

**CLARKE COUNTY PLANNING COMMISSION  
TABLE OF CONTENTS  
November 4, 2016 Regular Meeting**

<b><u>Item #</u></b>	<b><u>Description</u></b>	<b><u>Pages</u></b>
1	<b>November 4, 2016 Regular Meeting Agenda</b>	1
2	<b>Approval of Minutes:</b>	
	a. October 4, 2016 Briefing Meeting	2-7
	b. October 7, 2016 Regular Meeting	8-11
3	<b>Maximum Lot Size Exception)/Minor Subdivision MLSE-16-04/MS-16-08 Margaret R. Dillow, Joyce R. Singhas, Thomas A. Cather, Michael R. Cather, and Raymond N. Cather</b>	12-15
4	<b>Minor Subdivision MS-16-09 Ronald E. DeHaven</b>	16-20



# Clarke County Planning Commission

AGENDA – Regular Meeting

Friday, November 4, 2016 – 9:00AM

BERRYVILLE/CLARKE COUNTY Government Center – Main Meeting Room

1. **Approval of Agenda**
2. **Approval of Minutes**
  - a. October 4, 2016 Briefing Meeting
  - b. October 7, 2016 Regular Meeting

## Minor Subdivisions

3. **MLSE-16-04/MS-16-08, Margaret R. Dillow, Joyce R. Singhas, Thomas A. Cather, Michael R. Cather, and Raymond N. Cather.** Request approval of a two lot Minor Subdivision and Maximum Lot Size Exception for the property identified as Tax Map #7-A-7E located 189 Cather Road in the Russell Election District zoned Agricultural Open-Space Conservation (AOC).
4. **MS-16-09, Ronald E. DeHaven.** Request approval of a two lot Minor for the property identified as Tax Map #6-A-16 located 197 Neill Road in the Russell Election District zoned Agricultural Open-Space Conservation (AOC).

## Set Public Hearing/Public Hearings

5. **None**

## Board/Committee Reports

6. **Board of Supervisors (Mary Daniel)**
7. **Board of Septic & Well Appeals (George Ohrstrom, II)**
8. **Board of Zoning Appeals (Anne Caldwell)**
9. **Historic Preservation Commission (Doug Kruhm)**
10. **Conservation Easement Authority (George Ohrstrom, II)**

## Other Business

## Adjourn

## UPCOMING MEETINGS

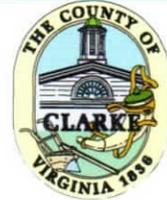
Tuesday, November 29 (3:00PM) – Briefing Meeting

Friday, December 2 (9:00AM) – Regular Meeting

# Clarke County

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**PLANNING COMMISSION  
BRIEFING MEETING MINUTES -- DRAFT  
TUESDAY, OCTOBER 4, 2016**



A briefing meeting of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Tuesday, October 4, 2016.

## **ATTENDANCE**

**Present:** George L. Ohrstrom, II (Chair); Anne Caldwell (Vice Chair); Robina Bouffault; Randy Buckley; Mary Daniel; Scott Kreider; Douglas Kruhm; Gwendolyn Malone; Cliff Nelson; and Jon Turkel.

**Absent:** Frank Lee

**Staff Present:** Brandon Stidham, Planning Director; Ryan Fincham, Senior Planner/Zoning Administrator

**Others Present:** Corey Childs (AFD Advisory Committee), Emily Day (AFD Advisory Committee), Cathy Kuehner (Winchester Star)

## **CALLED TO ORDER**

Chair Ohrstrom called the meeting to order at 3:01PM.

## **AGENDA**

The members approved the agenda by consensus as presented.

Mr. Stidham began the review of the October 7 meeting agenda by referencing the minutes from the September briefing and regular meetings, asking the members to advise Staff of any changes or corrections that may need to be made. He stated that there are three scheduled public hearings – one for the addition of land to the County’s Agricultural and Forestal District (AFD) and two hearings for the revised draft Waterloo and Double Tollgate Area Plans.

Regarding the request to add land to the AFD, Mr. Fincham reported that there have been no changes to the proposal or comments received since the Commission’s September 2 meeting.

Regarding the public hearings on the Waterloo and Double Tollgate Area Plans, Mr. Stidham noted the draft motions provided in the cover memo for the Commission to take action on the revised Plans. He reviewed the changes to the Waterloo Area Plan Introduction that were requested by the members in order to provide better connectivity between the historical information provided in Chapter I with the new Goals, Objectives, and Strategies included in Chapter II. He said that a similar change was

made to the Introduction in the Double Tollgate Area Plan along with new language added to Page 19 to further emphasize that Double Tollgate is intended to be a “deferred growth area.”

Chair Ohrstrom asked for clarification on what a “deferred growth area” means. Mr. Stidham replied that we will continue to identify Double Tollgate as a growth area but because the growth assumptions that were established when the Area Plan was originally written have not been met – Lake Frederick has not reached build-out, there is no available public sewer capacity from Frederick County, and actual traffic counts are below projected numbers -- no further action is recommended on the area until growth triggers occur. He added that we will be able to track changes on a more frequent basis with the Area Plans being evaluated every five years. Ms. Bouffault asked when the Commission will have an opportunity to re-evaluate the growth area. Mr. Stidham replied that the five-year Comprehensive Plan review will be one point and that it will occur before the five-year Double Tollgate Area Plan review is scheduled to take place.

Mr. Stidham reminded the members that separate public hearings will be conducted and that separate motions will need to be passed in order to take action on the revised Area Plans.

### **Old Business Items**

Mr. Stidham began the continued discussion of the agricultural business uses item by recapping the Board of Supervisors’ request. He also presented the reference materials provided by Staff including charts showing allowed uses in the AOC, Highway Commercial, and Neighborhood Commercial Districts in the current Zoning Ordinance and in the 1994 Zoning Ordinance. He also reviewed a list of text amendments considered since 1997 that impacted these uses.

Chair Ohrstrom asked about the 1994 use, “shops for welding, blacksmith, tinsmith, woodworking,” and how these are allowed now. Mr. Stidham replied that you can operate these uses as home occupations so long as the limitations of those uses can be met, but you cannot operate this use as a standalone business without a home occupation.

Mr. Kruhm said that he recently participated in the Artisan Trail tour and noted that there are a lot of shops and studios throughout the AOC and FOC areas of the County. He added that it was interesting to look at these businesses from a commissioner’s perspective and note impacts such as VDOT entrance compliance. He said that businesses do not appear to be operating consistently within the current regulations. Mr. Stidham said that since the mid-1990s, the County has greatly improved the site plan regulations and that the Commission could consider requiring site plan review and Commission approval if there is interest in adding business uses to the AOC District. Mr. Kruhm asked how nonconforming businesses are addressed. Mr. Stidham replied that the Zoning Ordinance limits how much a nonconforming business can expand and also allows for nonconforming status to be lost if the business is discontinued for two or more years. Mr. Turkel asked Mr. Kruhm if the businesses he referenced were home occupations or free-standing businesses. Mr. Kruhm said that the majority were probably home occupations. Mr. Stidham said that compared to other localities, we provide significant latitude for home occupations to be conducted.

