

**CLARKE COUNTY PLANNING COMMISSION
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November 1, 2019 Business Meeting Packet**

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Clarke County Planning Commission

AGENDA – Business Meeting

Friday, November 1, 2019 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

1. Approval of Agenda
2. Approval of Minutes
 - A. September 6, 2019 Business Meeting (revised)
 - B. October 1, 2019 Work Session
 - C. October 4, 2019 Business Meeting

CONTINUED PUBLIC HEARING

3. **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).

Board/Committee Reports

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

Other Business

10. Discussion, Zoning and Subdivision Ordinance Update Project Process

Adjourn

UPCOMING MEETINGS:
Joint Work Session with Board of Supervisors – Ordinance Update Project Friday, November 1 (immediately following Commission Business Meeting)
Joint Work Session with Board of Supervisors – Ordinance Update Project Thursday, November 14 (6:30PM)
Commission Work Session Tuesday, December 3 (3:00PM)
Commission Business Meeting Friday, December 6 (9:00AM)
Joint Work Session with Board of Supervisors – Ordinance Update Project Friday, December 6 (immediately following Commission Business Meeting)

Clarke County

PLANNING COMMISSION BUSINESS MEETING MINUTES

REVISED DRAFT

FRIDAY SEPTEMBER 6, 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, September 6, 2019.

Attendance

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

Absent: George L. Ohrstrom, II

Others: Cathy Kuehner (Public Information Director); George Condyles (County Telecom Consultant); Tracy Themak (representing Crown Castle).

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

Called to Order

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

Approval of Agenda

The Commission voted to approve the revised agenda.

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

No: No one

Absent: Ohrstrom

Approval of Minutes

The Commission voted to approve the Planning Commission Work Session Meeting minutes of July 9, 2019.

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

No: No one

Absent: Ohrstrom

The Commission voted to approve the Planning Commission Business Meeting minutes of July 7, 2019.

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

No: No one

Absent: Ohrstrom
Abstained: Kruhm

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 explained that Crown Castle (Applicant) is requesting to construct a new 185' monopole, Class 4 Wireless Communication Facility (WCF) on a portion of the subject property. He said that the Applicant obtained a lease on a portion of the subject property containing the easement and compound area. He stated that the lease grants the ability for Crown Castle to construct towers, install equipment, etc., through a Wireless Communication Easement and Assignment Agreement. He said that the proposed Tower will replace the existing 84 foot monopole. He said that the proposed facility is designed to accommodate AT&T antennas at a centerline height of 181' and T-Mobile antennas at a centerline height of 171'. He stated that the facility will be accessed by the existing entrance shown on the site plan. He said that the parking area will be the gravel easement which serves only the compound. He said that there are no water supplies or sewage disposal systems existing or proposed. He stated that a landscaping plan is provided satisfying the perimeter buffer requirements for a WCF. He said that the Applicant has responded to the comments from George Condyles (County Telecom Consultant) and Brian Lichty (County Emergency Services Director). He said that the Applicant provided a response letter on July 10, 2019 which was forwarded to Mr. Condyles. He stated that Staff discussed the response letter with Mr. Condyles by phone and he is present today to answer questions from the Commission.

He said that the Applicant has also been working with the Virginia Department of Transportation (VDOT) to satisfy their requirements. He said that the revisions required by VDOT are minor and they anticipate approval once those revisions are reviewed. He stated that the Applicant did apply for a setback variance with the Board of Zoning Appeals and the public hearing is scheduled for September, 10, 2019. He said that the fall zone is 92 feet and there is 61.5 feet from the property line where the cemetery lot is and that is what the variance is for. He stated that the height limit of a tower stops at 199 feet. Mr. Stidham said this is due to the fact that we prohibit towers that have to have lights on them.

Mr. Fincham stated that this proposal will not cause undue adverse effects on neighboring properties. He stated that this proposal will not cause an undue adverse effect on wildlife and plant habitats. He said that no karst plan is necessary and an Erosion and Sediment plan is not needed. He stated that the tower will not cause undue air pollution. He said that security fencing will be provided for the life of the tower. He said that Staff recommends approval for this proposal with conditions contingent upon final VDOT written approval of the site plan, the posting of the required removal bond and a variance approval from the Board of Zoning Appeals. After discussion with Staff and the Commission, Vice Chair Buckley opened the public hearing.

