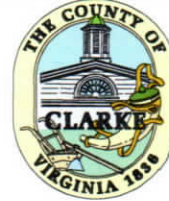


Clarke County

PLANNING COMMISSION BUSINESS MEETING MINUTES FRIDAY NOVEMBER 1, 2019



A Business Meeting of the Planning Commission of Clarke County, Virginia, was held at the Berryville/Clarke County Government Center, Berryville, Virginia, on Friday, November 1, 2019.

Attendance

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

Others: Cathy Kuehner (Director of Public Information)

Staff Present: 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 9:05 a.m.

Approval of Agenda

The Commission voted to approve the agenda.

Yes: Bouffault, Buckley (seconded), Caldwell, Daniel, Glover, Kreider, Kruhm, Lee, Malone (moved), Maynard and Ohrstrom

No: No one

Commissioner Caldwell said she spoke with Mr. Stidham before the meeting about how the minutes are done. She said that he had some very useful comments and she thinks they should be shared with the Commission on how they should be done and what they should reflect.

Mr. Stidham stated that with involved sets of minutes we try to capture the discussion the best that we can which includes paraphrasing and summarizing. He stated that we do not do minutes verbatim unless the Commission makes that request. We try not to go into mind reading or assuming what someone is trying to say if it is not as clear as can be stated. He said that when something is said incorrectly but we know the person meant to say something else, we have to put down what was incorrectly stated but if we can summarize it we will. He said this frequently occurs when minutes have a lot of discussion. He stated that we also tend to omit sidebar conversations. Chair Ohrstrom stated that we should not be having sidebar conversations anyway.

Approval of Minutes

Commissioner Bouffault said she has some changes to the minutes. She said that on page 11 of 13 in the minutes in the last paragraph the sixth line down the word “from” should replace the word “and.” She said that on the same page and same paragraph on the ninth line the words “to be” should be removed. She said that the last one is on page 13, the first paragraph and the last word should not be “sufficient,” it should be “substantiate.” Commissioner Caldwell stated that she has some minor typos and she is not going to do anything about the understanding per what Mr. Stidham said earlier. She said that on page 13 of 13 in the third paragraph, the word “piecemill” should be “piecemeal”. She said there is one on Page 7 of 13 in the second paragraph and the second line, the word “off” should be “of.” She said there are a lot more that she could mention but it does not fit with the philosophy.

The Commission voted to approve the Planning Commission Business Meeting revised minutes for the September 6, 2019 meeting as amended.

Yes: Bouffault (moved), Buckley, Caldwell (seconded), Daniel, Glover, Kreider, Kruhm, Lee, Malone, Maynard and Ohrstrom

No: No one

The Commission voted to approve the Planning Commission Work Session Meeting minutes for October 1, 2019.

Yes: Bouffault, Buckley (seconded), Caldwell (moved), Daniel, Glover, Kreider, Kruhm, Lee, Malone, Maynard and Ohrstrom

No: No one

Commissioner Daniel said she has a correction to the minutes on page 27 of 28 in the last paragraph in line three, the word “not” should be added in front of the word “know.” Commissioner Caldwell said on page 1 of 6 under Approval of Minutes, there is a paragraph that we voted to approve and then there was a motion and then the result. She said it then goes straight into the Business Meeting minutes but there is no heading there and it indicates that there is nothing there to say that there was a Business Meeting as opposed to the Work Session. Commissioner Bouffault said that on page 3 of 6 in the last paragraph line three, the word “work” should be “works.” Commissioner Caldwell said that on page 4 of 6 in the sixth item down, the page where Commissioner Bouffault made a motion to approve the 2nd proposed resolution, there is no record of a second motion and it should say that Maynard seconded the motion. She said on page 28 of 28 in the second paragraph the third line down the “20/20” should be “20-20.”

The Commission voted to approve the Planning Commission Business Meeting Minutes for October 4, 2019 as corrected and amended.