Ms. Bouffault asked about the 1994 commercial stables use and how they are viewed under the current ordinance. Mr. Stidham said that they are considered to be by-right agriculture. Mr. Kreider

asked about the special use for “small scale processing of fruit and vegetables.” Mr. Stidham said that there is one example – the tomato processing facility on Wrights Mill Road. Ms. Bouffault asked for clarification on “farm machinery sales and service.” Mr. Stidham said that this use and “farm supplies and sales” are allowed by right in the Highway Commercial District but are prohibited in the AOC District. Chair Ohrstrom said that it is inconsistent that farm wineries and farm breweries are allowed by right in the AOC District but not farm sales and service.

Mr. Stidham suggested that the members think of these uses and the physical impacts to surrounding properties that they may have, but not necessarily what the uses themselves entail. An example is that “processing of agricultural products not entirely produced in Clarke County” is a special use in the AOC District whereas processing of agricultural products produced in Clarke County is considered by-right agriculture, however the impacts of both are the same. Chair Ohrstrom added that farm wineries are not required to have everything grown on site.

Ms. Bouffault said that it may be excessive to exclude commercial nurseries/greenhouses from the AOC District. Chair Ohrstrom asked about how Anderson’s Nursery was approved and Mr. Stidham said that it is a special use for retail sales and service. Ms. Bouffault said that commercial nurseries/greenhouses could be allowed by special use permit in the AOC District, and Mr. Stidham suggested making it a by-right use subject to site plan review and approval by the Planning Commission. He added that the review would be similar to a special use permit except that the Commission would not be able to impose special conditions. He noted that potential business owners can be discouraged from investing in a new business if it is dependent upon a special use permit that could be revoked. Ms. Bouffault said that we need to have very specific definitions for nurseries and greenhouses. Vice Chair Caldwell asked what the difference is between “horticulture” and “nurseries, greenhouses (commercial),” and noted that the definition of “horticulture” sounds similar to “nurseries, greenhouses (commercial).” Mr. Fincham read the definition of “horticulture” and noted that there is no definition for “nurseries, greenhouses (commercial).” Ms. Bouffault replied that we definitely need clear definitions to consider before making a decision on how the use should be allowed. Mr. Kreider made the point that with horticulture, the product is getting sold one way or the other. Mr. Stidham said that you can draw the line between retail sales and wholesales. Chair Ohrstrom said that wholesalers have impacts in the form of large vehicles and Mr. Nelson replied that numbers of vehicles coming to a site can cause impacts just as large vehicles can.

Chair Ohrstrom stated that this request from the Board is a much bigger issue than anticipated. Mr. Stidham suggested the Commission provide some parameters for Staff to begin drafting the start of a text amendment for discussion. Vice Chair Caldwell added that the members should continue going around the table and start by agreeing on items that are relatively simple to address. Chair Ohrstrom noted that the Right to Farm Act should allow horticulture to be incorporated into agriculture and that he did not believe that they should be left as separate uses. Ms. Bouffault recommended combining horticulture into the definition of agriculture. Mr. Stidham said that the issue of retail sales of horticultural products still needs to be addressed. Ms. Bouffault said that retail sales should be included under “nurseries, greenhouses (commercial).” Mr. Fincham read the definition of “agriculture” and pointed out that it already includes “horticulture.” He also noted that site plans are not required for “agricultural buildings,” so you will need to specify that a site plan is required for an agricultural business use. Mr. Kruhm asked if the definition of “agriculture” refers to products

produced for food and Mr. Fincham said no. Mr. Kruhm said that he is concerned about very large commercial horticultural operations in other parts of the state that require huge quantities of water to operate. Mr. Buckley said that this type of use would fall under nurseries and greenhouses. Mr. Stidham said that he thinks this would fall under horticulture and that he views commercial nurseries and greenhouses as retail operations. Mr. Kruhm said that these facilities also have large trucks that produce a transportation impact. Chair Ohrstrom said that you can have a small greenhouse operator that grows and sells produce throughout the year that would be considered a commercial greenhouse when in reality they are just a small agricultural operation. He added that examples like this make the issue tricky.

Ms. Daniel asked where the definition of horticulture comes from and Mr. Fincham read the definition from the Zoning Ordinance. Mr. Stidham said that the definition does not address either retail sale or wholesale. He also noted that the definitions for "agriculture" in other counties are often very complex. Mr. Kreider asked if the point of this exercise is to attract more agricultural business to the County and Mr. Stidham replied that agricultural economic development is one of the goals. Vice Chair Caldwell said that it sounds like the members are in agreement that the commercial nurseries/greenhouses issue needs to be addressed.

Vice Chair Caldwell said that the issue of "processing of agricultural products not totally produced in Clarke County" is another one to be addressed. Mr. Stidham added that "processing" is not clearly defined in the Zoning Ordinance and cited the example of whether cutting hay and rolling into round bales would be considered "processing" of hay. He also asked whether "processing" should be considered as taking an agricultural product and turning it into something completely different, like turning wood into mulch. Ms. Bouffault asked about processing activities at farm wineries and farm breweries, and Mr. Stidham said that those uses should be set aside for the purpose of this discussion since they have special state code exemptions. Ms. Bouffault then asked about honey. Mr. Stidham said that this is a good example and asked whether putting a honeycomb in a bottle for resale is considered "processing." Ms. Daniel said that she thought "processing" was defined by case law and that it involves fundamentally changing the nature of an agricultural product, such as spinning off cream from milk. Ms. Bouffault asked about canning agricultural products not all grown in the County, and added that she thought this would be considered processing. Mr. Stidham suggested that if you are packaging an agricultural product brought from another location, it might fall under the scope of a light industrial use.

Mr. Buckley asked what the drawback would be to making farm machinery sales and service, farm supplies and sales, nurseries/greenhouses (commercial), and feed and grain mills all special uses in the AOC District. He said he thinks it is absurd that retail and service businesses are allowed by special use in AOC whereas these agricultural support businesses are considered prohibited uses. Mr. Stidham noted that if you want to allow these uses as an economic development incentive, he recommends making them permitted uses subject to site plan review and approval. Chair Ohrstrom noted that you can place special conditions on the approval with a special use permit, adding that the Commission was concerned about farm machinery and sales because they did not know how these businesses were disposing of the by-products of working on farm equipment. Mr. Stidham said that if you identify common impacts such as outdoor storage, you can create supplementary regulations to address these impacts.

Vice-Chair Caldwell asked if the former use, “shops for welding, blacksmith, tinsmith, woodworking,” should be added back into the AOC District. Chair Ohrstrom said that farms should be able to have woodworking shops. Mr. Buckley noted that cabinet shops like the one outside of Boyce on U.S. 340 would also be considered a woodworking shop. Mr. Stidham added that a specialty metal fabrication shop with state-of-the-art equipment and heavy truck traffic could also fit under the description of “shops for welding.” He also said that these businesses can be currently operated as a home occupation and that this helps to keep the size of the business and its impacts low. Mr. Fincham noted the “community services” building at the corner of Fishpaw Road and Longmarsh Road, stating that he gets calls on a regular basis asking whether it can be used as a welding or fabrication shop. He recommended keeping that building and location in mind if the Commission wants to allow these uses in the AOC District again. Ms. Bouffault stated that from her experience serving on the Career and Technical Committee for the Schools, there will be a demand for careers such as welding in the near future and that people will be looking for places where welding shops are permitted. Mr. Stidham said that if you wanted to control the size of these businesses, you could require all activities to be conducted in an enclosed building and place limits on the maximum size of the building. Mr. Kreider said that he thought these uses should be brought back, either as a permitted use with a site plan or a special use. Chair Ohrstrom said he thought all activities should be in an enclosed building.