Tracy Themak, (Donohue & Stearns, PLC), zoning council for Crown Castle, stated that the primary purpose today is to answer any additional questions the Commission might have. She said that with her today are representatives from Crown Castle site acquisition, construction, and engineers for AT&T and they can answer the more technical questions. She said she is going to give a brief power point as Mr. Fincham basically covered everything in his power point. She said we are proposing a replacement monopole for the existing stealth flagpole that was approved in 2003. She stated that the Applicant at that time was Omni Point and T-Mobile which were located on the original tower. She said the need is driven by T-Mobile and AT&T needing more height on the monopole to improve service in the area. She stated that AT&T will be the lead antenna and then T-Mobile. She said as soon as the new monopole is in place and AT&T & T-Mobile have migrated to the tower the old tower will be removed. She stated that they plan to put up a 185 foot monopole with two carriers and their upgraded equipment on the monopole. She said that this is clearly demand driven to meet the needs of the subscribers in Clarke County. She stated that this would be the minimum height necessary to be able to do this for both carriers. She said that in terms of optimal space and landlord approval and in terms of mitigating any additional disturbance to this parcel, this is the best area for the monopole. She stated that they are currently planning to be at the Board of Supervisors meeting later this month and then again at the October meeting. She said that Mr. Fincham stated that variance needs to be approved through the Board of Zoning Appeals which needs to be done before moving forward. She stated that she just learned that the VDOT bond and removal bond will be provided by Crown Castle later next week. She said that Mr. Fincham basically explained everything in his presentation. She showed where the proposed monopole will be located and said that the old tower will be removed. She stated that the monopole needs to be vertical and have two carriers with updated equipment in order to meet the needs of the customers in Clarke County. She showed photos where the tower will be visible and where it will not be visible. She provided hard copies for the Commission to review. She said that when Staff was presenting she noticed two things she would like to address. She stated the first item is on the American Tower facility that is located about a thousand feet to the southeast and primarily the reason that AT&T and T-Mobile are not on that one is a private business arrangement between AT&T, T-Mobile and Crown. She said that they have existing lease agreements with Crown and not American Tower. She stated that the reason they have the existing lease agreements is because the structure where American Tower has co-location opportunities is not at a height that would achieve effective propagation or Crown would have gone there. She said that Crown does not have the opportunity to interfere with that. They have a pole and they can bump it up and give these two carriers the heights that are required to maintain the service and what is currently being provided in the County and future service.

She said that the second item is that Commissioner Caldwell brought up the photographs of the other site of the look at the current proposed tower if it is increased by 20' and she did not get to put them in the presentation because it is not what we are proposing now. She said she did not want to keep the photos in the presentation showing the higher tower but she does have hard copies of the pictures and will hand them out to the Commission. She said that we do have members of our team available today to answer any questions. She stated that is all she has for her presentation.

Commissioner Maynard said that on pages 79 and 80 are pictures of the proposed future tower with a future extension that is 10% of current proposed height with future co-location antenna arrays. He added that on the proposal as it stands now there are two antenna arrays and on the future tower extension there is a third at the very top of the 203'-6" monopole. He stated that he would like

verification on the ability of Crown Castle to add that extension. He asked if it is a by-right extension and would you have to comply with the lighting requirements above the 199 feet.

Ms. Themak replied that the company is allowed by-right to increase the monopole height by 10% or 20 feet whichever is higher. She stated that in a jurisdiction like Clarke County where we have a maximum height of 199 feet and a prohibition on lit towers we could come up to 199 feet. She said that Crown is going to come here and invest the money and install this tower at 185 feet today. She added that the cost does not justify another 10 or 15 foot height increase on the tower. She stated that this will give AT&T & T-Mobile what they need. Commissioner Maynard asked does your right to go to 10% overrule the County's right to have a 199 feet. Mrs. Themak said that there are carriers that would take this and say that it is a federal law trumps the local jurisdiction. She said that in the counties that she has dealt with (Albemarle County and a couple more of the other jurisdictions) we encouraged them not to do that). She said if you do not want to pursue litigation and it is not something that they can come in and do it administratively by right in the County and they have height like here using the federal law to override local regulations is something they try to avoid.

Commissioner Bouffault asked that you are talking about the possibility of going to 203 feet on the tower and we have kept it to 199 feet, would it be technically feasible for you to add a third carrier and respect the 199 foot limit. Ms. Themak stated that with AT&T at the top centerline at 181 feet she believes it would be because there is a 10 foot separation between the centerline rings and they could still squeeze one more in at the top. Commissioner Bouffault said that you could still squeeze one more in and still respect the 199 foot limit. Ms. Themak said that the other benefit of this is that AT&T & T-Mobile have designated their needed centerline heights at 171 feet and 181 feet but given that this was originally an 85 foot stealth flagpole there may be carriers that come in and accept the 161 foot centerline.