Yes: Bouffault, Buckley, Caldwell, Daniel, Glover, Kreider, Kruhm (moved), Lee, Malone (seconded), Maynard and Ohrstrom

No: No one

Continued Public Hearing Item

SUP-19-01/SP-19-01, Crown Castle. Request approval of a Special Use Permit (SUP) and Site Plan to construct a new 185-foot Class 4 Wireless Communication Facility (WCF) that would replace an existing 84-foot monopole per §3-A-2-a-3-r of the Zoning Ordinance. The property is located on the west side of Mt. Carmel Road (Rt. 606) approximately 450 feet from its intersection with U.S. 50/17 (John Mosby Highway), Tax Map #39-A-74, is 84.55 acres in size, and is zoned Forestal-Open Space-Conservation (FOC).

Mr. Fincham stated that Staff received an email from the applicant to withdraw the application and we have notified them in writing that the case is closed. Commissioner Bouffault asked if that was the only communication that Staff received. Mr. Fincham said that we received one word answers from both Tracy Themak and Sara Brown. He said that he got an email that stated please consider this application withdrawn and he asked if this for the Site Plan and the Special Use Permit and Tracy said yes and Sara said correct. Mr. Fincham and Mr. Stidham said that was the end of it and it is marked closed and if they revisit this in the future they would have to start from scratch. Mr. Stidham stated that we notified adjacent landowners to let them know that they would have to reapply to start again.

Board/Committee Reports

Board of Supervisors (Mary Daniel)

Commissioner Daniel stated that the Board of Supervisors announced they have hired Chris Boies as the new County Administrator. She said he will be starting on December 2, 2019 and there will be some overlap as Mr. Ash is scheduled to retire at the end of January 2020. She said that Mr. Ash has been out for the last few weeks as he had eye surgery. She said that VDOT reported that butterfly restrictions are now in effect which prohibits them from mowing along the highways until the monarch butterflies migrate in the fall. She said on Tuesday evening a meeting with VDOT was held regarding Route 9 and it was very well attended. She said that the Mayor and Vice Mayor of Hillsboro attended the meeting and answered questions. She said we will have two police officers assigned to Clarke County and they will be monitoring traffic on Route 7 and Route 340 and this is not at the expense of the County. She said that the Board of Supervisors did have their meeting with the legislators. She stated that Mr. LaRock, Mrs. Gooditis, a representative from Senator Vogel's office and Chris Collins were at that meeting to talk to the Board of Supervisors about legislative issues. She stated that the priorities are online.

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

Mr. Fincham stated a public hearing is scheduled for November 6, 2019 at 9:30 a.m. He said that Cloverleaf Environmental has applied for three variances.

Board of Zoning Appeals (Anne Caldwell)

No Report

Historic Preservation Commission (Doug Kruhm)

Commissioner Kruhm stated that we had the second public hearing for a Certificate of Appropriateness for Brian Legge at 140 White Post Road to build a garage on his property. The first Certificate of Appropriateness he submitted was denied. He said this time he is putting the garage behind the house instead of the front and he met the requirements and was approved.

Conservation Easement Authority (George Ohrstrom, II)

Chair Ohrstrom stated that we continue to move along.

Broadband Implementation Committee (Mary Daniel)

Commission Daniel stated that we are trying to set up a meeting in December with Visual Link. She said that they have contacted Mr. Stidham and they have a plan coming up that will initially affect 90% of the County with a goal of 100% by the spring. She stated that it will be a wireless radio system and we will see what they have to say.

Other Business

Discussion, Zoning and Subdivision Ordinance Update Project Process

Mr. Stidham said he spoke with Mr. Mitchell about his review of the Subdivision Ordinance and he said he has not finished. He stated that Mr. Mitchell was unable to give him a date as to when he expects to have it completed due to his work load. Mr. Stidham said this more or less guarantees that the process we outlined with scheduling public hearings and meetings will occur in the future.

