

Clarke County Planning Commission

MINUTES – Business Meeting

Friday, September 1, 2023 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
George L. Ohrstrom, II (Chair/Russell)	✓	Ronnie “Ron” King (Buckmarsh)	✓
Randy Buckley (Vice-Chair/White Post)	✓	Frank Lee (Berryville)	✓
Terri Catlett (Board of Supervisors)	✓	Gwendolyn Malone (Berryville)	✓
Buster Dunning (White Post)	✓	John Staelin (Millwood)	✓
Robert Glover (Millwood)	✓	Doug Lawrence (BOS alternate)	X
Pearce Hunt (Russell)	✓		

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Senior Planner/Zoning Administrator), Kristina Maddox (Office Manager/Zoning Officer), Lorien Lemmon (Conservation Planner / GIS Coordinator)

OTHERS PRESENT: Marian Harders (Walsh, Colucci, Lubeley, & Walsh PC), Thomas “Ty” Moore Lawson (Thomas Moore Lawson, P.C.), Braden Houston (Opdenenergy)

CALL TO ORDER: By Chair Ohrstrom at 9:00AM.

1. Approval of Agenda

Commissioner Staelin asked if there could be a brief overview regarding the proposed development in the Town of Berryville. Mr. Stidham said the item can be listed as number 8 on the revised agenda under other business.

The Commission unanimously voted to approve the September 1, 2023 Business Meeting agenda as revised.

Motion to approve the September 1, 2023 Business Meeting agenda as revised:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE	King	AYE
Catlett	AYE	Lee	AYE (seconded)
Dunning	AYE	Malone	AYE (moved)
Glover	AYE	Staelin	AYE

Chair Ohrstrom asked for a moment of silence for Commissioner Scott Kreider who recently passed.

2. Approval of Minutes

A. July 5, 2023 Work Session

Commissioner Lee requested that on page 6 under “new business” in the second paragraph the word “moving” be changed to “removing.”

The Commission unanimously voted to approve the July 5, 2023 Work Session meeting minutes as corrected.

Motion to approve the corrected July 5, 2023 Work Session meeting minutes as corrected:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE (seconded)	King	AYE (moved)
Catlett	AYE	Lee	AYE
Dunning	AYE	Malone	AYE
Glover	AYE	Staelin	AYE

B. July 7, 2023 Business Meeting

Commissioner Catlett asked that “Chair” be replaced by “Commissioner” on page 12.

The Commission unanimously voted to approve the July 7, 2023 Business Meeting minutes as corrected.

Motion to approve the July 7, 2023 Business Meeting minutes as corrected:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE (moved)	King	AYE
Catlett	AYE	Lee	AYE (seconded)
Dunning	AYE	Malone	AYE
Glover	AYE	Staelin	AYE

CONTINUED PUBLIC HEARINGS

3. CZ-23-01, Rappahannock Electric Cooperative (applicant)/Virginia Port Authority (owner)

Mr. Stidham reviewed the Staff Report for the proposed conditional zoning application to rezone sixty-five acres of Agricultural-Open Space-Conservation (AOC) to Highway Commercial (CH) and Historic Access Corridor Overlay District (HAC). He said it is subject to conditions that are proffered by the applicant and that the property is located on the south side of Lord Fairfax Highway between the intersections of Featherbed Road and Highland Corners Road.

Chair Ohrstrom asked what would happen if the Commission approves the application but the applicant chooses not to purchase the property. Mr. Stidham replied that if a subsequent user purchases the property, they can either agree to develop the same use subject to the adopted proffers and concept development plan or the new applicants can go through the same process with a different use as a proffer amendment. He continued that the proffers create a unique set of regulations that are tied to this property.

Marian Harders (Walsh, Colucci, Lubeley, & Walsh PC) spoke on behalf of the applicant, Rappahannock Electric Cooperative (REC). She said there were a number of items outlined in the previous Staff Report that she wished to address. She continued that REC is now proposing to pave 265 feet to a location past the second entrance on Featherbed Road which reduces the original proposed paved road by 567 feet. She said 150 feet of current pavement exists so they would only be adding 115 feet of new pavement. She added they have been discussing signage with VDOT to alert oncoming drivers that the pavement will end. Additionally, she said the second entrance on Featherbed Road is of importance to REC due to safety

considerations and merging of employee and truck traffic. She added that REC is very considerate of the citizen concerns with respect to the pavement and said in addition to VDOT negotiations and that this is the end result of those discussions.

Ms. Harders said the second issue regarding the pump station has also been addressed. She said REC's initial concern was that this needed to be negotiated outside of the rezoning as final engineering had not been attained. She said they were not sure where the pump station would go in conjunction with the development of the property, however, through Staff discussions they have come to an agreement on the proffer language. She continued that REC will dedicate the pump station location.

