

Clarke County



PLANNING COMMISSION WORK SESSION MINUTES TUESDAY, OCTOBER 1, 2019

A work session of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Tuesday, October 1, 2019.

ATTENDANCE

Present: Robina Bouffault; Randy Buckley; Anne Caldwell; Bob Glover; Scott Kreider; Doug Kruhm; Frank Lee; Gwendolyn Malone; Pete Maynard; and George L. Ohrstrom, II.

Absent: Mary Daniel

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

Others Present: None

CALLED TO ORDER

Mr. Stidham called the meeting to order at 3:00PM.

APPROVAL OF WORK SESSION AGENDA

Commissioner Kruhm asked about the memo on pages 21-23 regarding the Economic Development Strategic Plan five-year review and asked whether it will be discussed today. Mr. Stidham replied that we will discuss it in conjunction with reviewing the October 4 Business Meeting agenda items.

Members approved the work session agenda as presented by consensus.

REVIEW OF AGENDA ITEMS FOR OCTOBER 4, 2019 BUSINESS MEETING

Regarding the September 6 draft Business Meeting minutes, Commissioner Bouffault noted that during the discussion of the Crown Castle special use permit and site plan application she had asked Ms. Themak whether Crown Castle would be willing to reduce the tower height by six feet. She added that this was also brought up by Commissioner Maynard but the discussion is missing from the draft minutes. Mr. Stidham asked Commissioner Bouffault if she raised the issue at the specific point in the minutes that she is referencing and she replied that she thought so. Mr. Stidham said that he would have Ms. Bean review the tape and add in the missing discussion. Commissioner Bouffault said that she asked this question because reducing the tower height by six feet would ensure that a later by-right extension would not exceed 199 feet. Chair Ohrstrom noted that he was absent from this meeting but the minutes indicate that he called the meeting to order when it was Vice-Chair Buckley who called the meeting to order. Mr. Stidham said he will make this change as well.

SUP-19-01/SP-19-01, Crown Castle

Mr. Fincham provided an update on this application. He said that the Board of Zoning Appeals (BZA) denied Crown Castle's variance request and described the BZA's grounds for denial. He noted that the property owners, the VanKeurens, were present at the BZA hearing and expressed concerns that they were not aware of the application. He also noted that the VanKeurens did not sign the applications for the special use permit/site plan or the variance. He said that he accepted the applications without the property owners' signatures because of an assignment and assumption agreement in the deed records that gives Crown Castle the authority to sign for the property owners. He said that the County Attorney is currently reviewing how the BZA's denial of the variance application and the absence of the property owners' signatures affects the special use permit and site plan applications. He stated that another possibility is that the application may have not been signed properly by Crown Castle but that they may have the authority to sign on the owner's behalf. He said that Staff will have a recommendation available for the Commission on Thursday. He noted that because of the 150-day timeline, the Commission will likely have to act on the application. He also distributed a letter received that day from Patricia Thomas, owner of the property across the road that contains the Verizon tree pole. He said in summary that Ms. Thomas states the tree pole has space available for co-location and that the Crown Castle application should be denied.

Commissioner Bouffault said that she looked in the land records and said that Crown Castle has the equivalent of a utility easement on the VanKeuren property. Commissioner Caldwell said that at the BZA hearing, Ms. Themak was asked several times about ownership of the land and Ms. Themak replied several times that Crown Castle owned the land. She said that Ms. Themak stated several times that Crown Castle had approached surrounding landowners looking for suitable tower sites but that no owners would rent them the land. She added that Ms. Themak also said that Crown Castle representatives spoke with the VanKeurens who told them that the site of the existing tower is the only place on their property where they could build their proposed tower. She said that as it turned out, Crown Castle never talked to the VanKeurens and it seemed as though there was a lot of homework that had not been done properly. Mr. Fincham added that the VanKeurens stated this at the podium during the BZA hearing. Commissioner Glover asked if the VanKeurens were at the last Commission meeting and Mr. Fincham said no. Commissioner Caldwell said that Ms. Themak also was informed that the former Verizon monopole pad on the VanKeurens' property is available for use. She added that this pad site is 10-20 feet higher in elevation than the current proposed site and it is much more visually unobtrusive. She said that Ms. Themak did not appear to be aware of the existence of this pad site. She also said that the VanKeurens were asked if this pad site is available for use and they replied yes.

