



# Clarke County Planning Commission

MINUTES – Comprehensive Plan Committee Meeting

Wednesday, March 27, 2024 – 3:30PM

Berryville/Clarke County Government Center – A/B Meeting Room

ATTENDANCE:			
Randy Buckley (White Post)	✓	John Staelin (Millwood)	✓
Bob Glover (Millwood)	✓	Terri Catlett (Board of Supervisors)	X
George L. Ohrstrom, II (Ex Officio)	E		

E – Participated electronically

**Staff Note** -- Chair Ohrstrom participated electronically for medical reasons.

**STAFF PRESENT:** Brandon Stidham (Director of Planning)

**CALL TO ORDER:** By Mr. Stidham at 3:30PM.

### 1. Approval of Agenda

Members approved the agenda by consensus as presented by Staff.

### 2. Approval of Minutes – March 6, 2024 Meeting

Chair Ohrstrom noted that the minutes are very comprehensive. Commissioner Staelin said that he thinks the minutes could be done in outline form as they are basically Mr. Stidham’s notes to himself. Members voted 4-0-1 (Catlett absent) to approve the March 6, 2024 meeting minutes as presented by Staff.

Motion to approve the March 6, 2024 meeting minutes as presented by Staff:			
Buckley	AYE	Staelin	AYE
Glover	AYE (seconded)	Catlett	ABSENT
Ohrstrom	AYE (moved)		

### 3. Old Business -- Continued Discussion, Rural Lands Plan Development

#### A. AOC/Valley Issues Workshop (continued)

Mr. Stidham stated that at the last meeting the Committee worked through the goals, policies and strategies in the current Comprehensive Plan and Agricultural Land Plan. He said that they did not get to the agricultural land issues discussion and will work on that today. He noted a few minor modifications to the March 6 version of the discussion questions and encouraged members to add in their own issues and questions.

Mr. Stidham began with a discussion of guidance for utility-scale solar and community-scale solar. Chair Ohrstrom said that he is not trying to bring back the utility-scale solar discussion. He said that community-scale solar is difficult to define but thought about encouraging rooftop solar on municipal buildings or farm structures. He added that a large farm like Audley with numerous farm structures and houses may want to install enough solar to operate off the grid. He noted that this

would require a large amount of solar arrays especially for a large farming operation. He asked whether the Committee should discuss establishing a maximum size limitation for this type of solar usage. Commissioner Staelin said that if the solar energy is not being re-sold, a farm could do this by-right today. Chair Ohrstrom said that the best way to do solar in this fashion is to be able to sell any excess generated energy back to the grid. Commissioner Glover said that this is net metering which comes in the form of a reduced electric bill. He said that this is different from utility-scale generation which is done at a per acre rate. He added that net metering is already in place for users of solar energy.

Mr. Stidham said that if a large farm like Audley proposed a free-standing array of solar panels to provide all of their electricity needs, Staff would require them to show their farm's power consumption in relation to the energy that can be generated by the array. He said this would determine whether the energy generated will be primarily for onsite use or for resale to the grid. He added that if it is primarily for onsite use, then it can be permitted under current rules as behind-the-meter. He also said that if more energy would be sold to the grid instead of being used onsite, then it would not be considered behind-the-meter. Chair Ohrstrom offered a scenario in which a property owner's solar array was designed to charge several electric vehicles but later reduced the number of vehicles resulting in far more energy being generated than used onsite. Mr. Stidham replied in that case, the solar array would still be set up for electric vehicle charging stations. He added that if the owner wanted to redirect usage of that solar energy for a different purpose, it would be reviewed again for zoning compliance as a behind-the-meter system. Commissioner Staelin said that he does not think that people would look for ways to generate more solar for resale because it does not make economic sense. He also noted that another regulatory impediment is that Dominion Energy requires separate meters for each location served by solar energy rather than one meter for an entire property. Vice Chair Buckley noted that utilities strictly regulate the amount of energy they will buy back so it is likely to be self-limiting. Mr. Stidham said that Dominion Energy is the only utility required by the General Assembly to participate in net metering. He added that the increasing demand for utility generation may encourage future changes in the law to expand net metering. Commissioner Glover noted a Washington Post article about the demand for electricity for cloud services and other technology demands. Mr. Stidham noted that electric vehicle charging is another source of electricity demand.