Mr. Stidham asked whether the fabrication shops should be by site plan or special use permit. Chair Ohrstrom asked what the difference would be in the two approvals. Mr. Stidham said that with a site plan the Commission would be determining whether they meet all technical requirements of Article 6 of the Zoning Ordinance but could not impose special conditions. He said that a special use permit allows you to impose special conditions and also results in the issuance of a “permit” by the Board of Supervisors that can be revoked for cause. Mr. Buckley asked if you can take health, safety and welfare in consideration with a special use permit and Mr. Stidham said yes, just as the Commission did with the solar farm. Mr. Turkel said that special use permits are attractive from a regulatory perspective but costly from the business owner’s perspective. Mr. Stidham noted that there is an additional fee for a special use permit and there is the Public Hearing process that is required.

Vice-Chair Caldwell said she supported the idea of allowing uses by-right with site plan approval and also creating new supplemental regulations to address common impacts. She added that this would be kind of a hybrid approach between a site plan review and a special use permit. Going back to the fabrication shops issue, Mr. Stidham asked whether these should be limited to properties with direct access to primary highways. The members agreed and Mr. Stidham noted that uses that could fit under the home occupation regulations would still be allowed on properties limited to secondary or private road access.

Mr. Stidham said that he thought he had enough direction from the Commission to work on materials for the next meeting. He said he would create a table of proposed use changes and identify new definitions or supplementary regulations that would be needed. Vice Chair Caldwell asked whether the farm machinery sales and service and the farm supplies and sales uses could be addressed. Mr. Stidham asked whether these should be by-right site plan approval for properties with direct access on primary highways and the members said yes. Mr. Stidham said that nurseries and greenhouses could be addressed similarly and Mr. Buckley replied that the terms need definitions. Chair

Ohrstrom said that for nurseries and greenhouses maybe thresholds are needed. Mr. Stidham said that large commercial greenhouses could be viewed as intensive farming operations similar to intensive livestock operations, and that perhaps groundwater usage could be used as a limiting factor. He also said that retail sales of agricultural products could differentiate a commercial greenhouse from a by-right agricultural operation. Chair Ohrstrom recognized Mr. Childs who said that innovations in water reuse could make water consumption an unreliable factor to regulate commercial greenhouse size. Mr. Childs added that most agricultural greenhouses and nurseries need a retail component to survive, and that better controls could be sales or building size. He also suggested distinguishing a nursery that buys and resells plants from an agricultural business that grows the plants onsite for wholesale or retail sale.

Vice-Chair Caldwell asked about feed and grain mills. Mr. Stidham said they appear to have always been prohibited uses in the AOC District. Mr. Buckley noted that it is the same as processing of agricultural products. Mr. Stidham said that they would not be prohibited uses if they were accessory to a farming operation – only if they were freestanding feed and grain mills. Members indicated that they did not want to make any changes to this use.

**New Business Items**

None

**Other Business**

Mr. Stidham reported that the Agricultural Land Plan Subcommittee will meet immediately after the Briefing Meeting and that Commission members are welcome to attend. He stated that the Telecommunications Subcommittee will meet on Thursday, October 6 at 4:00PM to review a proposed tower location map prepared by George Condyles (Atlantic Group). He also reported that the Board of Supervisors took action at their September meeting to repeal the County stormwater regulations and that he would be bringing a draft text amendment to the November 1 briefing meeting to remove references to the stormwater regulations that appear in the Zoning and Subdivision Ordinances.

The meeting was adjourned by consensus at 4:03PM.

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George L. Ohrstrom, II (Chair)

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Brandon Stidham, Planning Director

# Clarke County

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**PLANNING COMMISSION  
REGULAR MEETING MINUTES  
FRIDAY, OCTOBER 7, 2016 DRAFT**



A regular meeting of the Planning Commission of Clarke County, Virginia was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, October 7, 2016.

## **ATTENDANCE**

George L. Ohrstrom, II, Chair; Anne Caldwell, Vice Chair (arrived late); Robina Bouffault; Randy Buckley; Mary Daniel; Scott Kreider; Doug Kruhm; Frank Lee; Gwendolyn Malone; Cliff Nelson; and Jon Turkel.

## **STAFF**

Brandon Stidham, Planning Director; Ryan Fincham, Senior Planner/Zoning Administrator; and Debbie Bean, Recording Secretary.

## **CALLED TO ORDER**

Chair Ohrstrom called the meeting to order at 9:00 a.m.

## **APPROVAL OF AGENDA**

The Commission voted to approve the Agenda.

**Yes:** Bouffault, Buckley, Daniel, Kreider, Kruhm, Lee, Malone (seconded), Nelson (moved), Ohrstrom, and Turkel

**No:** No one

**Absent:** Caldwell

Vice Chair Caldwell entered the meeting.

## **APPROVAL OF MINUTES**

The Commission voted to approve the briefing meeting minutes of August 30, 2016.

**Yes:** Bouffault (moved), Caldwell, Daniel, Kreider (seconded), Kruhm, Malone, Lee, Nelson, Ohrstrom and Turkel

**No:** No one

**Abstained:** Buckley

The Commission voted to approve the regular meeting minutes of September 2, 2016.

**Yes:** Bouffault, Buckley, Caldwell (moved), Daniel, Lee, Kreider, Kruhm (seconded), Nelson and Turkel

**No:** No one

**Abstained:** Ohrstrom and Malone

## **Public Hearings**

**AFD-16-01, George E. & Sun H. Riley.** Request addition of an 11.61 acre parcel to the Clarke County Agricultural & Forestal District (AFD), identified as Tax Map #6-A-53B located at 2246 Russell Road in the Russell Election District.

Mr. Fincham stated that a new application has been submitted requesting to add 11.61 acres to the Agricultural and Forestal District for 2016. He said the property is owned by George E. and Sun H. Riley and is located at 2246 Russell Road in the Agricultural Open-Space Conservation District (AOC) and identified as Tax Map #6-A-53B. He stated that the property is in Land Use and there are no remaining dwelling unit rights on this property. He said that at the AFD Committee meeting on August 25, 2016 the Committee voted 9 to 0 to recommend to the Planning Commission acceptance of the parcel. After discussion with Staff and the Commission, Chair Ohrstrom asked for public comments. There being no public comments Chair Ohrstrom called for a motion.

The Commission voted to approve the request of an addition of an 11.61 acre parcel to the Clarke County Agricultural & Forestal District.