Chair Ohrstrom asked for confirmation that the County cannot force someone to co-locate and several commissioners replied yes. Commissioner Bouffault said that she hopes that if Crown Castle reduced the tower height to 179 feet that they would not need a variance. Commissioner Caldwell replied that they would still need a variance in that situation because they currently need a 30.5 foot variance. Commissioner Bouffault said that if the tower height drops to 179 feet it drops to beneath 30 feet. Commissioner Caldwell disagreed and said that the old variance does not apply. Commissioner Bouffault replied that we do not want this matter to go to court and we need to have a resolution one way or another because Crown Castle is a multi-billion dollar company and litigation costs would be high. Commissioner Caldwell said that the easiest way to resolve this would be to

make a good-faith effort to use the abandoned pad site which would be a much better location visually that would not require a variance. Commissioner Bouffault said that you cannot force them to do this as it is a commercial decision and if it goes to court, you will not be right. She said that they already have a tower that is a big asset for them in a good location. She added that if they comply with our ordinance requirements regarding height and we deny them, we will not be in the right.

Commissioner Kruhm said that he understands there is a problem between Crown Castle and the property owners as to where the tower is to be located and not a problem between Crown Castle and the County. Commissioner Caldwell noted that Ms. Themak asserted unequivocally that Crown Castle had discussed the tower location with the VanKeurens which they never did. She added that when asked, the VanKeurens stated that the other pad site is available. Commissioner Maynard noted that Crown Castle has a perpetual easement on the pad site where they intend to locate the proposed tower and the other available pad site is not within this easement. He added that it would cost Crown Castle to acquire the rights to develop on that other pad site. Commissioner Caldwell also noted that the VanKeurens stated that they signed over the easement rights to the pad site after T-Mobile was insisting on renegotiating the terms of their previous lease. Commissioner Bouffault said that Crown Castle's perpetual easement is the same as having a deed to the property and contains the same legal rights. She added that it has the appearance of a utility contract and would be the same as giving a utility easement to Rappahannock Electric Cooperative. Mr. Stidham said that according to the County Attorney, a key part of that document is that the VanKeurens have given them power of attorney to file for all licenses and applications. He added that if resolved, Crown Castle would need to sign the application in the correct format with the power of attorney assigned by the VanKeurens and the ownership issue would go away. Commissioner Kruhm asked if the VanKeurens would have to sign the application and Mr. Stidham replied no, Crown Castle would have to sign as the VanKeurens' attorney-in-fact.

Chair Ohrstrom noted in Ms. Thomas's letter that she cites a 1993 Federal law that requires co-location and said he did not think that this is correct. Commissioner Caldwell said that George Condyles stated at the last Business Meeting that all of the telecommunication providers have agreements with all of the tower owners. She noted that Crown Castle wants AT&T to locate on their proposed tower but if AT&T wants to, they could go on the American Tower monopole on the Thomas property. Commissioner Bouffault replied that you have to be careful because we do not have the right to make business judgments. Commissioner Caldwell replied that this is not what she is saying, and that if AT&T gets sick of this process then they can just go on the American Tower monopole if they want to do so. Commissioner Bouffault said that AT&T and Verizon are in direct competition with one another and she thinks that Shentel, who serves the T-Mobile towers, is serving this tower with fiber.

Mr. Stidham said that the best case scenario would be for Crown Castle to request a deferral and use the time to sort out these issues. He added that the most recent email from Ms. Themak stated that she has new information to present to the Commission on Friday which does not sound like they intend to request a deferral. He also said that Staff may be forced to recommend denial because of the BZA's denial of the variance request. He said that if they did request a deferral, it would stop the review clock. He added that if they wanted to move to the other pad site, Staff would be amenable to