Mr. Stidham noted that the expansion of power transmission lines is another major issue and our plans are silent in regards to it. He said we may want to come up with very strong policies opposing any new overhead transmission lines in the County. Chair Ohrstrom said that we have no power to do that and Mr. Stidham replied that we can note our opposition in the Comprehensive Plan. Commissioner Staelin said that including the language in the Comprehensive Plan gives the Board of Supervisors chair the backing to send letters of opposition on behalf of the County. Chair Ohrstrom said he agrees with this and it is a good idea. Mr. Stidham asked whether the Committee wanted to make a statement about undergrounding power lines although it would likely be cost prohibitive. Chair Ohrstrom noted that State Senator Russet Perry introduced legislation regarding undergrounding that did not pass in this General Assembly session but there is a movement to support this concept. Commissioner Staelin noted that the largest transmission lines cannot be constructed underground. Chair Ohrstrom agreed and said anything 500 kV or greater cannot go underground at the present time. Vice Chair Buckley said we need to do anything we can to avoid new power towers and added that the power lines and substations in Frederick and Jefferson Counties are probably what has made those jurisdictions so attractive to solar companies.

Mr. Stidham said that if power transmission lines are forced on us, there is the possibility that the General Assembly may one day force utility-scale solar on us as well. Commissioner Glover and Chair Ohrstrom noted that there were some bills introduced in this year's General Assembly session about this. Mr. Stidham asked if we want to make a similar statement about utility-scale solar that we are making about power transmission lines. Commissioner Glover replied yes and noted that the Board of Supervisors has already made these statements. Mr. Stidham asked about leaving an opening to allow for community-scale solar. Commissioner Glover said maybe if we can define it. Mr. Stidham said that it is already somewhat defined because 5 megawatts is the maximum size that a solar system can be to connect directly into the grid without needing a substation. Chair Ohrstrom asked Mr. Stidham where he saw this number and Mr. Stidham replied that he has seen it in a couple of articles that he researched. Chair Ohrstrom said that 5 megawatts is pretty big and Mr. Stidham replied that it is about 50 acres. Chair Ohrstrom added that the rule of thumb is 5-10 acres per megawatt. Commissioner Staelin said that is almost too big and we may want to come up with a maximum size based on area of the system instead of wattage. Mr. Stidham said you can also limit it by prohibiting placement in important soils or outside of planting areas if on a farm. He noted that a farm may have 50 acres of rocky land that cannot be farmed but would be the perfect place for solar arrays. Members agreed with this idea.

Commissioner Staelin said that we skipped over nutrient credit banks on the list. Mr. Stidham noted that we have a statement in the Comprehensive Plan regarding limiting nutrient credit banks that convert agricultural land to forest. He asked the members if we want to say anything more than this. Chair Ohrstrom said that the Easement Authority adopted a policy to oppose nutrient credit banks on eased land except in certain situations such as not on prime soils and only a limited percentage of the lot area. Mr. Stidham said he will get a copy of the policy for distribution to the Committee. Vice Chair Buckley added that monocultures are also prohibited. Chair Ohrstrom noted that the policy requires native hardwood forest patterns to be followed. Mr. Stidham said that he will put a pin in this issue for the FOC areas discussion. He asked the members if nutrient credit banks should be encouraged on the mountain as a means of reforestation. Chair Ohrstrom said maybe so long as it is not a monoculture and Commissioner Glover added that he is fine with this. Mr. Stidham asked if there is an issue with planting pines on the mountain and Chair Ohrstrom said that he is opposed to planting only pines. Commissioner Glover noted that where you have pine forests you no longer have the biodiversity that you once had. He also said some planted pine forests look terrible. He also noted that you do not have as much farming on the mountain. Chair Ohrstrom is opposed to cutting down a mature hardwood or mixed forest to sell the wood and then getting paid by Department of Forestry to replant the harvested area with a monoculture for nutrient management. Mr. Stidham noted that logging and replanting solely in pines is not done nearly as often in Clarke as in other parts of the state and he wondered if it is due to the land values. Vice Chair Buckley noted that it has a lot to do with soil type. He added that there is also a trickle-down effect on the County when development in Arlington is allowed to be mitigated with nutrient credit banks in Clarke including increased traffic and demands for electricity.