Commissioner Bouffault asked if they have a fiber backhaul and if it is Shentel. Mrs. Themak asked a member of their technical team to answer this question. He said he believes so and he met with them about 3 months ago. Commissioner Bouffault said she thinks that Shentel is close to merging with T-Mobile and they are currently working through some difficulties. She knows that Shentel has the backhaul for T-Mobile on Route 50 which is close to Waterloo and across from Blandy Farm. She said she thinks they have a current 100 foot or possibly 80 foot or 90 foot tower. She stated that she knows that backhaul is Shentel because Shentel is also servicing with fiber at Blandy Farm.

Commissioner Maynard asked that in regard to the by-right extension to 203 feet would Crown Castle entertain a voluntary condition that in order to prevent future litigation would they cap the height at 199 feet in accordance with County Ordinance. He said he does not want to see that 5 years from now Crown Castle would want the extra 15 feet claiming that we have a right to do this and then we get into the legal situation that we have to say we are enforcing our regular ordinance and you say that you have the by-right that trumps our local ordinance.

Mrs. Themak said that unfortunately Crown Castle does not want to set the precedent that we come to our hearings and leave our legal rights under federal law. She said that she could take this to them but cannot speak to it right now. She added that she did not think that it is a precedent they want to set to waive their rights under the law because that would be used as an across the board condition where the law would be very helpful and is not so vehemently opposed. She stated that she thinks that the

County's cap is the biggest deterrent and coming in and trying to litigate a matter that would be overly expensive for the additional 10 feet it would provide.

Commissioner Glover asked where the dead zones are now for AT&T and T-Mobile around Route 50 and Route 606.

Ms. Themak said that we did not provide those in the application. She said she could speak generally to that but recently there was Virginia legislation passed that stated providers do not have to provide their maps or demonstrate need in the area. She said that there is a need here and Crown, AT&T and T-Mobile do not invest the funds and if there is a need we go on customer complaints and 911 for emergency services. Commissioner Glover asked if someone could speak at all about the dead zones just for personal use. She said that we do not live in the jurisdiction so we do not have the information. Commissioner Glover said he just wants to know where the dead zones are now for AT&T and T-Mobile around Route 50 and Route 606. She said she can speak generally but legally we have not submitted those materials because they are not part of the application. Commissioner Glover stated that the customers that are complaining are the customers that are commuting. He said that his next question which he believes you will not be able to answer is how many homeowners will benefit from the proposed tower. Ms. Themak said this information is not part of the application and the commuters working and living in the area and the emergency services depend on carriers like AT&T and T-Mobile to keep the towers current. She stated that we have agreed to leave space on the tower for emergency services and that is all in the interest of maintaining services for Clarke County.

Commissioner Glover stated that he is confused because Ms. Themak said there is demand and he said we still do not know how much demand there is for the local folks. He said that Ms. Themak cannot speak about this so he will let it go.

The Engineer for AT&T stated that we have a need for this site. He said from this proposed site it is 2.6 miles to the east and 5 to 6 miles in other directions. He said that there is a big area which we do not cover well. He said that there are spots that we miss especially on Route 50 straight through to Route 602 and Route 606. He stated that to the northwest there is a Blue Ridge Wildlife Center and that is an area we are trying to improve.

Commissioner Caldwell said that she understands that Crown Castle is primarily dealing with cell phones and part of your application mentions the possibility that the County could help to expand broadband access through location on your tower. She stated that this is usually provided by local WISPs and the question is that obviously Crown Castle owns many towers throughout the country so what percentage of our rural towers have WISPs co-located on them. A technical representative from Crown Castle said that he thinks the answer to that would be yes because there are independent wireless networks on our cell towers above and beyond the carrier. Ms. Themak stated that she does not know the answer to that question but she will find out and get back to her.

Commissioner Glover said that with WISPs you get unlimited data and you do not get choked. He said that AT&T, Verizon, T-Mobile are all hot spots but after 15 gigabytes you get choked. He said that is why the WISPs are more of an advantage to us than having a hot spot with a carrier. Commissioner Bouffault replied that is not quite accurate. She said that the WISPs that we currently have are dealing with the same problem with choking as we have with cellular. She said she was just researching a new

system called Bit Haulers. She said that what they are doing is bouncing off of all the cellular networks using all of them to provide what they are saying is going to be very fast 5G cellular internet. She said the reality is they are small companies and they are very interested in selling equipment that you can put on your house to receive this 5G. She stated that they are subject to the same choking problems as everyone else.