**Yes:** Bouffault, Buckley, Caldwell, Daniel (seconded), Kreider, Kruhm, Lee, Malone, Nelson (moved), Ohrstrom, and Turkel

**No:** No one

## **Revised 2016 Waterloo Area Plan.**

Mr. Stidham briefly reviewed the Revised 2016 Waterloo Area Plan. He stated that at the September briefing and regular meetings edits were requested by the Planning Commission. He said that the edits have been added to the revised draft. He stated there are four new plan goals: promoting broadband accessibility; proactive strategies for business development; ensure attractiveness and marketability; maintain current area plan boundaries and the form, scale, and current capacity for development. He said the three new objectives are: set aside funding annually for capital project investment; pursue approaches to make water and sewer more affordable; and establish/maintain regulations to ensure quality and efficient site development standards and compatible uses. He stated that the Conclusion describes the process for ensuring the Plan is reviewed every five years.

Chair Ohrstrom thanked the Committee and Staff for their time and hard work on this project. After discussion with Staff and the Commission, Chair Ohrstrom opened the public hearing. There being no public comments, Chair Ohrstrom closed the public hearing.

The Commission voted to recommend approval of the 2016 Waterloo Area Plan as presented by Staff.

**Yes:** Bouffault (moved), Buckley, Caldwell, Daniel, Kreider, Kruhm, Lee, Malone (seconded), Nelson, Ohrstrom, and Turkel

**No:** No one

**Revised 2016 Double Tollgate Area Plan.**

Mr. Stidham briefly reviewed the Revised 2016 Double Tollgate Plan. He said that a change was made to the Introduction in the Double Tollgate Area Plan along with new language to further emphasize that Double Tollgate is intended to be a “deferred growth area.” He said that we will continue to identify Double Tollgate as a growth area but because the growth assumptions that were established when the Area Plan was originally written have not been met – Lake Frederick has not reached build-out, there is no available public sewer capacity from Frederick County, and actual traffic counts are below projected numbers -- no further action is recommended on the area until growth triggers occur. He added that we will be able to track changes on a more frequent basis with the Area Plans being evaluated every five years. He stated that there are three new Plan Goals: deferred growth area designation; maintain current Area Plan boundaries, form and scale and current capacity for development; and Broadband accessibility. He said there are three new Objectives: set aside funding annually for capital project investment, pursue approaches to make water and sewer more affordable, and establish/maintain regulations to ensure quality and efficient site development standards and compatible uses. He stated that the Conclusion describes the process for ensuring the Plan is reviewed every five years. After discussion with Staff and the Commission, Chair Ohrstrom opened the public hearing.

Barbara Seldon, co-owner of Dinosaur Land, was present and stated that she has concerns with there not being any water and sewer available in this area. She asked how any business can come to this area if we do not have water and sewer available. She said that her other concern is the availability of internet. Chair Ohrstrom stated that there is no place in that area to put in a water/sewer plant. He said that the County does not have a big enough budget to fund it. He said that he hopes that the State comes up with a plan to upgrade the Department of Corrections area which could possibly help with the water/sewer problem. He suggested that she talk to her Supervisor with her concerns. Commissioner Daniel suggested she contact Senator Vogel and Delegate Randy Minchew as they are both familiar with this area and tell them your concerns. Commissioner Bouffault suggested an Internet Service that may be able to help you get internet in your area.

JoAnn Light, co-owner of Dinosaur Land, was present and stated that two of the lots at Dinosaur Land are zoned commercial but there is no water or sewer available. She said she would like to see a way of getting water/sewer in the Double Tollgate area. She stated that internet service is really needed for their business.

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

The Commission voted to recommend approval of the 2016 Double Tollgate Area Plan as presented by Staff.

**Yes:** Bouffault (moved), Buckley, Caldwell, Daniel, Kreider (seconded), Kruhm, Lee, Malone, Nelson, Ohrstrom, and Turkel

**No:** No one

## **Board/Committee Reports**

### **Board of Supervisors (Mary Daniel)**

Commissioner Daniel stated that the Board of Supervisors received a report from the Northern Shenandoah Valley Regional Commission regarding the USDA Rural Development Plan which is now on their website. Chair Ohrstrom asked if they have any money for the internet. She said that this is something she is discussing with Supervisor McKay. She said she asked him to look into some of the few rural organizations that may have something. She stated that we are trying and we keep looking. She said that the Board of Supervisors had a public hearing for Steven Soechtig for an Administrative Appeal of the Board of Septic Appeals decision. She stated a decision may be made at the next meeting.

### **Board of Septic & Well Appeals (George Ohrstrom, II)**

No report.

### **Board of Zoning Appeals (Anne Caldwell)**

No report.

### **Historic Preservation Commission (Doug Kruhm)**

No report.

### **Conservation Easement Authority (George Ohrstrom, II)**

Chair Ohrstrom stated that the Conservation Easement Authority is probably going to look at redoing the easement template soon. He stated that earlier this year the Virginia State Supreme Court heard a case from the Wetlands American Trust which is Ducks Unlimited regarding an easement they held in Loudoun County. He said the easement was being challenged because the property owner wanted to build a huge bridge over a small creek which would significantly alter all sorts of terms of an easement. He stated that the Loudoun County Circuit Court made the decision that any ambiguities in the language of an easement would now be interpreted in favor of the land owner and not in favor the easement holder. He said that most organizations that deal with Conservation Easements in the State of Virginia are now studying their templates carefully to remove any ambiguities and trying to figure out how to deal with this situation.

On motion by Commissioner Malone and seconded by Commissioner Caldwell the meeting was adjourned at 9:50 a.m.

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George L. Ohrstrom, III

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Brandon Stidham, Director of Planning

Minutes prepared by Debbie Bean, Recording Secretary

**MAXIMUM LOT SIZE EXCEPTION (MLSE-16-04)/MINOR SUBDIVISION (MS-16-08)  
Margaret R. Dillow, Joyce R. Singhas, Thomas A. Cather, Michael R. Cather, and  
Raymond N. Cather**

**November 4, 2016 Planning Commission Meeting  
STAFF REPORT -- Department of Planning**

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The purpose of this staff report is to provide information to the Planning Commission to assist them in reviewing this proposed minor subdivision. It may be useful to members of the general public interested in this proposed subdivision.  
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**Case Summary**

**Applicant(s):**

Margaret Dillow, Joyce R. Singhas, Thomas A. Cather, Michael R. Cather, and  
Raymond N. Cather

**Location:**

- Subject property is located at 189 Cather Road
- Tax Map Parcel #7-A-7E
- Russell Election District (Nelson and Ohrstrom, II)

**Zoning District and Lot Guidelines:**

Agricultural-Open Space-Conservation (AOC)

**Proposed Lot Configurations:**

Lot 1 = 5.888 acres (1 Existing Dwelling / No DUR)

Residue Lot (Lot 3) = 19.624 acres (No Existing Dwelling / 1 DUR)

Total Area in subdivision = 25.5128 acres

**Request:**

Approval of a two lot Minor Subdivision for the property identified as Tax Map #7-A-7E located at 189 Cather Road in the Russell Election District zoned Agricultural Open-Space Conservation (AOC).

**Staff Discussion/Analysis:**

The applicants are in the process of estate planning and propose this minor subdivision in the aforementioned lot configurations. As part of that planning, a boundary line adjustment is also proposed to follow the subdivision.