Chair Ohrstrom asked about developing a policy on agrivoltaics. He noted that agrivoltaics was really a utility-scale solar issue and he did not think we needed a policy for farmers that want to have their own behind-the-meter systems on their farms. Mr. Stidham replied that if we want to leave an opening for community-scale solar in the future, we should have a policy to address agrivoltaics at the same time. Chair Ohrstrom said we should encourage agrivoltaics to be part of any solar plan. He also gave the example of a landowner agreeing to graze cattle as part of a utility-scale solar

facility who later discontinues cattle grazing. He asked whether the County could require the grazing to continue if it was part of the approval. Mr. Stidham said that this is why we would not want to condition an approval on the landowner conducting agrivoltaics for the lifespan of the project, but we would not have a problem if they wanted to do agrivoltaics voluntarily. Chair Ohrstrom suggested adding language to say that agrivoltaics is a good dual use of the land and helps keep the land in agricultural production. Vice Chair Buckley said that he would be fine including that language but personally he thinks agrivoltaics is a gimmick. He said that there is no market for sheep in the County and they are the only livestock that works with solar. He also said that raising honeybees is also a nonstarter. Mr. Stidham noted that cattle has been tried but requires the panels to be placed on much taller posts. Chair Ohrstrom said he would be fine with the language and people should be allowed to try agrivoltaics to see if it works for them. Vice Chair Buckley added that some agrivoltaics would be better than a solar facility without it.

Mr. Stidham asked if there were any other land conversion threats, noting that threats from development are already well covered. Commissioner Glover noted that industrial-scale agriculture is one that we will be discussing later in the agenda. Members had no other threats for discussion.

Mr. Stidham moved to a discussion of agribusiness, agritourism, and industrial-scale agriculture. He said the first question is whether there should be a vision or definition developed to distinguish between a farm that is primarily an agricultural operation versus a farm that is primarily an agritourism or agritainment business. Chair Ohrstrom said it would be challenging to come up with a definition and Commissioner Staelin added that he did not know how to determine this without access to income information. Mr. Stidham suggested developing a list of businesses that we do and do not want to see in the County under by-right agriculture. Chair Ohrstrom said it is a good place to start. Commissioner Staelin said he did not think you could do so under the Right to Farm Act. Mr. Stidham said it is a fine line between an honest business that comes in as an agricultural operation and later wants to add things to help grow their business versus someone who comes in from the start with a business plan to do agritourism and agritainment with the actual agriculture being window dressing. Commissioner Staelin suggested limiting agritourism events and activities by duration and portion of the farm being used. He also said that he thought a special use permit may be required in some cases. Chair Ohrstrom replied that the General Assembly prohibited localities from requiring special use permits for agritourism activities. He also said that he wants to be able to question people having agritourism events as to whether they have an emergency plan, adequate septic, and other concerns. He added that he is concerned that someone could propose a wedding venue in a 200 year old barn and couch it as being agriculture so the barn does not have to be inspected.

Mr. Stidham suggested saying that only bona fide agricultural operations should be considered by-right agriculture. Vice Chair Buckley said we could use the term “accessory” – whether the event is accessory or is the agricultural operation accessory. Mr. Stidham said this is another way of saying what we mean by bona fide agricultural operation – that there must be an actual working farm as the primary use and everything else is accessory. Vice Chair Buckley said he supports farmers like the Shenks who have a nontraditional way of generating revenue but is not in support of someone who buys a farm for the purpose of developing an agritourism business under the protection of by-right agriculture. Members agreed and Commissioner Staelin added it is all in how you word it. Mr. Stidham said that he will try to develop a statement of what we consider to be by-right agriculture entitled to the protections of agricultural zoning. Chair Ohrstrom said that the language would need

to stand up to strict legal review. Mr. Stidham replied that he considered using the language directly from the Code of Virginia regarding the regulation of agribusinesses and explaining how we interpret the language for the County.