Commissioner Bouffault said that she did some research and found information that she would like the Planning Commission to review. She made copies of this information and handed the copies out to the Planning Commission. She stated that she emailed the Planning Commission last week with her questions and concerns. Commissioner Bouffault said her first question is how we got to this point. She said that in reviewing the Planning Commission Briefing Minutes from November 28, 2017 she stated that the Planning Commission had a discussion about the Zoning & Subdivision Update and the current status of the project and the Ordinances Committee activity. She said that at the Board of Supervisors meeting on December 19, 2017, Mr. Stidham informed the Board of Supervisors that the presentation of the final draft to the full Planning Commission will be submitted to the Commission in a special workshop meeting. She said there was never any approval or discussion of a joint Board/Commission workshop to deal with an initial draft which the full Commission had not previously reviewed, approved, gone to public hearing or did any resolutions and its recommendations to the Board of Supervisors. She said that is what is outlined as the process in the Code of Virginia 15.2-2285. She said that the Dillon Rule is very strict and we are only allowed to follow the processes that they have actively said. She said the Dillon Rule states that local governments are limited to powers expressly granted to them by their states. She said that this is the Dillon Rule in Virginia and those powers are explicitly granted to them by the legislators that are the three key tenets. She stated that those powers are necessary and fairly implied from a specific grant of power and what we have in the way of a legal process which is sequential. She said this starts with a full Planning Commission, we review it, do whatever we have to do to it, come to a conclusion and then we carry our recommendations forward to the Board of Supervisors. She said that currently there are some workshops where the full Commission has not seen anything and yet we have the Board of Supervisors reviewing something that will subsequently be brought to the Planning Commission and what they are looking at now may not resemble at all the recommendation we make at the end of this. She stated she thinks we would be better advised to bring our drafts as specified by the Code of Virginia and as we have always done until now to the Planning Commission before the Board of Supervisors get involved. Chair Ohrstrom asked if there were any comments from the Planning Commission.

Commissioner Glover said this is the first time he has been through this process and he said he is not currently on any sub-committees. He said that he did serve on the ground water committee when the approval plan was almost done and then we were working on the Comprehensive Plan and the Economic Plan at the last meeting and it kept getting emphasized that everything keeps moving forward after everyone else agrees to it. He said he is confused because at the meeting last month it was said everything moves forward. Chair Ohrstrom said everything goes through the Planning Commission first for approval and then on to the Board of Supervisors for final approval. He said that because this is such a big project that perhaps the thinking was not such a bad idea to get the Board of Supervisors to look at it to just get their comments as well as ours. Commissioner Bouffault asked why bother them if it is not final. She said we need to follow what we are allowed to do according to the Code of Virginia. Chair Ohrstrom said we are not approving anything and nothing is written in stone so why not continue the process we have now. Commissioner Bouffault stated that this is not a legal process. Commissioner Daniel stated that everybody has their meetings whether they are joint or separate and it does not make any difference. She said in a small County where we have a small Staff it is humane to keep those meetings to a minimum. She stated to please keep in mind that three of the five Supervisors have served on this Commission and two have not and it is unfair to think any of us can just read the plan and know everything about it. She said that she has advocated for some joint public hearings and workshops and of course that would have to be run through Mr. Mitchell who is familiar with this and aware of the joint meetings. She said that if we can get this finished three months earlier by doing joint meetings and joint work sessions she thinks that it would be appropriate. Chair Ohrstrom stated that we could ask Mr. Mitchell if we are doing anything illegal. Commissioner Maynard said he does not think we are doing anything illegal. He said he believes regardless of the outcome of these joint sessions the process will be where the whole re-written ordinance goes to the full Planning Commission first. Chair Ohrstrom said that is exactly right and we are not changing any actual method of adoption and Commissioner Bouffault is absolutely right that we have to follow the rules in order to do that. He stated that this is only informational to get everyone's input and to make sure there are no red flags that we could have missed.