**Access:**

The ingress/egress for Lot 1 will be the existing driveway shown on the subdivision plat. The ingress/egress for the Residue Lot will be the approved farm entrance as shown on the subdivision plat. VDOT has not provided comments to date.

Water and Septic:

An existing septic drainfield and reserve area are shown on Proposed Lot 1. A proposed septic area for a four-bedroom install and reserve is shown on the Residue Lot. VDH has not provided comments to date.

Karst Plan / Resistivity Test:

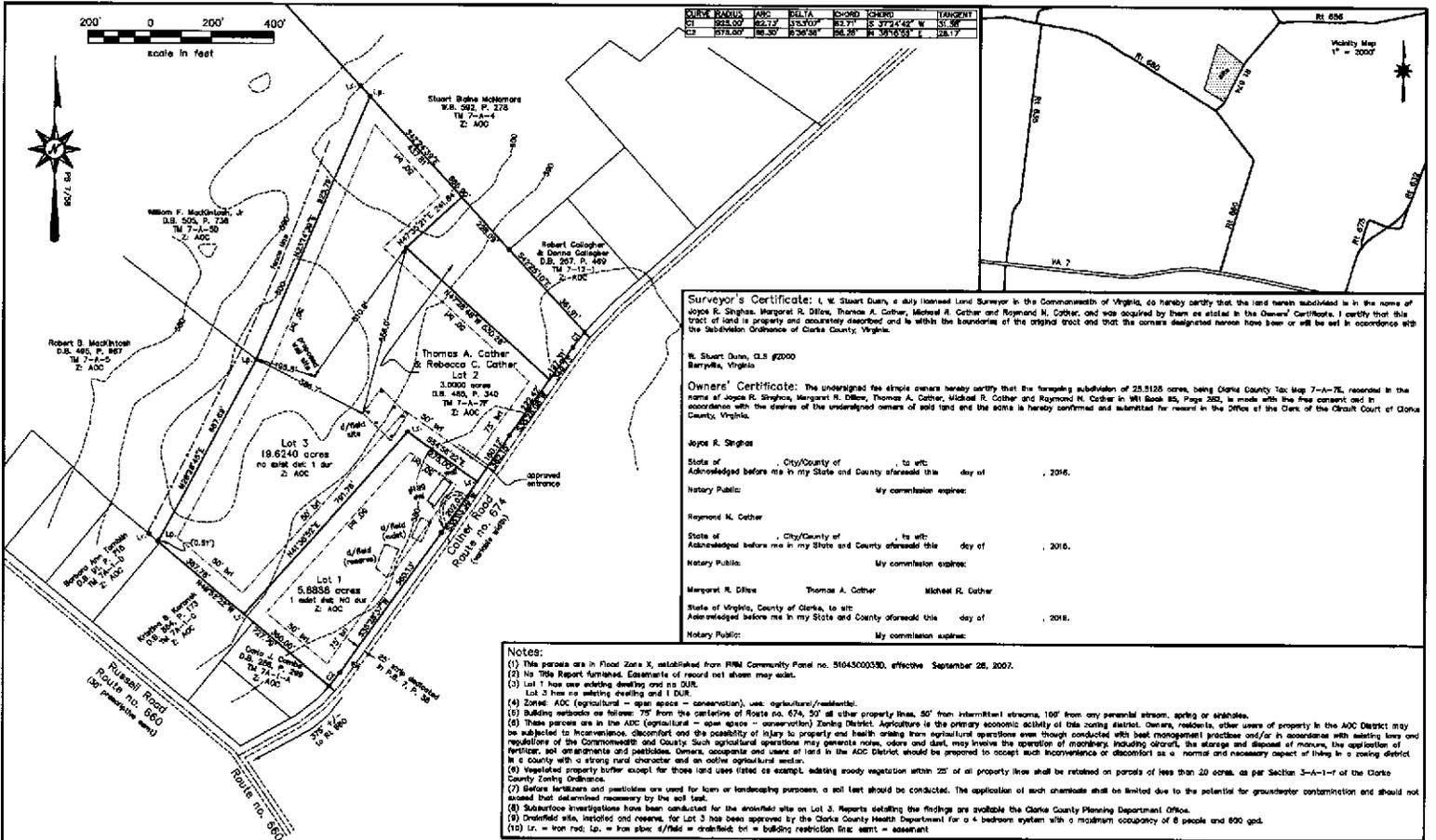
The resistivity tests have been reviewed and approved by County consultant Dan Rom.

**Recommendation:**

Staff recommends that the Commission defers action on the plat and returns it to the applicant until VDOT and VDH comments are received and any required revisions are made. This would satisfy the Commission's 60-day time limit for review of the minor subdivision plat.

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**History:**

October 3, 2016	Complete Application filed with the Department of Planning.
November 4, 2016.	Placed on the Commission's regular meeting agenda.



LINE	BEARING	DISTANCE	POINT
1	S 82.00° E	22.77	STATION
2	S 74.00° W	26.38	STATION
3	S 74.00° W	26.38	STATION
4	S 82.00° E	22.77	STATION

**Surveyor's Certificate:** I, W. Stuart Dunn, a duly licensed Land Surveyor in the Commonwealth of Virginia, do hereby certify that the land herein subdivided is in the name of Joyce R. Singhas, Margaret R. Dillow, Thomas A. Cather, Michael R. Cather and Raymond N. Cather in W8 Book 95, Page 282, as made with the free consent and in accordance with the Ordinance of Clarke County, Virginia. I certify that this tract of land is properly and accurately described and is within the boundaries of the original tract and that the corners designated herein have been or will be set in accordance with the Subdivision Ordinance of Clarke County, Virginia.

**Owners' Certificate:** The undersigned fee simple owners hereby certify that the foregoing subdivision of 25.5126 acres, being Clarke County Tax Map 7-A-7E, recorded in the name of Joyce R. Singhas, Margaret R. Dillow, Thomas A. Cather, Michael R. Cather and Raymond N. Cather in W8 Book 95, Page 282, is made with the free consent and in accordance with the Ordinance of Clarke County, Virginia.

**Joyce R. Singhas**  
 State of \_\_\_\_\_, City/County of \_\_\_\_\_, to wit:  
 Acknowledged before me in my State and County on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
 Notary Public: \_\_\_\_\_ My commission expires: \_\_\_\_\_

**Raymond N. Cather**  
 State of \_\_\_\_\_, City/County of \_\_\_\_\_, to wit:  
 Acknowledged before me in my State and County on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
 Notary Public: \_\_\_\_\_ My commission expires: \_\_\_\_\_

**Margaret R. Dillow, Thomas A. Cather, Michael R. Cather**  
 State of Virginia, County of Clarke, to wit:  
 Acknowledged before me in my State and County on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
 Notary Public: \_\_\_\_\_ My commission expires: \_\_\_\_\_