allowing them to amend their application rather than requiring the application to be re-filed. Commissioner Maynard said that the public hearing was continued at the last meeting and asked if we would begin Friday's meeting with the public hearing. Mr. Stidham said yes, that the public hearing is already open and you will hear new presentations from Staff and the applicant. Commissioner Caldwell said that she is concerned that a revised application and new information will be presented on Friday for the first time. Mr. Stidham said that the Ordinance's filing deadline requirements ensure that the Commission would not be able to consider last-minute submissions and he added that the applicant is aware of the filing deadline requirements. He said the Commission could then ask Ms. Themak if she would formally request a deferral. Commissioner Bouffault asked if the Commission could ask her this at the meeting on Friday and Mr. Stidham replied yes. Chair Ohrstrom asked if the public hearing should be continued and Mr. Stidham replied that it should be left open. Mr. Stidham also said the only time Staff would recommend closing and re-opening the public hearing is if the applicant makes significant material changes such as increasing the tower height or moving the tower location. Commissioner Bouffault asked if the applicant agrees to reduce the tower height by six feet and revise the application, should we still ask for a deferral. Mr. Stidham replied yes and said that the filing deadline requirement keeps applicants from bringing in new information at the last minute which is a protection for the Commission. Chair Ohrstrom said that it would be in their best interest to request a deferral and take the time to clean things up. Commissioner Lee asked if they do not defer, would the Commission have no choice but to deny the application and Mr. Stidham replied yes. Mr. Stidham also noted that if Ms. Themak decides to request a deferral at the meeting, the Commission should ask her to confirm for the record that she understands that this stops the review clock.

Commissioner Kruhm asked if there were any comments on the balloon test and Mr. Stidham replied that Staff has not received any comments. Mr. Fincham noted that Staff informed the adjoining property owners of the balloon test. Mr. Stidham noted that the balloon was visible coming down the mountain west on U.S. 50. Commissioner Glover said the problem with the balloon test is that it does not simulate the width of the proposed tower. Commissioner Bouffault asked if we have the right to ask Crown Castle to paint the tower a color other than white. Mr. Stidham said that he thinks this is one of the things that was taken out of local government authority by the General Assembly, however it should not be a problem for Crown Castle to choose a different standard color. Commissioner Bouffault noted that the new bluish-gray color of the County water towers blends in better than the old white paint color.

Continued Discussion, Economic Development Strategic Plan Five-Year Review

Mr. Stidham stated that the Comprehensive Plan provides us with direction on updating the component plans, and he referenced the Staff memo containing a list of Comprehensive Plan objectives that relate directly to specific component plans. He added that Objective #10 on economic development directly informs the creation and update of the Economic Development Strategic Plan. He said that he has made changes to Staff's recommended resolution to initiate the five-year review of the Strategic Plan emphasizing that Objective #10 of the Comprehensive Plan be updated along with any other relevant objectives. He added that after the revised Comprehensive Plan is adopted, the new language will be used to inform the update of the Strategic Plan. He said by no means would you discard the work that has been done by the Economic Development Advisory Committee (EDAC) and Industrial Development Authority (IDA), but you would not adopt any revisions to the

Strategic Plan until the revised Comprehensive Plan is adopted. He also noted that none of the prioritization work product by the EDAC and IDA is in conflict with the current Strategic Plan, so there is no need to wait for the Strategic Plan to be updated before implementing these revised priorities.

Commissioner Bouffault said that she begged to differ and distributed a copy of the Zoning and Subdivision Ordinance Update Project Policies that Staff previously distributed to the Commission in June. She highlighted language indicating that no text amendments be considered unless they are initiated either by the Planning Commission or Board of Supervisors. She also said that in May 2018, the Board of Supervisors specifically asked for the EDAC and IDA to revise the Strategic Plan and to provide a recommendation to the Planning Commission which they did. She said the recommendations were reviewed by the Comprehensive Plan Committee on August 19 and that the Committee did not want to move forward with Staff's recommended resolution because the review was asked for by the Board of Supervisors. She said the Committee along with Len Capelli worked with the recommendations and came up with their version of the Plan. She also said the Committee wanted to recommend a resolution that would forward this Plan to the Board of Supervisors for adoption. She said then the Board can do whatever they want to with it. She added that she considers this to be a temporary interim text amendment to the Comprehensive Plan and that by putting the matter on hold until we have finalized review of the Comprehensive Plan, you will be adding on two years to the process. She said that it is her understanding that the Board does not want the current Strategic Plan because it is obsolete. She noted that the current Strategic Plan does not address broadband internet or AirBNBs. She said she would prefer that we allow the Board of Supervisors to make this decision.