Commissioner Bouffault said she is delighted to hear that because that is not quite right about what was stated here. She asked if we could start tackling the actual issues that we were talking about. She said that the current ordinance is a very effective ordinance and it has been extremely helpful. She asked if this gets voted in with the time line that has been presented how will we be able to address these controversial issues and the gaps that are in what we have seen thus far. Chair Ohrstrom stated that we will work through that before it gets adopted. He said we are not ready to adopt it yet we are just having informational meetings and talking about it. Commissioner Buckley stated that it seems to him that once we see all the information then it all has to come back to this Planning Commission to make any changes that need to be made and then this body has to approve it. He said that once we approve it we send it to the Board of Supervisors and that is our trajectory. He stated that Commissioner Bouffault has some very valid concerns about the ordinance update but he does think that we will have the opportunity to address them once the complete presentation has been done. Commissioner Bouffault said she wants to know when the plan will come back to the full Commission. Commissioner Buckley said once the presentation is completed. Commissioner Daniel said that this is a very complicated matter and she would appreciate getting emails from people and Staff as she is going through and learning it. She said that she completely agrees this is not the final draft which means we are expected to make changes. Commissioner Bouffault said she should hold off on all her information until the workshops are completed and it comes back to our desk. Chair Ohrstrom stated that if you


want to talk about what is going on at a specific workshop feel free to bring it up then. Commissioner Buckley said he does not think that we are meant to be kept silent while this is going on. Commissioner Caldwell said the committee that has been working on this over the last several months before these joint workshops started actually previewed Mr. Stidham's presentation for each of these four workshops. She said that the first presentation was simply a general description of what has happened and what we are going to be dealing with and why there were so many problems with the current ordinance and why it required such an extensive evaluation. She stated that the next three workshops will address specific areas of the project and at that time if people have comments on those specific sections those are the workshops which she believes we will have comments and discussions about specific parts or changes and updates that have been made. She said as we work through these workshops those are the places for specific concerns to be expressed. Commissioner Bouffault said that Commissioner Caldwell just said the opposite of what we were told seconds ago. She said that she has not seen it done this way since she has been a Planning Commissioner. Chair Ohrstrom said if you want to talk about what is going on at each workshop that will be okay and if you want to wait until we get the whole thing back we can talk about it then. He said he does not see it as a problem either way.

Commissioner Maynard said he views these joint sessions as informational. He said that Mr. Stidham will give a power point presentation and explain the process to the Planning Commission then we will come up with a final draft version of the Zoning & Subdivision Ordinance Update to be presented to the Board of Supervisors. Chair Ohrstrom said that Commissioner Maynard is correct but having comments from other people in front of the process is probably very helpful. Commissioner Maynard said that people can have comments but he does not think it is the right forum to do the Planning Commission's work. Commissioner Buckley stated that he agrees with Commissioner Maynard 100% and he thinks that we need to make a distinction between making a comment when we see a problem with this and having any expectation that we are going to resolve a dispute during these sessions. He said if we are going to agree or disagree or change anything that has to be done at the end of our Planning Commission meetings not during these sessions. He said if there is something that jumps out at you then by all means say it. He said that we all need to be comfortable before sending this to the Board of Supervisors. Commissioner Caldwell said that is actually very helpful because then we will construct a list of concerns that need further deliberation and work. She said if we have that list it will make it very helpful and we can see what is bothering people and have an in depth discussion in the future. Commissioner Lee stated that the committee looked at the plan and realized that there was going to be some issues that were going to be controversial. He said that with some of these issues we decided that the entire Commission needed to take a look at it. He stated that we as a body did not think we could tackle some of the more controversial issues. He said that we left those issues open on purpose so the full Commission could study it and have discussions before anything is resolved. He stated that we need to keep this in mind that this is just an open beginning and this is not the finished product. Chair Ohrstrom said that after the Planning Commission meeting on December 6th which will be the last one of the informational meetings and then it comes back to the Planning Commission and we can take as long as is necessary before we forward it to the Board of Supervisors.

On motion by Commissioner Caldwell and seconded by Commissioner Malone the meeting was adjourned at 10:56 a.m.



George L. Ohrstrom, II, Chair



Debbie Bean, Recording Secretary