Fred Tavenner, property owner in the area, stated that the existing tower does not provide good service to an area that is about 900 feet. He said a picture was presented showing the new tower was visible going down Route 50 and on another picture it showed that the tower was not visible. He asked if the tower has to be visible in order to get service. Commissioner Bouffault stated that cellular does not have to be in direct line of sight in order to get service. She said that WISPs have to be in direct line of sight for service. Mr. Tavenner said that there is an existing tower that looks like a Christmas tree so AT&T and T-Mobile could use the existing tower instead of having additional towers all over the county. Commissioner Bouffault said that the existing tower belongs to Verizon and they have indicated that they are not willing to share the tower with a competitor. She said that this is truly a business decision that they have made. She stated that Crown Castle is keeping AT&T and T-Mobile happy by providing this proposed new tower.

Chris Collins, property owner in the area, stated that he heard it said that it is not going to be a problem and you will not see it and it will not be a visual disturbance. He said that this is not true. He stated that he drives up and down that road a couple times a day and sees it every time he drives by. He said the proposed tower is going to be twice the height of the existing tower. He stated that it is going to be very intrusive and it will look like Loudoun County. He stated that it will impede the view shed. He said make no mistake about it this is a money making proposition. He stated that people want to build that tower to make money and this is the easiest way to do it. He said that there is an existing site here and lets bend the regulations and increase our profitability quickly. He asked how far they have gone to explore other alternatives. He asked if there has been a lot of research on this proposed tower. He said he would like to know. He stated that he gets 4G service and he guesses he picked the right carrier and I am lucky because I am sure a lot of commuters get a dead zone. He said that he has always liked Clarke County for holding the line and taking their time to make the right decision for everyone. He stated that he would like the Commission to take the view shed into consideration.

Steve Tavenner, property owner near the proposed new tower. He asked if for some reason in the future someone wants to go beyond the current 199' foot limit on the tower would they be able to have a light on top of it. Vice Chair Buckley stated that the County has an ordinance that bans lights and it states when a tower reaches 200 feet or more there is a requirement for a light on the top. Mr. Tavenner was concerned if a light was allowed it would shine on his property. He said that he likes the way the existing tower looks and it is very well done. He said that he has Sprint service and this tower will not help him at all. He said he does not understand why these companies cannot consolidate some of their equipment and add more companies to use the same tower.

Fred Tavenner asked if it would be possible to do this tower like the existing tower. Mr. Stidham said that he has seen examples elsewhere of using the stealth tree approach and in this particular location it would probably stick out even worse because they work best when they blend in with surrounding foliage and it would have a significant portion of the tower above the tree tops.

George Condyles (County Telecom Consultant, President of the Atlantic Group) stated that he is the County Consultant and has been for a number of years. He stated that his purpose in reviewing these applications is to make sure you have an objective and unbiased opinion of facts of what the application says. He said that the Applicant has submitted all of their technical data that they are required to by law and that includes the local, Federal and State requirements, FCC, Commonwealth of Virginia and Clarke County require. He stated as far as ownership goes the existing tower (Christmas tree) is owned by American Tower and in the world of tower and tower leasing there are various competitors. He said that SBA is one, American Tower, Crown Castle are large nationwide providers of infrastructure and in addition to that they own fiber optic cable and these companies are into it heavy and deep and they are traded on the New York Stock Exchange. He said that across the street there is a stealth tower which we call the Christmas tree and it still has not been answered on why they cannot build over there. He stated that what he has heard is that from a business stand point its competition and all of that is true. He said that all of these carriers have what is called a master lease agreement with every facility provider. He stated that if one of the providers see a location they want to go on the first thing they do is see who has a tower in that area. He said that the only question he has is why one of these providers cannot go to where the American Tower Christmas tree is located. He said this would be more advantageous to go there as it is on higher ground elevation and the slot is available at the 80 foot position. He said that in the spirit of trying to position these towers with branches, camouflage, etc. and doing this to a 180 foot structure, it will look very bad. He said that camouflage only hides up to about 120 feet without looking really bad. He said that another item is the ability to raise the tower by 10% and Commissioner Maynard and Commissioner Glover have expressed some concerns about that. He said what the Federal law will allow is a one-time bump but if it is going to happen it will require lighting and the FCC will tell you the intensity of light that will be needed. He stated that he is not against this application at all other than he would like to have the question answered in a technical way not a business way. He said if I lived on the street where this tower would be going up he would not want it to happen either. He said he has no problem with the variance. He said that the application has merit and you should consider it.

Commissioner Maynard said in looking at the placement of the antenna arrays at 171 feet and 181 feet technically would it be almost as feasible to lower the overall height of this pole from 185 feet to a point where the federally authorized increase would bring it to a maximum off 199 feet. He said you could just lower those arrays slightly so that when they come in to exercise their Federal right of a one-time bump of 10%, they would fall within the County guidelines and the arrays instead of being at 171 feet and 181 feet would initially start out at 165 feet and 175 feet. Mr. Condyles stated he is going to guess because he has not studied the data but you would be looking at a 5 to 8% penalty to do it exactly like your scenario. He said it is not a bad strategy. Commissioner Maynard said that he just does not want to see the county spending a million dollars of county funds to fight a by right exercise in the federal courts.