Commissioner Caldwell said that there has been no memo from the Board of Supervisors to the Planning Commission asking the Commission to update the Strategic Plan. She added that the best thing to do is to ask the Board to send something formal to the Commission regarding the Strategic Plan. Commissioner Bouffault replied that she thinks they are saying the same thing and that she is trying to get this scheduled for public hearing. Chair Ohrstrom said maybe the best thing to do is to have the Board ask the Commission to review the EDAC and IDA recommendations. Commissioner Bouffault replied that the Board directed the EDAC and IDA to provide their recommendations to the Commission and that they are following the process which is the usual process for a text amendment. Mr. Stidham stated that the document distributed by Commissioner Bouffault is the list of project policies for the Zoning and Subdivision Ordinance Update Project which has nothing to do with the Comprehensive Plan or the Economic Development Strategic Plan. He added that these policies were set up to deal with requests to amend the current Ordinances while the update project is underway. He also stated that the introductory section of the Comprehensive Plan contains language to help avoid consideration of individual text amendments to the Comprehensive Plan outside of a five-year review. He said that any time you review your Comprehensive Plan and component plans, you have to go through a careful and deliberate process. He said there may be instances that require a review to be expedited to occur before the five-year review. Commissioner Bouffault said that this is a text amendment to the Strategic Plan and not the Comprehensive Plan, and Mr. Stidham replied that the Comprehensive Plan and component plans are all equal. Commissioner Bouffault replied that this is different because they have been working on the Strategic Plan for 18 months and it has been distilled into a text amendment to an existing plan that will give the Board the freedom to move forward. She

said the Board could use this as a temporary guideline but that she is not going to wait around for the Board to tell us this 18 months after the fact. She said the Board made it very clear in their May 2018 minutes that she references in her resolution, and added that Mr. Stidham asked her to write the resolution because he did not want to write it. Mr. Stidham said that the resolution under consideration at the August 19 Comprehensive Plan Committee meeting was to initiate the five-year review of the Strategic Plan and reference having it be reviewed in the context of the Comprehensive Plan and potentially detaching it from the Comprehensive Plan. Commissioner Bouffault replied that this was Mr. Stidham's resolution. Mr. Stidham replied that he got head nods from the members on the resolution and that Commissioner Bouffault wanted to add bullet points to the resolution that she was going to provide to him later. Commissioner Bouffault replied that she does not like having what she has said misrepresented. She added that she got word of a rumor that she had done this all by herself and that people had called the three other Committee members and they denied having any involvement in this. She said that Mr. Capelli is not here to confirm that she met with him on August 22 and she is having her veracity and integrity challenged openly. She said if the Committee members do not feel that they participated or that she asked for their input, and Commissioner Glover replied that he was confused by the whole process. Commissioner Glover continued by stating that the August 19 meeting was about the Comprehensive Plan and in his mind they were dealing with the Strategic Plan only at that meeting. He said some very good ideas came up and were discussed, and he thought that this was all part of the Comprehensive Plan. Commissioner Bouffault asked if someone called him and asked if he had been involved or not. He replied that Mr. Stidham called him to help straighten out his confusion.

Commissioner Maynard said that the Committee was asked to determine whether to review the Strategic Plan and, if so, how. He said he thought that this was tasked to the EDAC and IDA and Commissioner Bouffault met with Mr. Capelli to come up with the revised Strategic Plan. He noted that both resolutions essentially say the same thing except that one resolution says that we are going to wait until after the Comprehensive Plan update is completed before revising the Strategic Plan, and the other says we are going to recommend adoption of the revised Strategic Plan to the Board of Supervisors. He said we can recommend that the 3-4 page revised Strategic Plan be adopted or we can say that this is our work product and let the Board decide what to do with it. He added that the task was to give them a Strategic Plan. Commissioner Bouffault read the second whereas from her resolution stating that the Board of Supervisors tasked the review and recommendation of the Strategic Plan to the EDAC and IDA with the final recommendation to be presented to the Commission for its consideration. She added that this is what the Board wanted and we need to give it back to them. Mr. Stidham stated this was never communicated to Planning Staff and obviously was never communicated to the Planning Commission. He added that the purpose of the Comprehensive Plan Committee meeting was to discuss the five-year review resolution for the Strategic Plan just as we had done in the fall of 2018 for the Comprehensive Plan and Transportation Plan which the Commission adopted in January.