Chair Ohrstrom read the public hearing rules and opened the public hearing.

Clay Brumback (536 Silver Ridge Lane) noted that he served on the Planning Commission previously and understands the Comprehensive Plan. He said that he lives off Featherbed Road and that he does not want to see the open space eliminated at Double Tollgate. He said although he prefers to see open space and farmland, his concern is the future impacts that changing the zoning to commercial highway will have beyond 5 to 7 years. Additionally, he said the original application included two entrances off US 340 with an emergency entrance with no access to Featherbed Road. He suggests REC save the extended pavement cost and not pave 265 feet. He said there is an example of a similar facility in Frederick County that has two entrances – one for trucks and one for office traffic that seems to work well. He continued he does not want additional traffic on Featherbed Road.

Ty Lawson (Katharbrine Ln, White Post) said he has had some on-site meetings with Staff and phone calls with neighbors. He said although the proffered use and landscaping are fine and a good use for the property, the issue lies with the second entrance. He said he has had discussions with VDOT and learned that the second entrance is not a requirement of theirs but a REC preference. He said he also received a copy of the report that read VDOT has yet to receive the traffic impact analysis (TIA) that was discussed with the county and developer in April. He added that a TIA was not required. He noted there will be 8 office workers in addition to trucks using the yard and as a result will not yield much traffic. He asked why a second entrance is necessary with a paved Featherbed Road and that it seems to be a need versus a want. He said he is going to support his neighbors and request that a second paved entrance not be approved for Featherbed Road. He commented that everything else in the proposed application looks good including the attractive building and landscaping as proposed.

Henry Schmick (281 Vista Ln, White Post) noted he previously spoke at a Planning Commission meeting on this topic and that he based his research on the 2022 Clarke County Comprehensive Plan. He said he essentially looked at the seven goals for land use and condensed them into three categories including visual, economic, and resource management/conservation or safety issues. He continued that his last comments regarding visual involved the fact that the current building is located in an industrial area and that the county does not need an industrial area built along US 340. He added that the applicant has added a lot of shrubs and hedges to their plan since then so he has checked that off his list. He said unfortunately electrical generation and electric distribution involve a lot of heavy duty chemicals, wires, and pipes and therefore he suggests a covered stock yard and storage yard to prevent it from the elements. He said safety is going to take a lot of vigilance and reiterated the importance of closed storage for the equipment and wires. With regards to economics, he said REC did a good job on electrical distribution but they do not go into electrical generation. He said we need to know more about electrical generation in order to be forward thinking and suggested we learn more about agrivoltaics. He noted cattle ranching on the

remaining 20 acres that serve that property and said it may be beneficial to follow a simple approach like where they raise the solar panels higher so that cattle can graze underneath. He also noted the landowner previously got \$10 an acre from cattle production but increased their profit when they rented the land for solar panels. He said he would like to talk with REC about this possibility and hopes they publish the data so everyone has a better idea of how much it costs.

Chair Ohrstrom closed the public hearing.

Chair Ohrstrom asked if the second entrance is locked in should the application be approved today. Mr. Stidham said that it does lock them in for the second entrance as it is proffered and is part of the concept plan and that the applicant will need to come back to the Commission for a proffer amendment if their plans change. Mr. Stidham asked REC for their feedback as having the second entrance was their decision and critical to their development plan for this site.

Ms. Harden clarified that there will be seventy-five employees utilizing the facility. She said that the second entrance is not a VDOT requirement but that they did reply via email that if the entrance was reduced to one access point that they prefer the access to be off the lower volume road which is Featherbed Road. She continued that the heavy construction traffic off the main road and limiting the emergency access further down Featherbed Road in addition to the occasional customer that uses the kiosk and the employees off Featherbed Road is something they feel is beneficial in this case. She said it is a need rather than a want and that it is more of a safety concern for REC. She said REC’s preference is to proceed with the second entrance with respect to any changes of the site plan.

There were no questions or comments from the Commission.

The Commission unanimously voted to recommend approval of **CZ-23-01, Rappahannock Electric Cooperative (applicant)/Virginia Port Authority (owner)** application subject to the applicant’s proffered conditions dated August 31, 2023.

Motion to recommend approval of <u>CZ-23-01, Rappahannock Electric Cooperative (applicant)/Virginia Port Authority (owner)</u> application subject to the applicant’s proffered conditions dated August 31, 2023:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE	King	AYE
Catlett	AYE	Lee	AYE
Dunning	AYE	Malone	AYE (seconded)
Glover	AYE	Staelin	AYE (moved)

4. TA-23-01, Campground Regulations.

Mr. Stidham reviewed the Staff Report for the proposed text amendment. There were no questions or comments from the Commission.