Commissioner Lee stated that he wants to say something about the procedure of the Planning Commission in giving conditional approval to the proposed Special Use Permit/Site Plan before the Board of Zoning Appeals (BZA) has the public hearing and the opportunity to vote on the variance. He stated that the BZA is a separate body from the Planning Commission and he thinks it is premature for the Planning Commission to move forward in giving conditional approval on this request until such time that the BZA has the Public Hearing on the variance.

Mr. Stidham stated that as we talked at the Work Session the recent changes in the General Assembly level have limited the overall time frame for review of cell towers to 150 days which would terminate around mid-December. He said that given how the months have fallen since the application was filed that allows for essentially one deferral for a one month period which would end the 150 day review clock. He stated if the Planning Commission would defer to the October meeting action would need to be taken in October in order to get it on the Board of Supervisors schedule to set public hearing at the Board October meeting for their November meeting. He said if the Planning Commission is considering a deferral to next month he always recommends continuing the public hearing so it can remain open and that also saves on advertising costs because if you close it and then reopen it we would need to re-advertise again and it would still give the public time to come back and speak again.

Vice Chair Buckley asked Mr. Stidham to clarify the timeline if we choose to defer. Mr. Stidham said that changes to State law have limited the overall review time for cell towers to 150 days which would end at some point in mid-December. He said that based on how the months have fallen since the application was first reviewed, it would leave room for one deferral for a one month period within the 150 day review period. He said that if the application were deferred to October, the Commission would have to act in October in order for it to go on the Board of Supervisors' agenda in October to schedule public hearing for November. Commissioner Bouffault asked whether the Commission would continue the public hearing to October, and Mr. Stidham replied that Staff always recommends continuing the public hearing when a matter has been deferred to a future meeting to allow for additional public comment and to save on advertising costs.

Commissioner Kreider moved to defer action for one month to the October Commission Business Meeting and to continue the public hearing in order to consider the outcome of the Board of Zoning Appeals variance request. The motion was seconded by Commissioner Glover. Mr. Stidham said that the Commission might want to ask the applicant to request the one month deferral. He added that if the Applicant were to accept and take on the burden of deferral and provide that acceptance in writing that would stop the review clock. He stated that the General Assembly also gives the ability for the Applicant to voluntarily agree to a time extension of that 150 day period so it might be worth asking the Applicant's agent if that was something they would consider.

Vice Chair Buckley asked Ms. Themak if this is something they would consider. She said that she is curious given that Crown Castle will not be able to act on the Special Use Permit or Site Plan without BZA approval. She asked if this were to be acted upon today and the BZA were to deny the variance on September 10th then this would be null and void. She said that in 2003 the special use permit was conditioned upon approval of the variance request by the BZA. She added that Crown Castle is anxious to start this project and asked what the risk would be if we held to the timeline with the condition that the variance request be approved in order to approve the special use permit request. Commissioner Glover said that he would like to get more information based on the presentation. Ms. Themak said that she would accept the deferral if it is built into the review timeline and would be happy to come back in October to answer the Commission's questions. She added that she wants to stick to the original timeframe of having the final Board hearing in November. Mr. Stidham noted that this would be a Commission deferral and the review clock would continue to run. Ms. Themak asked if she would be receiving a list of the additional items that the Commission wants to see. Commissioner Bouffault noted the tower height question raised by Commissioners Maynard and Glover. Commissioner Glover said that he would like to speak with some of the residents in the area about the

application. Commissioner Bouffault said that one of the first questions raised was about the need for the tower and propagation maps. She added that there is a definite need for good service especially in the mountain areas and that it is frustrating to not know what the benefit in service would be. She said we would probably be a lot more comfortable if we knew how this would benefit the citizens.

Commissioner Maynard said that he wants to see additional information on the by-right extension possibilities for the proposed tower. He said that clearly by the pictures shown here that this extension is in the plans and that the pole will be built to add that third array. Commissioner Bouffault said that we already know that it would go against us if we went to court because Federal law does trump our local ordinances. Mr. Stidham said that to Commissioner Maynard's point, there are two options. Crown Castle could lower the tower height or they could accept a condition that the tower would not be extended beyond 199 feet. He said that absent these two options, we would have to enforce our Ordinance if an extension were proposed in the future and would go to litigation if it comes to that. Mr. Stidham also noted Mr. Condyles's concern as to why the applicant cannot co-locate on the American Tower site from a technical standpoint and not a business standpoint. He said a third point is in regards to visual impact and asked Ms. Themak if Crown Castle would be willing to schedule a balloon test during the deferral period. Ms. Themak replied yes and Mr. Stidham added that we can work on scheduling a date for that test and an alternate date for bad weather.