Chair Ohrstrom asked how we can solve this. Commissioner Maynard asked if we could just send the thing to the Board. Vice-Chair Buckley said that he cannot understand why the recommendations from the EDAC and IDA have not been sent to the Commission from the chairs of those bodies. Commissioner Bouffault said that it was. Commissioner Caldwell replied that we have not received any formal letters from either of those bodies. Commissioner Bouffault said that we have a May 15

letter from Mr. Capelli containing their recommendations and she read from this letter. She said that was presented at the August 19 Committee meeting for consideration and that is what we worked on and when it was decided that she would work with Mr. Capelli to refine the draft. She said she got the input from the three Committee members and she sent out her revised draft, and now she is being told that no one knew or received anything.

Mr. Stidham suggested to Chair Ohrstrom that Christy Dunkle, a member of the EDAC, is present and may want to provide comments, and Chair Ohrstrom recognized Ms. Dunkle. Ms. Dunkle stated that she is confused about this whole thing and what she recalls is that EDAC reviewed a 17 or 24 page document that one of the Board members may have done and that EDAC members were asked to make comments on the document. Commissioner Caldwell asked if EDAC reviewed the 3-page document and approve it. Ms. Dunkle said that she does not recall receiving the document. Commissioner Bouffault said that Ms. Dunkle is not part of the County she is part of the Town, and she added that she does not know if they are terribly interested in the Town side.

Chair Ohrstrom asked if it is possible to adopt Staff's resolution to initiate the five-year review of the Strategic Plan and also adopt Commissioner Bouffault's resolution and send the Strategic Plan to the Board running them on parallel tracks. Mr. Stidham said that he is only concerned about adopting the five-year review resolution to comply with State code requirements. Commissioner Bouffault said that she considers this to be a temporary fix. Commissioner Maynard pointed out that it would only require a change to the last line of Staff's resolution. Mr. Stidham replied that he would revise Staff's resolution by removing that we would not work on the Strategic Plan until the revised Comprehensive Plan is adopted. Commissioner Maynard said that this is a way to get this to the Board and ask them if this is what they want and if they want more or less. Chair Ohrstrom said that he does not see that the resolutions contradict each other at all. Commissioner Bouffault asked if the resolutions would be voted on separately and Chair Ohrstrom replied yes. Commissioner Lee said that the five-year review resolution still needs to have the language removed about waiting until the Comprehensive Plan review is completed. Mr. Stidham directed Commissioners to the September 3 version of Staff's resolution and recommended modifying the last paragraph by removing using the revised Comprehensive Plan Objective #10 to inform the Strategic Plan review process. Commissioners stated that they were comfortable with this change and Mr. Stidham said that he would have a revised version for consideration at Friday's meeting. Commissioner Caldwell said that it would be good to get letters from the EDAC and IDA stating that they have reviewed the new 3 page draft and support it, and that should be easy to do. Commissioner Bouffault said that you do not normally go backwards in a process. Commissioner Caldwell replied that you are not going backwards, it is informing people and asking whether they are OK with the document. Commissioner Bouffault said that the process is for one body to work on it and then send it forward for the next body to work on it. Commissioner Maynard said that you are not opening a can of worms by sending it back, you are informing them of what you came up with and thanking them for their input. Chair Ohrstrom said if they do not like it, then they can tell us and it is a working document.

OLD BUSINESS ITEMS

Zoning and Subdivision Ordinance Update Project – Joint Workshops and Project Status

Mr. Stidham briefly reviewed the work product binders for the upcoming joint workshops, noting that the first workshop is on October 17. He said that this workshop is a general overview of the project and that the remaining three workshops get more into detailed discussions of the material. He said that the Subdivision Ordinance is still under review by the County Attorney and he hopes to be able to distribute it at the November 1 workshop.

Chair Ohrstrom asked what the best way is to help the average citizen understand this process. Mr. Stidham replied that there will need to be a plain language introduction that explains why we did the project, what we went through, and most importantly what we did not do. He said that we are stretching out the public hearing process to provide plenty of time for citizens to ask questions. Commissioner Maynard asked if the Guidance Manual is still under development and Mr. Stidham replied yes.

The meeting was adjourned by consensus at 4:01PM.

George L. Ohrstrom, II (Chair)

Brandon Stidham, Planning Director