Chair Ohrstrom opened and closed the public hearing as there were no public speakers for comment.

Chair Ohrstrom thanked Mr. Lowell Smith for his comments.

Commissioner Lee commented that he requested a deferral on this text amendment so he could do his own research on the matter and noted he is an ongoing member of the Appalachian Trail Conservancy for 25 years. He said he reviewed the topography for this section of the trail and said it is called the roller coaster because it is difficult for anyone to hike. He said there are camping opportunities within the boundaries of the Appalachian Trail (AT) and that he does not feel it is necessary to have additional camping besides what is currently offered.

The Commission unanimously voted to recommend adoption of **TA-23-01, Campground Regulations** as presented by Staff.

Motion to recommend adoption of <u>TA-23-01, Campground Regulations</u> as presented by Staff:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE (moved)	King	AYE (seconded)
Catlett	AYE	Lee	AYE
Dunning	AYE	Malone	AYE
Glover	AYE	Staelin	AYE

SCHEDULE PUBLIC HEARING

5. SUP-22-01/SP-22-02, Horus Virginia I LLC (applicant)/Bellringer Farm, LLC (owner)

Mr. Camp reviewed Staff Report for the proposed special use permit and site plan.

Chair Ohrstrom asked if there was time for the applicant to complete a boundary line adjustment or property merger within the 100-day requirement. Mr. Camp replied it could be a condition that the lots have to be merged. Commissioner Glover asked if that would also come before the Commission and asked how long the construction process will take. Mr. Camp replied it would return to the Commission only if it was written in the condition to do so. He also responded that he believed it would take less than a year.

Commissioner Lee commented there is a lot of speeding on Triple J Road and wanted to know if there will be proper signage at both entrances. Chair Ohrstrom suggested a gated entrance post construction to eliminate pass through traffic from Westwood Road to and from Triple J Road. Commissioner Catlett noted trucks will pass schools when they are on Westwood Road.

Thomas “Ty” Moore Lawson, Katharbrine Lane, White Post (Thomas Moore Lawson, P.C.) represents the applicant. He said they received approval from the owner on the lease to do a boundary line adjustment and that the applicants can make it a condition of the permit. He said the project would take three months of prep work to get the site underway for the stormwater management sediment ponds to be converted into stormwater management ponds and about six months for completion as the weather permits.

Mr. Lawson said that the Triple J Road location was previously considered for the high school site and that there is another entrance that runs through a neighboring property. He said the Triple J Road entrance will be the construction entrance and that it will not be used much post-construction and that the entire site would be fenced. He continued that he resides near the other solar plant location in the county and has found there is not much traffic in and out of the site.

Mr. Lawson said that the county's ordinance is very specific and detailed for the consideration of solar. He said they have spent a considerable amount of time to get to this point and working with the Department of Environmental Quality (DEQ) due to their internal turnover and ever-changing regulations.

Mr. Lawson continued that county's ordinance requires that a solar plant be located adjacent to and within a mile of a substation in which case this property meets that requirement. He said the landscaping of the site is in contrast to the solar plant site in Double Tollgate and noted the permitting process has been lengthy.

Mr. Lawson said they received a copy of the Hecate agreement which Opdenenergy offered to match and will pay more as it is a larger site. He said VDOT has approved both entrances with regards to the transportation plan. He continued that they are happy to provide the details on the reclamation plan and that he understands that only grass should remain at the end of the lease once everything is removed. He added that the value of what is installed into the ground is worth several times the cost to reclaim it and that Opdenenergy can post whatever bond is required regarding the decomposition plan. He said the materials are valuable as they contain copper, etc. so the company wishes to remove and recoup those costs.

Mr. Lawson noted the Board asked the Commission to amend the ordinance so that future solar is restrained. He said the current restrictive ordinance allows essentially two solar plant locations and this is one of those locations.

Mr. Lawson explained the aerial photos shown on the screen and said this proposed solar plant will not be seen from the road like the Hecate location. He said there is only one location from the road where people will see the solar plant panels.

Commissioner Staelin asked what the view will be like from Chet Hobert Park. Mr. Lawson replied that it is a highly wooded area and should not be viewable from the park or the nearby farm. He said they are proposing to retain existing vegetation and plant areas that have been disturbed and commented that it is below the viewshed.