Mr. Stidham explained the second item regarding developing regulations to create farmland of various sizes for purchase or lease including the history behind its inclusion in the Agricultural Land Plan. He noted that nothing was ever done with this strategy and asked the Committee whether it should be retained. Commissioner Glover said that people are already leasing land and Vice Chair Buckley said that the problem is the loss of land to lease. Mr. Stidham said that he had envisioned a 100 acre farm being allowed to use available dwelling unit rights (DURs) in ways not currently allowed by the Zoning Ordinance to create farmland for multiple emerging farmers to live on and farm. Chair Ohrstrom said it is a slippery slope to tie to DURs, adding that the Piedmont Environmental Council has been working on this same issue and has not come up with any answers. Mr. Stidham said the point is not just to create farmland to lease but also to live on. He said the DUR rules sometimes get in the way and the only other option is to subdivide which the farmer may not want to do. Commissioner Staelin says that it goes to the issue of whether we want to actively or passively provide support. Mr. Stidham said that preserving land to be available for lease is something we can create language for in the Plan.

Mr. Stidham asked what the Committee wants to do with industrial-scale agriculture. He said at one point Staff was considering establishing a maximum floor area of agricultural buildings under roof before a special use permit is required. Chair Ohrstrom said that retail buildings are currently capped at 50,000 square feet and maybe we can do something similar. Commissioner Staelin asked if we could limit a building size if it is for agriculture. Mr. Stidham replied that you could require a special use permit process if the entire operation is under roof. Chair Ohrstrom asked about the size of the typical riding arena and said he thought it was 10,000 square feet. Mr. Stidham said he used White Post Dairy as an example and it is about 25,000 square feet. Chair Ohrstrom suggested saying that anything over 25,000 square feet should require a special use permit. Mr. Stidham noted you could say that a special use permit is required when the majority of the agriculture is occurring under roof. He said he did not think we are concerned with buildings for cattle but would be concerned where all of the farming is taking place in a building. Commissioner Glover said there are types of dairy operations elsewhere where the cows never leave the barn. Mr. Stidham noted that poultry can be kept the same way. Vice Chair Buckley said he sees a lettuce factory being very different from a dairy farm.

Mr. Stidham asked the members if they have any concerns with under-roof agriculture that involves livestock or poultry. Chair Ohrstrom said that intensive livestock facilities have to have nutrient management plans so there is some oversight for those operations. Mr. Stidham noted that the intensive farming regulations in the Code of Virginia do not apply to growing plants and he said that we could treat those operations differently. He suggested maybe focusing on under-roof hydroponics. Commissioner Staelin said that he likes the idea of regulating under-roof output. Vice Chair Buckley said that it could apply to anything that is not an animal shelter and Commissioner Glover said that it can apply to buildings that are heated and cooled. Mr. Stidham said that aquaculture could also be included.

Mr. Stidham moved on to a discussion of onsite sales of goods by farms. He said the current rule is that you can sell your own products and items that you produce from products grown or raised on