Commissioner Bouffault said that the tower is presented at 185 feet and Federal law allows for an extension of 10% of the tower height or 20 feet. She asked if the tower height were reduced to 179 feet, would this make everyone happy. Ms. Themak asked about amending the special use permit application to 179 feet and simultaneously applying for the administrative increase of 10% or 20 feet, and whether both applications could be considered and acted on at the same time. She added that this would provide the height that AT&T needs. Mr. Stidham asked for confirmation that Ms. Themak would be trying to obtain an approval height of 199 feet. A representative from the Crown Castle team stated that from a construction and maintenance perspective, they do not want to have a lighted tower for an additional three feet. She added that they apply for towers frequently at 199 feet because they do not want to have to maintain a lighted tower. She said that AT&T needs 185 feet and that they will not come back and request to extend the tower height to 203 feet.

Commissioner Bouffault asked the representative from AT&T whether they could accept a height of 179 feet instead of 185 feet. She added that she understands he may not be able to answer the question now but we are talking about a difference of six feet. The AT&T representative said that six feet should not be that big of a deal. Commissioner Kruhm asked if they could give us the information on the resultant degradation from the reduced height. Commissioner Maynard said that they do not give that information out but they have to make a business decision on how it impacts their request. Ms. Themak said that she would not be comfortable with bumping AT&T down to a lower height but would be comfortable with the special use permit and simultaneous administrative approval of the tower height at 199 feet. Mr. Stidham said that he is uncomfortable with doing a simultaneous administrative approval. He suggested that consideration be given to a condition that the height of the tower will not be increased to a height that would require FAA lighting. Ms. Themak replied that is fine and asked for confirmation that we would essentially be capping the height at 199 feet. Mr. Stidham replied that there would be no extension of the tower height that would require FAA lighting. Ms. Themak said that she thinks this would solve all of the problems.

Commissioner Caldwell noted that we have a motion and second on the floor. Mr. Fincham noted that for the Commission's information, the Zoning Ordinance requires the applicant to provide photosimulations of the proposed tower with a by-right extension shown. Ms. Themak said that they do not have engineered drawings showing a third carrier on this proposed tower. The Commission voted to defer action and continue the public hearing until the October Planning Commission meeting. **Yes:** Bouffault, Buckley, Caldwell, Daniel, Glover (seconded), Kreider (moved), Kruhm, Lee, Malone, and Maynard

No: No one

Absent: Ohrstrom

Boundary Line Adjustment

Approval of a boundary line adjustment for the properties identified as Tax Map #3-A-3C and 4-A-2A, located off Old Charles Town Road in the Russell Election District zoned Agricultural Open-Space Conservation (AOC).

Mr. Fincham stated that the Zoning Administrator normally approves boundary line adjustments but in cases where the proposed boundary line adjustment would exceed area limitations, the Planning Commission is the approval authority for the purpose of allowing such area limitations to be exceeded. He said that Staff has reviewed the site and the half acre adjustment area is minimal and is not used for agriculture and is not suited for agriculture. He said that Tax Map #3-A-3C is currently at 3.975 acres and after the adjustment it will be 4.475 acres. He stated that Tax Map #4-A-2A is currently at 53.2272 acres and after the adjustment it will be 52.7272 acres. He said that the total area in the boundary line adjustment is 57.2022 acres which remains the same and 0.500 acres were adjusted. He said that a LESA score was calculated on the agricultural lot Tax Map #4-A-2A and the score was 67.58 which is considered low quality. He stated that there are no issues pertaining to the existing well and onsite sewage systems. He said that the Health Department approval and signature of the plat will be required. He said that a karst plan/resistivity test is not required for the existing septic system. After discussion with Staff and the Commission, Vice Chair Buckley called for a motion.

The Planning Commission voted to approve this request

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

No: No one

Absent: Ohrstrom

Board/Committee Reports

Board of Supervisors (Mary Daniel)

Commissioner Daniel stated that last week the entire Board of Supervisors were overwhelmed with the concerns about Loudoun County and the Town of Hillsboro who are thinking about closing Route 9. She said that the Board is all over this and are going to have a work session dedicated to this issue on Tuesday. She said that in her opinion it is a tremendous safety issue. She said we are waiting for our safety audit on Route 7. She said that the census is coming up and they are hoping to be able to do most of it on line. She stated that a traffic study report is being done for the Town of Berryville and we will probably get the results back for the October Board meeting. She said we have several citizen positions available and you can find the information on line.