Chair Ohrstrom commented that there is a large limestone rock outcrop that is even noted in the Clarke County maps in the 1700s. He asked how the applicant plans to get through it. Mr. Lawson replied that some of the property is not buildable due to the one-mile radius of the substation. He said years ago he was Chair of the committee for the new high school and it was decided at the time that due to the limestone ledges that it would be better to relocate elsewhere.

Mr. Lawson said they understand the erosion and the regulations that address it and that they are disturbing a significantly less amount of ground as the land lays cooperatively. He said there is a lot of tall grass to receive the stormwater but nonetheless they are adhering to DEQ's pond requirements.

With regards to noise, Mr. Lawson said he does not anticipate much noise. He said he does not hear much noise being so close to Hecate solar plant.

Mr. Lawson said they are meeting with Fire and Rescue about the emergency action plan and to explain how to get access to the site in the event of an emergency.

Mr. Lawson reiterated that the traffic noise will mainly occur during the construction phase of the project and expects a representative to check in on occasion to ensure the equipment is operating properly.

Commissioner Glover asked when they started the permit process. Mr. Lawson said it was approximately two years ago when they initiated discussions with DEQ.

Commissioner Catlett asked about the geotechnical site characteristics in the report where it was noted there was debris and trash in the sinkholes. She said the consultant recommended they do soil and groundwater evaluation. Mr. Houston with Opdenergy said they received a much more comprehensive report and that their resubmission should cover those details. Chair Ohrstrom asked if they planned to do resistivity testing under the stormwater ponds and if they were required to do that. Mr. Houston said he is not certain if they did the testing under the stormwater ponds but they did it for the equipment yard and where the panels will go. Commissioner Lee said he recommends it.

There were no further questions or comments from the Commission.

The Commission unanimously voted to set public hearing for **SUP-22-01/SP-22-02, Horus Virginia I LLC (applicant)/Bellringer Farm, LLC (owner)** for the October 6, 2023 business meeting.

Motion to set public hearing on SUP-22-01/SP-22-02, Horus Virginia I LLC (applicant)/Bellringer Farm, LLC (owner) for the October 6, 2023 business meeting:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE (moved)	King	AYE
Catlett	AYE	Lee	AYE (seconded)
Dunning	AYE	Malone	AYE
Glover	AYE	Staelin	AYE

BOARD AND COMMITTEE REPORTS

6. Board and Committee Reports

Board of Supervisors (Terri Catlett)

Commissioner Catlett said the Board voted to approve the plan for the courthouse green and that the Emergency Medical Services (EMS) is considering a restructure. She said August was fairly quiet other than those two items.

Board of Septic & Well Appeals (George L. Ohrstrom, II)

Chair Ohrstrom noted there was a well appeal hearing where a well variance was approved. He said the applicant’s presentation showed a proposed screened-in porch that was close to the allowable state-wide setback to a well. He said the proposal also rerouted stormwater from the house away from the well site. He said the applicant’s property has a lot of large trees and that the thought of drilling for another well was exceedingly problematic. He said the committee approved the variance due to the stormwater management aspect of the project.

Board of Zoning Appeals - BZA (Jeremy Camp)

Nothing to report.

Historic Preservation Commission – HPC (Bob Glover)

Commissioner Glover said there has not been a meeting since the awards ceremony in May. Mr. Camp said the next meeting will be on September 20th and noted that there will be a public hearing regarding a revisions to a garage in White Post.

Commissioner Glover made note of a book signing through the Historical Association for the former president of Harvard who was born in Clarke County.

Conservation Easement Authority (George L. Ohrstrom, II)

Chair Ohrstrom said they continue to look at interesting easements and may have one on the mountain that VDOT suggests they look at other possibilities other than development due to access issues.

Chair Ohrstrom said they continue to struggle with the mitigation aspects of what to allow on conservation easements in the county.

Broadband Implementation Committee (Brandon Stidham)

Mr. Stidham said All Points Broadband stated they will start to connect homes in 2024 and that they hope to provide more details before the end of the year.

OTHER BUSINESS

7. Projected Upcoming Agenda Items, September 2023 – January 2024

Mr. Stidham said the Comprehensive Plan Committee started work on the Rural Lands Plan and that in October the Commission will continue the discussion of the solar text amendment. He said the business meeting will include a solar plant public hearing and noted that the Bullard Campground is still on hold. He added there are three minor subdivision applications and an Ordinance Committee meeting scheduled soon to discuss two potential text amendments.