your farm. He added that you cannot sell items that come from offsite sources. Vice Chair Buckley said he remembered the previous discussions on this topic and enforcement was a big issue, how do you determine where a product comes from. Commissioner Staelin said that this is a problem with farmers markets selling produce that is not grown locally. Mr. Stidham said that you may have small local farmers that want to sell their products but do not want the public coming to their farm to buy them. Chair Ohrstrom asked how difficult it would be for a farmer to get a special use permit to allow farms within a five mile radius to sell their goods at his farm. Mr. Stidham said that you can apply for a special use permit but the scale of sales is an issue. He added that you could have a farm with their own farm stand wanting to sell eggs from the farm down the street and questioned whether someone should have to get a special use permit and site development plan approval to do this. Commissioner Staelin said you could limit the size of the stand to control scale. Mr. Stidham said that he is concerned with scope creep – that a farm could start small, become wildly popular, and then claim that the County is putting them out of business because we won't allow them to expand. Commissioner Glover said that farms right now are selling other farms' products and he thinks that is fine and should be allowed to continue. He said right now there isn't a problem with these businesses getting oversized and he knows that the goal is to prevent the problem in the future. Vice Chair Buckley said that there are huge farm stores operating in Frederick and Loudoun right now. Mr. Stidham noted a large farm store in Frederick on Route 50 that generates a significant amount of traffic on the weekends and Vice Chair Buckley noted a popular farm store just down the road that sells baked goods. Vice Chair Buckley also noted a small farm stand outside of Charles Town that he thinks is the perfect size. Commissioner Staelin said the only way he can think to regulate it is by size.

Mr. Stidham said that for this exercise we do not have to come up with the parameters of an ordinance but rather a vision for what we want to see. Chair Ohrstrom asked if we need to come up with a cap on how large farm stores can be. Commissioner Glover said that Oak Heart Farm is a good example of the kind of farm store we want. Commissioner Staelin said you could limit the by-right allowance to a maximum floor area and off-street parking. Mr. Stidham said that for the Plan, we could say we want to allow under by-right agriculture retail sales that are small-scale, accessory to and supportive of the primary farming activity on the property, and that anything beyond this scope should require a special use permit and site plan. Commissioner Glover replied that he would allow small to medium but not large. Mr. Stidham asked how far above a small stand could a farm get by just selling their own products. Commissioner Staelin said that you can also note that entertainment and live music is not allowed. Mr. Stidham said you could also require the stand operator to prove that the off-site products being sold are from a Clarke County farm. He added that they could prove this by providing an invoice from the farm showing the amount of goods delivered to the farm stand. Chair Ohrstrom said he has no problem with this approach if we can do it but that size limit is important. Mr. Stidham said that he is worried if all of the small farmers get together to sell at one place, then it will exceed the size cap for by-right agricultural sales. He added that five farm stands selling their own products should also be allowed to sell each other's products. Commissioner Glover said we should not stop at the state line with allowing off-site products and Commissioner Staelin added that you could allow a 25 mile radius. Mr. Stidham said that if one place develops to sell everyone's goods, then that should be the market that has to get a special use permit and site development plan because it is going to be big.

Mr. Stidham noted the next issue is whether to modify the strategy to use agricultural-related uses to preserve historic homesteads. He said he is not sure how we came up with the strategy but thinks we

may want to eliminate it. Commissioner Staelin said he agrees. Chair Ohrstrom said that he doesn't understand the purpose of the strategy and said we would not stand in the way of someone who wanted to farm a historic homestead. Mr. Stidham said when we added the strategy in 2015, we didn't have the proliferation of wineries, breweries, and agritourism uses. Commissioner Staelin said that this strategy can be said to encourage turning a homestead into an agritourism use. He added that some people believe you cannot sell these old houses for residential use but there are others that are building new houses of the same size. Commissioner Glover said from the perspective of the Historic Preservation Commission, anything to preserve a historic structure is a good idea and noted old barns as an example. Vice Chair Buckley noted that some of these old barns have lost their usefulness as agricultural structures and this strategy encourages them to be turned into wedding venues or a distillery and this isn't what we want either. Mr. Stidham added that we may not want someone to take a historic home and turn the first floor into a tasting room. Chair Ohrstrom asked if we would eliminate this strategy and Mr. Stidham replied yes. Commissioner Glover said that we may want to keep it to support historic preservation. Commissioner Staelin replied that we have other historic preservation strategies and we may not want this particular strategy. Mr. Stidham said that we may want to clarify that we do not want this strategy to be used to encourage all kinds of agribusinesses to come in.

Regarding County support for the agricultural industry, Mr. Stidham said it sounds like we want to remove language stating that the County should have a "vigorous agricultural development program." He added that it does not sound like the agricultural industry needs the County's proactive help. Chair Ohrstrom suggested striking the word "vigorous" to avoid the misconception that the County wants to attract all types of agribusiness. Commissioner Staelin said we would have to hire subject matter experts to have a vigorous program.