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

No Report.

Board of Zoning Appeals (Anne Caldwell)

Commissioner Caldwell said there is a public hearing meeting scheduled for September 10, 2019 at 9:30 a.m. for a variance request from Crown Castle.

Historic Preservation Commission (Doug Kruhm)

Commissioner Kruhm said that there is a public hearing meeting scheduled for September 18, 2019.

Conservation Easement Authority (George Ohrstrom, II)

Vice Chair Buckley stated that Alison Teetor, George Ohrstrom and myself recently attended a celebration of the 100th Conservation Easement partially funded by the Virginia Farmland Preservation Fund. He said that Alison and two other PDR Managers were recognized by Governor Northam and the Secretary of Agriculture for their work in farmland preservation and he said that he thinks it was a really well deserved recognition. He stated that it was a very nice event and George was one of the speakers. He said that we have also submitted a grant application to the Virginia Land Conservation Fund to leverage some matching Federal funds for an easement on a portion of Smithfield Farm and have three other easement applications pending.

Broadband Implementation Committee (Mary Daniel)

No meeting recently.

Other Business

Mr. Stidham stated as we discussed at the work session on Tuesday, everyone should have a copy of the document that you had not had a chance to review. He said this is the original submission from Len Capelli containing the recommendations of the Economic Development Advisory Committee and the Industrial Development Authority (IDA). He said that it is dated May 15th and we received it sometime in June. He said that this has been presented to us as those two bodies recommendations on revising the Economic Development Strategic Plan. He said that you already have the information from Commissioner Bouffault and her draft that she has provided at the work session as well and we talked about taking this month and picking it up back in October. He stated as a reminder the five year review resolution needs to be adopted by the Planning Commission by October 21st which is the anniversary date of the adoption of the Economic Development Strategic Plan.

Commissioner Bouffault said she wants to make some comments. She stated that the Comprehensive Plan Committee met on August 19th and it was discussed and decided to take what you are now receiving today to the rest of the Commissioners. She said that Mr. Stidham was talking about the final recommendation of the EDAC and IDA that they were passing on to us. She said that she worked with Len Capelli on the 22nd and they incorporated the main part. She said the only thing they found was that the EDAC and the IDA had separated the County Economic Development and the agencies such as the Commissioner of the Revenue and any of the other elected agencies. She said we consolidated that with the view that this is such a tiny county the communication between all of us needs to be much closer than if we were to be a large city or a big county where you have very different buildings and so we are all in the same building. She said what is obvious is we really did not have a discussion concerning the draft you received from us on the 26th. she said she did send it out to EDAC and IDA on

the 26th so if they had any comments or they wanted to post a recommendation to make changes we could do so but we did not receive anything back from them. She said she would like for this draft plan to be discussed at the October Work Session and if we can agree on it, we could adopt it for public hearing. She asked Mr. Stidham if it does have to go through a public hearing. Mr. Stidham stated if you are going to amend the Comprehensive Plan or any other component plans it requires public hearings for both the Planning Commission and the Board of Supervisors.

She said that we could set a public hearing at our level for October. She said that we need a new plan and it is neat and tidy and everybody has had a chance to read it. She stated that last year the Board of Supervisors wanted this plan updated. She said she would argue that it is probably the most important implementing plan that we have right now. She said we need to increase our tax revenues and that is the basis why we need to have this plan approved. She stated she wants to get this off our plate and Mr. Stidham's plate and move it on to the Board of Supervisors before the end of the year if possible.

Vice Chair Buckley asked Mr. Stidham if we need to take any action on this resolution.