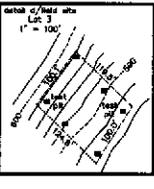
- Notes:**
- (1) The parcels are in Flood Zone X, established from FEMA Community Panel no. 51645000330, effective September 26, 2007.
  - (2) No TRS Report furnished. Easements of record not shown may exist.
  - (3) Lot 1 has one existing dwelling and no DWR.
  - (4) Zoned AOC (agricultural - open space - conservation), use: agricultural/residential.
  - (5) Building setbacks as follows: 75' from the centerline of Route no. 674, 50' all other property lines, 50' from intermittent streams, 100' from perennial streams, spring or swales.
  - (6) These parcels are in the AOC (Agricultural - open space - conservation) Zoning District. Agriculture is the primary economic activity of this zoning district. Owners, residents, other users of property in the AOC District may be subjected to harassment, discrimination and the possibility of injury to property and health arising from agricultural operations even though conducted with best management practices and/or in accordance with zoning laws and regulations of the Commonwealth and County. Such agricultural operations may generate noise, odors and dust, may involve the operation of machinery, including tractors, the storage and disposal of manure, the application of fertilizers, soil amendments and pesticides. Owners, occupants and users of land in the AOC District should be prepared to accept such inconvenience or discomfort as a normal and necessary aspect of living in a zoning district in a county with a strong rural character and an active agricultural sector.
  - (7) Vexatious property holder except for those land uses listed as exempt, existing woody vegetation within 25' of all property lines shall be retained on parcels of less than 20 acres, as per Section 3-A-1-1 of the Clarke County Zoning Ordinance.
  - (8) Before fertilizers and pesticides are used for lawn or landscaping purposes, a soil test should be conducted. The application of such chemicals shall be limited due to the potential for groundwater contamination and should not exceed that determined necessary by the soil test.
  - (9) Subsurface investigations have been conducted for the arched site on Lot 3. Reports detailing the findings are available to the Clarke County Planning Department Office.
  - (10) Drainfield site, installed and reserved, for Lot 3 has been approved by the Clarke County Health Department for a 4 bedroom system with a maximum occupancy of 8 people and 800 gal.
  - (11) cr. = iron rod; lp. = iron pipe; d/f/d = drainage; br = building restriction line; ssm = easement

**Approval:**

Clarke County Zoning Administrator      date: \_\_\_\_\_

Chairman of Planning Commission      date: \_\_\_\_\_

Clarke County Health Department      date: \_\_\_\_\_



**Area Tabulation:**

25.5126 acres	area of Lot 1, TM 7-A-7E	(1 dwt, 1 DWR)
5.8685 acres	area of Lot 1 after division	(1 dwt, no DWR)
16.6240 acres	area of Lot 3	(no dwt, 1 DWR)
0.0000 acres	area dedicated for public use	



Minor Subdivision and Maximum Lot Size Exception  
 of the Land of  
**Joyce R. Singhas, Margaret R. Dillow,  
 Thomas A. Cather, Michael R. Cather  
 and Raymond N. Cather**  
 W8 Book 95, Page 282      Tax Map 7-A-7E  
 Langmarsh Magisterial District, Clarke County, Virginia

Dunn Land Surveys, Inc.  
 106 North Church Street  
 Berryville, Virginia 22611  
 Tel: 540-955-3388  
 September 26, 2016

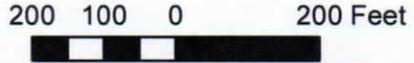
Survey no. 1227A



Lot 3  
19.62 acres  
1 DUR

Lot 1  
5.89 acres  
1 ext. dwl., 0 DURs

Margaret Dillow, et. al.  
TM# 7-A-7E, 25.5 acres, 1 ext. dwl., 1 DUR



Clarke County GIS  
October 28, 2016



**Legend**

- Parcel Boundary
- Conservation Easements
- Structures
- Drainfield
- Proposed Lot Line
- Existing Lot Line
- Roads
- Private Road

**MINOR SUBDIVISION (MS-16-09)**  
**Ronald E. DeHaven**  
**November 4, 2016 Planning Commission Meeting**  
**STAFF REPORT -- Department of Planning**

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The purpose of this staff report is to provide information to the Planning Commission to assist them in reviewing this proposed minor subdivision. It may be useful to members of the general public interested in this proposed subdivision.  
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**Case Summary**

**Applicant(s):**  
Ronald E. DeHaven

**Location:**

- Subject property is located at 197 Neill Road
- Tax Map Parcel #6-A-16
- Russell Election District (Nelson and Ohrstrom, II)

**Zoning District and Lot Guidelines:**  
Agricultural-Open Space-Conservation (AOC)

**Proposed Lot Configurations:**  
Lot 3 = 3.00 acres (No Dwelling / 1 DUR)  
Residue Lot = 44.933 acres (One Existing Dwelling / No DURs Remaining)  
Total Area in subdivision = 47.933 acres

**Request:**  
Approval of a two lot Minor Subdivision for the property identified as Tax Map #6-A-12 located at 197 Neill Road in the Russell Election District zoned Agricultural Open-Space Conservation (AOC).

**Staff Discussion/Analysis:**  
The applicant intends to build a home on Proposed Lot 1 and propose this minor subdivision in the aforementioned lot configurations.

**Access:**  
The ingress/egress for Lot 1 will be the private access easement shown on the subdivision plat. The ingress/egress for the Residue Lot will be the existing farm driveway as shown on the subdivision plat. VDOT has not provided comments to date.

**Water and Septic:**  
According to Health Department comments, the Residue Lot is served by an approved existing 3-bedroom sewage disposal system and drilled well. The proposed 100% reserve area for the Residue Lot, as well as the proposed 2-bedroom primary and 100% reserve area for Lot 1 have been approved by the Health Department, and they are awaiting final plats for signature.

Karst Plan / Resistivity Test:

Not required.