Mr. Stidham said the next issue is whether the objectives and strategies dealing with agricultural impacts to the environment should be retained or modified. He said the strategy to encourage stream bank restoration and stream fencing should probably be retained. Commissioner Glover noted Goal 3, Objective 1, Strategy (a) which says to conduct periodic reviews of the Zoning Ordinance to balance the needs of the agricultural community with ensuring their potential impacts are effectively addressed. He added that this was included in response to the White Post Dairy manure spill and also in response to heavy truck traffic going through White Post to and from the Dairy. Commissioner Staelin asked if the issue is conducting the reviews or creating the regulations and Mr. Stidham replied the latter. Chair Ohrstrom said that from a water quality perspective, he does not have a problem with the wording. Mr. Stidham noted that the strategy promotes creation of more regulations which is not supportive of the agricultural industry. He suggested moving the language to another part of the Plan. Commissioner Staelin noted that the strategy suggests that we formally review the zoning regulations. Mr. Stidham suggested replacing "conduct periodic reviews" with "evaluate" and members agreed. He said we can have a section on how we want to regulate agribusiness and move this language to that section.

Mr. Stidham said he believes we have already decided to take out the strategy to allow farmland of various sizes for purchase/lease and to create housing opportunities for farm workers and families, adding that this has not emerged as an issue to address. Members agreed with this. Mr. Stidham asked about relaxing the regulations on the number of minor dwellings that you can have on your property. Vice Chair Buckley noted that allowing large properties to have additional minor dwellings of less than 600 square feet could provide affordable housing without impacting the school

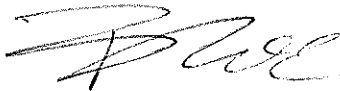
system. Mr. Stidham noted that it is an interesting concept given the interest in tiny houses and he also said that there was legislation in the General Assembly session to require localities to allow accessory dwellings. Vice Chair Buckley said that minor dwellings could be allowed on a sliding scale. He added that he thinks 600 square feet might be too small but that they cannot be so large that they become a burden on the County.

Mr. Stidham noted that the next meeting is scheduled for Monday, April 15 at 2:00PM. Chair Ohrstrom left the meeting.

Commissioner Staelin noted on page 12 of 22, Goal 2 in the Goals Statement, that we may not want to use the word "industry." Mr. Stidham said that he plans to come up with an updated goals statement. Commissioner Staelin also asked for confirmation that we are removing "vigorous" from Objective 1. Mr. Stidham replied yes and added that we will probably not say that we are going to have a program at all. Commissioner Staelin asked about Strategy (b) under the same objective and whether we are going to keep that strategy to create a formal agricultural development program. Mr. Stidham replied that we will take that out and have it covered by the Economic Development Department. On page 14 of 22, Strategy (b), Commissioner Staelin asked about the language "maintain existing and work to create new land development regulations" and whether it should be changed to "consider." Mr. Stidham said we can use "evaluate" or "consider." Commissioner Staelin said our intent is to be less proactive. Commissioner Staelin noted the wording on page 17 of 22, Objective 3. Mr. Stidham suggested referencing "traditional" agriculture as an improvement. Commissioner Staelin noted on page 21 of 22 regarding greenways that we began the discussion but did not come to a conclusion on it. Mr. Stidham said that our County already has greenways and we are promoting them through the easement program. Commissioner Staelin noted the pumpout of septic systems in Objective 19. He said his idea is to charge all property owners a fee and when it is time for the septic system to be pumped out, the County sends the property owner a voucher that can be used for any company to pump their system. He added that the voucher would help with tracking whether systems have been pumped. He also noted on page 22 of 22, item 6(d), that "residential" should be deleted. Mr. Stidham suggested deleting "commercial and residential" and members agreed.

**4. New Business** ~ none scheduled

**ADJOURN:** Meeting was adjourned by consensus at 4:54PM.



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Brandon Stidham, Clerk