8. Berryville Development

Mr. Stidham provided an overview on the Friant property rezoning in the Town of Berryville. He said the property was annexed into the Town of Berryville and the application is being reviewed exclusively by their Planning Department. He said the county attorney, Mr. Mitchell developed a flowchart many years ago as to who has the review authority which concluded that rezoning applications are not to be reviewed by the Berryville Area Development Authority (BADA) and only by Town of Berryville’s Planning Commission and acted on by their Town Council. He continued that there are a number of different Berryville Area Plan subareas that come into play with this. He said the Friant property is spread out over three different subareas including the lowlands to the north that border the bypass which is an environmental preservation area, a historic home which is in its own cultural and historical preservation subarea, and also a portion of the Friant property to the east. He said if the developer attempted to subdivide today by right, they could get just over 100 lots, however, the developer is proposing to do 214 lots with a rezoning. He said it is in the Berryville Area Plan to be a possibility if the development plan provides a bulleted list of improvements. He said the difficulty lies in the need for a coordinated transportation network with the development. He added that the Bel Voi property is not owned by the Friants or DR Horton and effectively splits the property in two. He said they have to connect the two halves in order to come across the southern portion of the Bel Voi property as the northern part is within

the environmental portion. He said as of now, the Bel Voi property owners do not wish to provide that connectivity which leaves the developer with two completely separate sections. He said the eastern portion can be connected at the intersection of Route 7 business and the Route 7 bypass owned by Audley Farm. He continued that there is a pre-determined access easement for the Friant property through the Audley property. He said the western half of the Friant property is isolated and would have to be accessed through the Battletown subdivision which creates a number of issues. He said it does not comply with the master plan traffic approach in his opinion. He said the historic preservation area around Bel Voi that spills over to the Friant property was drawn specifically due to a ridgeline viewshed protection and intended to extend the protection area. He said DR Horton is currently proposing to put a subdivision street and houses that area which is another red flag.

Mr. Stidham said that he was in a town meeting earlier in the week and learned that the applicants are proposing two stormwater basins to the north of the development pods. He explained that it appears some of the water will run south towards E Main St and through the subdivision. He said town Staff confirmed that they do not have any stormwater infrastructure in that location. He said he recommended the town ask the developer how they plan to get stormwater flow uphill to the proposed stormwater basin.

Mr. Stidham said he recommended the developer explain their phasing plan in his meetings with the town and developer. He said they also highly recommend the developers build the main access road to serve all of the construction and home traffic rather than have a secondary connection into the Battletown subdivision until it is at the end of the construction process. He said currently they have proffered development triggers to complete the main access road at 135 building permits and noted this would be more than 2/3 the way through the development. He said there are no assurances that the development will not feel development and construction traffic impacts.

Mr. Stidham said the applicant has proffered to give the town \$300,000 if they are unable to connect the two lots so they can make the connection themselves by using eminent domain which is illegal in Virginia. He said a Supreme Court case in Virginia over ten years ago adopted changes to the Code of Virginia that limits when a locality can use eminent domain power which does not include for a private purpose. He said that it has to serve a public purpose. He suggested that the town have a discussion with Mr. Mitchell on the issue. He continued that the town has scheduled a special workshop with their Planning Commission at the end of the month before the public hearing takes place. He said this could come before the BADA should DR Horton continue to propose houses in the viewshed protection area but that is clearly states in the Berryville Area Plan that the area is drawn for this purpose and that any development should honor that line.


Chair Ohrstrom said he thought that the density increase will come back to the BADA. Mr. Stidham replied no but that if anything deviated from the flowchart that it would go to the BADA. He said the extra dwelling units come from a pool that was identified at the last update process that have yet to be used in other areas. He said the current location of the high school was originally proposed for housing so there are remaining dwelling units and that Berryville Glen was originally zoned as DR-2 or DR-4 but was actually zoned DR-1 which resulted in several remaining dwelling units as well. He said when the Berryville Plan was updated that incentives were set in certain areas including Friant property to provide development at a higher level that pool of dwelling units may be accessed to obtain a higher density. He said over half of the dwelling units would be used in this case.


Commissioner Staelin asked what would bring a development up to the higher level. Mr. Stidham replied they would include things like onsite amenities, clustering, minimum lot size for DR-4, a few environmental preservation items. He said the portion of the property that is in the environmental section would be put into conservation easement. He said in his opinion, the town Staff's recommendation as the project stands currently should be denial.

ADJOURN:

The Commission unanimously voted to adjourn the September 1, 2023 Planning Commission Business Meeting at 10:48AM.

Motion to adjourn the September 1, 2023 Planning Commission Business Meeting at 10:48AM:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE	King	AYE
Catlett	AYE	Lee	AYE (moved)
Dunning	AYE	Malone	AYE (seconded)
Glover	AYE	Staelin	AYE


 George L. Ohrstrom, II (Chair)


 Kristina Maddox (Clerk)