Commission it was agreed to modify the amendment with the following language in Section 3-C-2 “but allowing outdoor display to cover up to 750 square feet and the outdoor display of living plant material, top soil, or mulch to cover up to 2250 square feet”. After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing for this amendment with the modifications discussed above for the next regular meeting of the Commission on 2010 January 8

Yes: Arnold, Batterton, Caldwell, Nelson (seconded), Ohrstrom, Smart, Thuss (moved), Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

TEXT AMENDMENT – SET PUBLIC HEARING

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

Section 6-H-11, Improvements and Minimum Standards, so as to provide more comprehensive outdoor lighting standards for commercial site plans. TA-09-06

Mr. Johnston explained this request. He stated that the zoning ordinance regulating exterior lighting on site plans for commercial uses currently consist of a single paragraph and limits lighting only in regard to height and shielding. He said that elements of exterior lighting such as location, intensity, photometric data, and type of lighting are not addressed in the current regulations. He stated that planning staff and Chester Engineers prepared the attached amendment based on standard practice on this topic by lighting professionals and standards in other jurisdictions. After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing on this amendment for the next regular meeting of the Commission on 2010 January 8.

Yes: Arnold, Batterton, Caldwell (seconded), Nelson (seconded), Ohrstrom, Smart (moved),
Thuss (moved), Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

TEXT AMENDMENT – SET PUBLIC HEARING

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

Section 9-B-147, Definition of the term: “Restaurant”, so as to clarify the difference between a temporary food establishment and a restaurant. TA-09-07

Mr. Johnston explained this request. He said temporary food establishments that include temporary structures

or mobile vendor equipment and vehicles have by policy been issued a business license, although the only section in the County Zoning Ordinance that addresses such activities is the definition of the term "Restaurant". He stated that the current definition treats the temporary food establishment the same as a permanent restaurant and therefore would only be allowed in the zoning districts that provided for restaurants as a permitted use with an approved site plan. He said in essence, any vendor at any special event would by County Ordinance be treated as a "Restaurant". He stated that to help clarify the difference between a temporary food establishment at a special event and a restaurant, it is proposed that the definition of restaurant be amended in such a way as to clarify the difference between such. After discussion by staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing on this request for the next regular meeting of the Commission on 2010 January 8.

Yes: Arnold, Batterton, Caldwell (moved), Nelson, Ohrstrom, Smart (seconded), Thuss, Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

TEXT AMENDMENT - SET PUBLIC HEARING

Section 3-A-1-a, Permitted Uses and Structures, so as to add the use: "Farmers Markets, Seasonal"; and

Section 9-B-71, Definitions, so as to add the term: "Farmers Markets, Seasonal". TA-09-08

Mr. Johnston explained this request. He said with the interest to produce local foods and Agricultural activities we could shift farmers markets into a permitted use. He stated that this would give a definition of this activity. He said that other vendors could join current property owners selling produce on the property. Commissioner Steinmetz suggested that the operation date for seasonal farmers markets be extended to December 31 from the current October 31. After discussion with staff and the Commission, Chair Ohrstrom called for a motion.

The Commission voted unanimously to set public hearing on this amendment with modifications for the next regular meeting of the Commission on 2010 January 8.

Yes: Arnold, Batterton, Caldwell, Nelson, Ohrstrom, Smart (seconded), Thuss, Steinmetz (moved)

No: No one

Absent: Dunning, McKay, and Wade

AGRICULTURAL DISTRICT RENEWAL – PUBLIC HEARING

The Clarke County Board of Supervisors will be considering the renewal of the Clarke County Agricultural District. This District is enabled by the Code of Virginia to preserve land in agricultural use for six years. The current six-year term of the District expires in March of 2010.

Mr. Russell explained this item. He stated that the Agricultural/Forestral District Renewal is done every 6 years. He said it goes to the Board of Supervisors and then is recommended to the Advisory Committee. He stated the Advisory Committee then recommends it to the Planning Commission and then it goes back to the Board of Supervisors. He stated that the following issues were discussed and recommendations made to the Planning Commission and Board of Supervisors:

- 1) *Whether to limit land use taxation to only those whose lands have been included in the Agricultural and Forestral District.* In order to do so, the Board of Supervisors would have to eliminate land use taxation and then adopt land use again under the conditions that landowners qualifying would have to be in the District. Due to the complexity of such a change and the fact that joining the District is voluntary, this would in effect limit the

voluntary nature of the program. *The Advisory Committee voted unanimously to recommend opposing such change to land use and the District.*