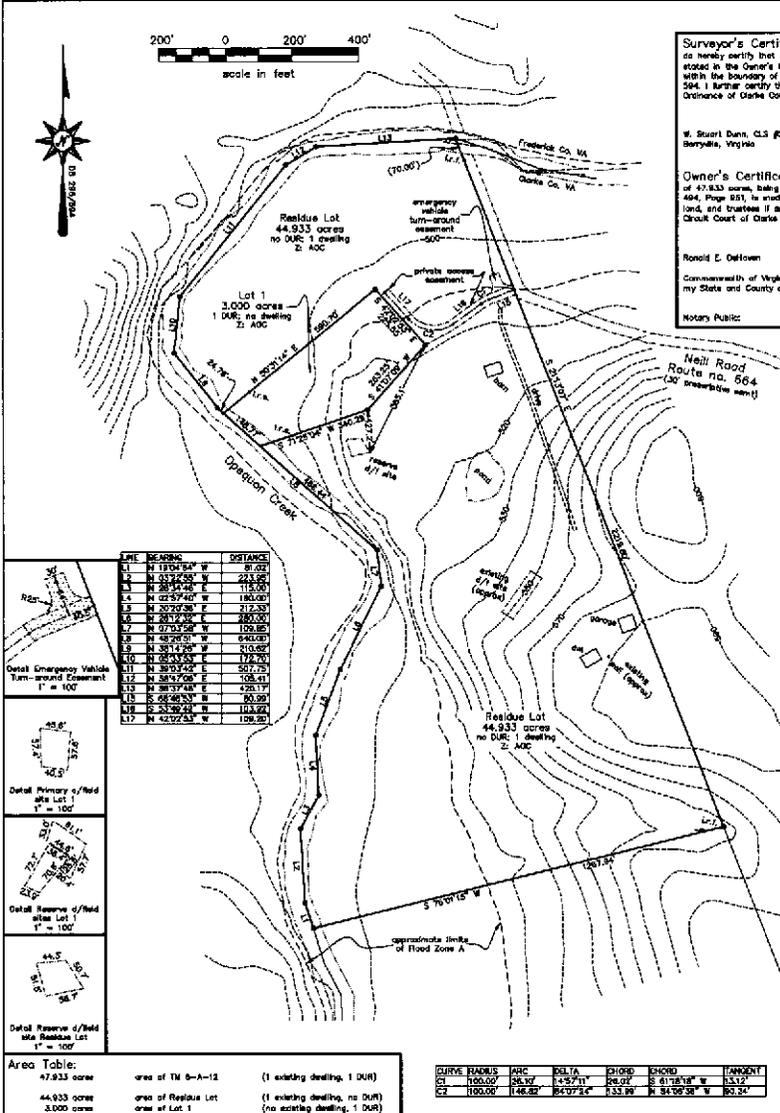
**Recommendation:**

Staff recommends that the Commission defers action on the plat and returns it to the applicant until VDOT comments are received and any required revisions are made. This would satisfy the Commission's 60-day time limit for review of the minor subdivision plat.

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**History:**

- |                   |   |
|-------------------|---|
| October 5, 2016   | Complete Application filed with the Department of Planning. |
| November 4, 2016. | Placed on the Commission's regular meeting agenda.          |



**Surveyor's Certificate:** I, W. Stuart Dunn, a duly licensed Land Surveyor in the Commonwealth of Virginia, do hereby certify that the land herein subdivided is in the name of Ronald E. DeHaven, and was acquired by him as stated in the Owner's Certificate. I further certify that these parcels are properly and accurately described and are within the boundaries of the original tract and are referenced to the monument established in Deed Book 295, Page 264. I further certify that the monuments designated herein have been set in accordance with the Subdivision Ordinance of Clarke County, Virginia.

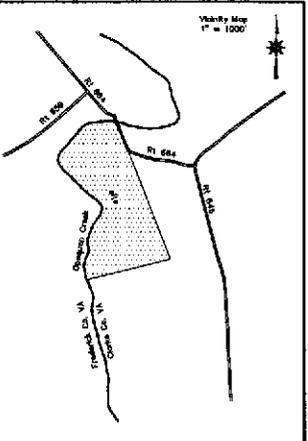
W. Stuart Dunn, CLS #2000  
Berryville, Virginia

**Owner's Certificate:** The undersigned fee simple owner hereby certifies that the foregoing Minor Subdivision of 47,933 acres, being Tax Map 6-A-12, recorded in the name of Ronald E. DeHaven in deed recorded in Deed Book 494, Page 261, is made with the free consent and in accordance with the desires of the undersigned owner of said land, and trustees if any, and the same is hereby confirmed and submitted for record in the Clerk's Office of the Circuit Court of Clarke County, Virginia.

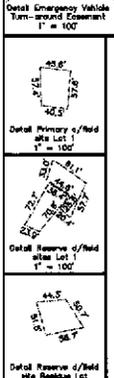
Ronald E. DeHaven  
Commonwealth of Virginia, County of Clarke, to-wit: The foregoing Owners' Certificate was acknowledged before me in my State and County aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Notary Public: My commission expires: \_\_\_\_\_

**Approval:**  
Clarke County Zoning Administrator date: \_\_\_\_\_  
Chairman of Planning Commission date: \_\_\_\_\_  
Clarke County Health Department date: \_\_\_\_\_



LINE	BEARING	DISTANCE
1	N 17°01'34" E	8.00
2	N 83°22'52" W	223.95
3	N 88°14'40" E	115.00
4	N 23°59'04" E	184.00
5	N 20°12'38" E	212.33
6	N 20°12'38" E	282.00
7	N 07°13'54" W	129.85
8	N 48°28'51" W	640.00
9	N 30°12'38" W	210.00
10	N 23°59'04" E	175.00
11	N 39°12'38" E	507.75
12	N 34°12'38" E	108.41
13	S 28°48'28" W	80.99
14	S 28°48'28" W	113.94
15	N 42°12'53" W	106.90

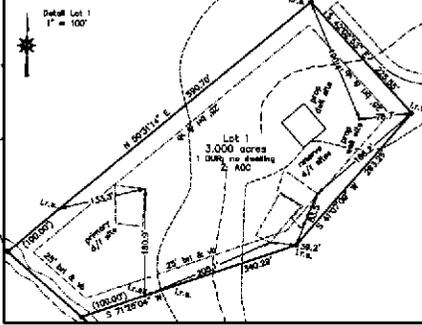


**Area Table:**

47,933 acres	area of TM 6-A-12	(1 existing dwelling, 1 DUR)
44,933 acres	area of Residue Lot	(1 existing dwelling, no DUR)
3,000 acres	area of Lot 1	(no existing dwelling, no DUR)
0.000 acres	area dedicated for public use	

CURVE	RADIUS	ARC	DELTA	CHORD	CHORD	TANGENT
C1	100.00'	36.33'	+5°57'11"	28.01'	S 61°18'18" W	13.12'
C2	100.00'	146.82'	85°02'24"	133.89'	S 84°05'35" W	83.24'

- Notes:**
- Lot 1, 3,000 acres, has no existing dwelling and 1 DUR. Residue Lot, 44,933 acres, has 1 existing dwelling and no DUR.
  - Methods as follows:  
Lot 1: 25' from the edge of the 30' private access easement; 25' of property lines, 50' from any intermittent stream, spring and/or stream.
  - Residue Lot: 100' from the edge of Route no. 664, 75' from the edge of the 30' private access easement; 75' of property lines, 50' from any intermittent stream, 100' from any perennial stream, spring and/or stream.
  - Tracts are in AOC zoning district (agricultural) - open space - conservation; use is agricultural/residential.
  - Use is open space, etc. Use is not for residential use - building restriction lines do = vegetated property buffer; d/field = drainage; DUR = dwelling unit right.
  - These tracts are in the AOC (agricultural - open space - conservation) zoning district. Agriculture is the primary economic activity of this Zoning District. Owners, residents, other users of property in the AOC district may be subjected to inconveniences, discomfort and the possibility of injury to property and health arising from agricultural operations even though conducted in accordance with best management practices and/or in accordance with zoning laws and regulations of the Commonwealth and County. Such agricultural operations may generate noise, odors and dust, may involve the operation of machinery including tractors, the storage and disposal of manure and the application of fertilizer, soil amendments and pesticides. Owners, occupants and users of land in the AOC District should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a Zoning District in a County with a strong rural character and an active agricultural sector.
  - The appropriate limits of Flood Zone A and it were established from FIRM Community Panel no. 8104N020300, effective September 28, 2007.
  - The draft site on Lot 1 is approved by the Clarke County Health Department for a 2 bedroom system with a maximum capacity of 4 people and 300 gpd, see VMS construction permit 8043-15-0258. The reserve site on the Residue Lot is approved as a 2 bedroom system with a maximum capacity of 8 people and 400 gpd; the appropriate location of the existing septic field on Residue Lot was established by the connecting AOC.
  - Vegetated property buffer except for those uses listed as exempt, existing woody vegetation within 25' of all property lines shall be retained on parcels of less than 20 acres, as per Section 2-2A-1-f of the Clarke County Zoning Ordinance.
  - Before fertilizers and pesticides are used for lawn or landscaping purposes, a soil test should be conducted. The application of such chemicals shall be limited due to the potential for groundwater contamination and shall not exceed that determined necessary by the soil test.
  - The private road shown on this plan will not be paved or maintained with funds of the County or 100%. In the event that owners of these lots subsequently desire the addition of such private road to the secondary system of State Highways for maintenance, the cost to upgrade it to the prescribed standards must be provided from funds other than those administered by VDOT or the County.

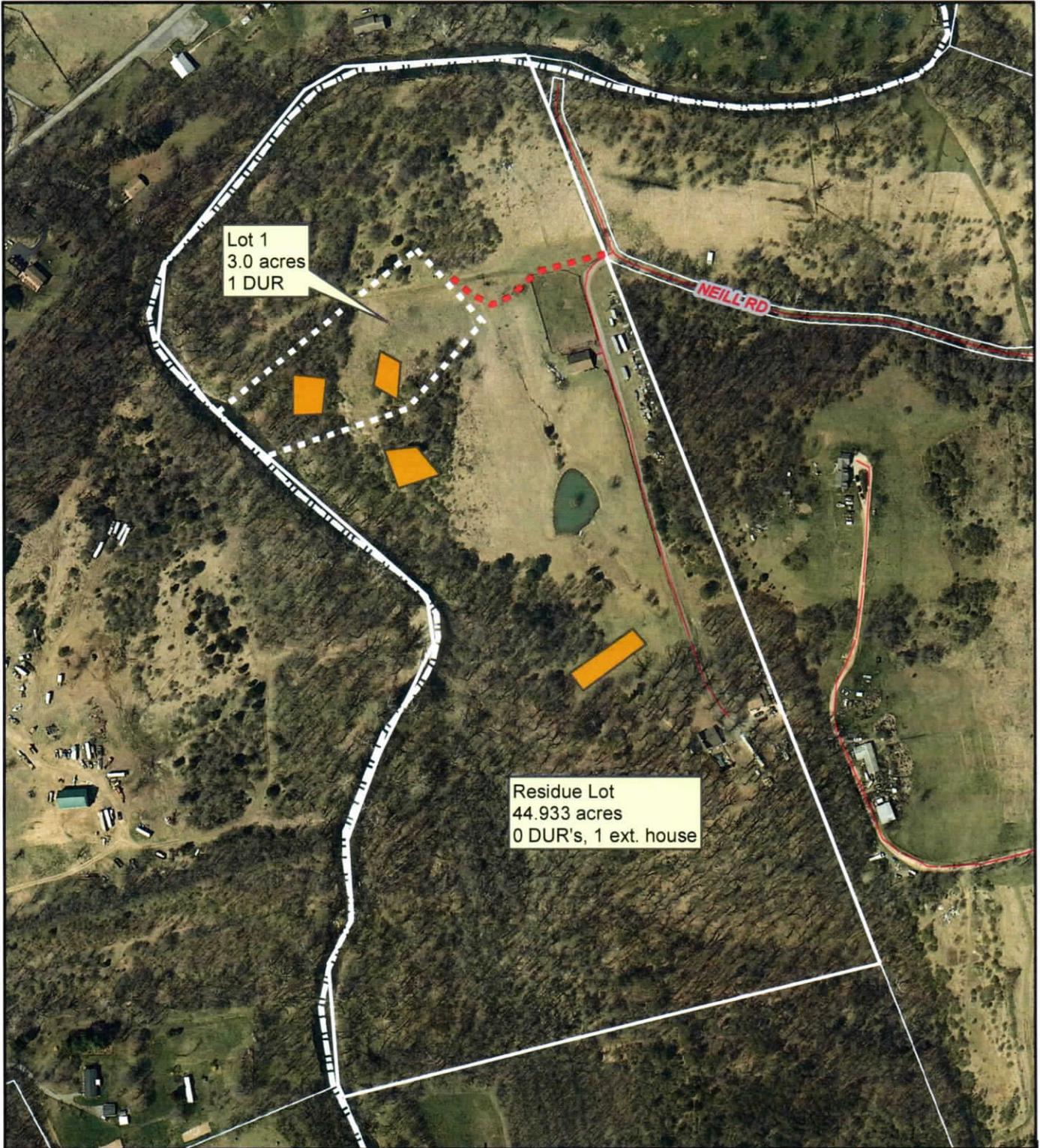


Minor Subdivision of the Land of  
**Ronald E. DeHaven**  
Deed Book 494, Page 261 Tax Map 6-A-12  
Longmarsh Magisterial District, Clarke County, Virginia



Dunn Land Surveys, Inc.  
108 North Church Street  
Berryville, Virginia 22811  
Tel: 540-955-3388  
June 23, 2016

survey no. 2271\_subd  
sheet 1 of 1



Ronald DeHaven  
 TM# 6-A-16, 47.93 acres, 1 ext. dwl., 1 DUR



200 100 0 200 Feet

Clarke County GIS  
 October 28, 2016



**Legend**

- Parcel Boundary
- Conservation Easements
- Structures
- Drainfield
- Proposed Lot Line
- Existing Lot Line
- Roads
- Private Road



**Lord Fairfax Health District**  
**Clarke County Health Department**  
100 North Buckmarsh Street  
Berryville, Virginia 22611  
Tel. (540) 955-1033 ~ Fax (540) 955-4094  
[www.vdh.virginia.gov](http://www.vdh.virginia.gov)



October 20, 2016

Ryan Fincham  
Senior Planner/Zoning Administrator  
101 Chalmers Court  
Berryville, VA 22611

RE: Preliminary Review – Ronald DeHaven Minor Subdivision  
Site Address: 197 Neil Rd  
Tax Parcel: 06-A-16 / 44.933 acre residue and 3.0 acre division

Ryan,

With respect to a preliminary review of the subject division, this office offers the following comments regarding private sewage system and drinking water well infrastructure:

- 1) The residue lot is presently served by an installed and approved private well and 3-bedroom, onsite sewage system.
- 2) A 100% reserve area footprint for the residue has been identified and certified by Hadley Environmental Services. This agency has reviewed and concurs with the proposal.
- 3) The proposed 3.0 acre division lot has a valid construction permit for a 2-bedroom sewage system and a separate 100% reserve area.
- 4) The well for the proposed 3 acre division is labeled as proposed. Said well has been constructed. The plat should be modified to reflect this change.

Please let us know when the final plat has been approved through the Planning Commission and is available for agency signature.

The owner is advised that §143-15 of the Code requires the submittal of a certification letter application (for the residue reserve area footprint) and applicable processing fee before agency signing of the plat. To avoid administrative denial of the application due to a State mandated processing time-frame, the owner is advised not to apply for the certification letter until such time as the approved division plat is available for signing.

Best regards,

A handwritten signature in blue ink that reads "Todd W. Lam".

Todd W. Lam,  
Environmental Health Specialist, Sr.

Cc: Ronald DeHaven., owner  
Barry Hadley, OSE  
CCHD file