- 2) ***Whether to extend the renewal term of the District from the current 6 years to 10 years.*** After much discussion debating the pros and cons of extending the District's renewal term, *it was recommended in a unanimous vote to continue the current term limit of 6 years.*
- 3) ***Whether to extend the yearly land use taxation filing date to the Commissioner of Revenue's from the current December 1 deadline to December 31 as is permitted by the State of Virginia.*** *The Advisory Committee voted unanimously to recommend extending the filing date to December 31.*
- 4) ***Whether to consider adding an "Open Space" category to the District.*** *The committee voted to recommend adding such with conditions made up of 5 criteria. This criteria is included in the PC packet.*
- 5) ***The Board of Supervisors wanted the Committee to make a recommendation in regard to replacing the SLEAC system for land use taxation with a different system that is currently being studied by a regional effort of Commissioners of Revenue.*** *The Committee recommended that the regional effort continue their study and report back to the Board of Supervisors.*
- 6) ***Whether to consider criteria for boundary line adjustments between parcels in the District and parcels not in the District.*** *The Committee is scheduled to meet in regard to this question prior to the Planning Commission meeting. Staff will report on the Committee's recommendation at the regular Planning Commission meeting.*

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

The Commission voted unanimously to continue the public hearing on this request until the next regular meeting of the Commission on 2010 January 8 in order to allow residents more time to apply.

Yes: Arnold, Batterton (seconded), Caldwell, Nelson, Ohrstrom, Smart (moved), Thuss, Steinmetz,

No: No one

Absent: Dunning, McKay, and Wade

Board/Committee Reports

Board of Supervisors

– **Pete Dunning**

Mr. Johnston stated that at the 2009 November 17 Board of Supervisors meeting the Board set public hearings on the following amendments to the County Zoning Ordinance;

- Sections 7-A-5, the organization and procedures of the Board of Zoning Appeals, and 7-C-5b, variances. TA-09-11
- Sections 3-A-1 and 3-A-2-f, Vegetated Property Buffer in the AOC and FOC zoning districts; TA-09-13

A public hearing was set for the Town of Berryville requesting approval of a Special Use/Site Plan for a public utility facility. SUP-08-02

The Board held three public hearings for amendments to the County Zoning Ordinance and approved the changes to:

- Section 4-G-3, uses and structure permitted in required yards; TA-09-01A
- Section 4-I-9-b, definition of the term 'Area of Sign', and Section 4-J, off-street parking. TA-09-02
- Section 3-A-1-a, permitted uses in the AOC zoning district; Section 3-A-2-a, permitted uses in the FOC zoning district; Section 3-C-2-ii, supplementary regulation for farm winery, and Section 9-B-193, definition of the term 'Farm Winery'. TA-09-03

Sanitary Authority

– **Pete Dunning**

No report.

Board of Septic & Well Appeals – **Pete Dunning**

Ms. Teetor said there was a public hearing on 2009 November 12 regarding a well variance for Charlotte Jones located at 6073 Lord Fairfax Highway, which was approved.

Board of Zoning Appeals – **Anne Caldwell**

Commissioner Caldwell stated that there was a public hearing on 2009 October 29 for Susan Molden Harmon on a setback variance located at 1 Morning Star Lane, which was approved.

Historic Preservation Commission – **Cliff Nelson**

Commissioner Nelson stated that at the 2009 December 1 Commission meeting, Ms. Kalbian stated that she had met with the Director of the People to People Health Foundation, as to the tax credits available for properties with historic structures. Commissioner Nelson stated that Mr. Johnston reported that Karl Riedel Associations of Leesburg had been selected as the consultant on the \$95,000 Greenway Court rehabilitation project. Commissioner Nelson stated that the next meeting of the Commission is scheduled for 2010 January 26.

Conservation Easement Authority – **George Ohrstrom**

Chair Ohrstrom stated that the Authority closed on the monastery property on 2009 November 12. He said he hopes this will encourage the monastery to put more acreage in easement.

Ag/Forestral District renewal – **Bev McKay**

Commissioner McKay presented a map to the Commission, which showed land that is currently in the agriculture/forestral district and also the new acreage that will be going in. Commissioner Steinmetz stated that staff and the advisory committee needs to be commended for their hard work on this effort.

Staff Reports

Natural Resource Activities – **Alison Teetor**

Report and Analysis of USGS study of Clarke County Groundwater

Status of AOSS (new state alternative sewage treatment standards)

Ms. Teetor gave a power point presentation on the above items to the Planning Commission.

Enforcement Officer – **Nancy Olin**

Ms. Olin's progress reports for 2009 October 27 thru 2009 November 30 were reviewed.

There being no further discussion to come before the Planning Commission, the meeting was adjourned at 11:30 a.m. until the next regular scheduled meeting on 2010 January 8.

George L. Ohrstrom, II, Chair

Charles Johnston, Clerk

Minutes prepared by
Debra L. Bean, Recording Secretary