Mr. Stidham said he does not think we need to take any action today. He stated we can continue to add this item to the October regular meeting agenda which would enable us to discuss it at the work session. He said that he wants to apologize on behalf of all county Staff as to the confusion of this process. He said that the excerpt from the Board minutes from May that was handed out on Tuesday does clearly state that the Board has delegated the update to the Strategic Plan to the EDAC and the IDA and that was dated back from Spring of 2018. He said that for whatever reason that directive was never communicated to the Planning Staff. He stated that as he described on Tuesday he met with Mr. Capelli in January of this year to talk about the need for this five year resolution to be adopted and he was not told at that point that the Strategic Plan was being rewritten. He said he was aware that the Board was with working with Mr. Capelli and associated groups on EDAC priorities but at no point was it communicated across departments that this Strategic Plan was being revised and that he should expect the Planning Commission to receive a revised Strategic Plan for consideration. He said had we been made aware of this that early on he would have talked about process and procedure. He stated that the fact that we have a Comprehensive Plan update coming up soon that contains an objective with our big picture strategies for Economic Development used to inform the update of the Economic Development Strategic Plan, and that the process would be to work through these priorities with the Comprehensive Plan update and then decide what to do with the Strategic Plan. He said that the outcome of the Comprehensive Plan could take away the current practice to maintain a Strategic Plan as a component plan that we could detach that and make it a free standing document that can be worked on by the Economic Development and the Board independently of the Comprehensive Plan. He said we would have to work with Mr. Capelli and County Administration on any modifications and changes. He said that since Staff was not involved with the creation of this we would guide you through the Public Hearing process and make sure all those requirements are filed. He said that his concern right now remains and is making sure that some sort of resolution is adopted in October that reflects if we want to do work or not do work on the current Economic Development Strategic Plan. If there is a resolution to have a Public Hearing to amend either this document or some other version of the document that satisfies my check box.

Commissioner Bouffault asked to comment. She stated we cannot disassociate from the Comprehensive Plan. She said that the Comprehensive Plan shall consider strategies to provide

broadband, infrastructure to the future needs of the residents and businesses in our locality. She said that we do have the right to amend the plan at any time according to the Code of Virginia if it is deemed sufficient.

Vice Chair Buckley stated that he wants this to go on the October Agenda if everyone agrees.

Mr. Stidham said that any time you are working on a Comprehensive Plan or implementing other component plans it is prescribed that you do a careful and a deliberate consideration and we added language in the Comprehensive Plan when we updated it to be sure that piece mill amendments are not done. He said he agrees with Commissioner Bouffault that our current plan says almost nothing about broadband and one of the major things we should do is create an objective on broadband in our Comprehensive Plan and that is where it would have the most punch.

Vice Chair Buckley said he thinks we are all in agreement that we need to discuss this. He said to please be prepared and we will discuss it in October. He asked for a motion to adjourn.

On motion by Commissioner Caldwell and seconded by Commissioner Kruhm the meeting was adjourned at 11:00 a.m.

Randy Buckley, Vice Chair

Debbie Bean, Recording Secretary

Clarke County



PLANNING COMMISSION WORK SESSION MINUTES -- **DRAFT** 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

Clarke County

PLANNING COMMISSION BUSINESS MEETING MINUTES - **DRAFT** FRIDAY OCTOBER 4, 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, October 4, 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) and Mickey Powell (Winchester Star)

Staff Present: Brandon Stidham, Planning Director 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 (seconded), Caldwell (moved), Daniel, Glover, Kreider, Kruhm, Lee, Malone, Maynard and Ohrstrom

No: No one

Approval of Minutes

The Commission voted to approve the Planning Commission Work Session Meeting minutes of September 3, 2019 with one correction to add an additional word to a sentence regarding the Boundary Line Adjustment.

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

No: No one

Commissioner Caldwell stated that these are very complicated and long minutes and she ended up finding a lot of minor corrections that do not change the substance of the minutes but which increase the readability. She moved to defer the approval of these minutes until next month for those corrections to be made.

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

No: No one

Continue 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. Stidham explained that Staff received an email from Tracy Themak, representative for the applicant, formally requesting the Planning Commission to defer the hearing today for one month to allow time for them to speak with the landlord. He said he presumes that this would be the VanKeurens, the property owners. He stated that she did acknowledge in this email that this would stop the 150 day review clock and extend that review period by one month. He said that she hopes to have the items ready for review by the Commission for the November meeting if the Commission grants that deferral request.

He stated that a couple of items that were brought to their attention is that we reminded them that the Zoning Ordinance requires any revised materials be provided to Staff within 10 days prior to the continued Public Hearing. He said if they have additional changes that they want to make they will need to be in to Staff by October 22nd. He stated that we have noted that the Board of Zoning Appeals variance was denied and we have not received any feedback as to how they intend to resolve that. He said that Staff supports granting the deferral request and extending the review clock by one month. He stated that if the Commission does approve this deferral, Staff would also recommend to continue the Public Hearing until the next meeting of the Commission on November 1st. Mr. Stidham said he will answer any questions you may have.

Chair Ohrstrom asked the Commission if they have any questions. There being no further questions the Chair called for a motion.

The Commission voted to defer action and continue the public hearing on this request until the November 1, 2019 Planning Commission meeting.

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

No: No one

Board/Committee Reports

Board of Supervisors (Mary Daniel)

Commissioner Daniel stated that the issue of closing Route 9 was addressed and have an alternative plan has been proposed. She said that the Board of Supervisors was not a part of that discussion and has not received the full details on this plan. She said that it only involves closing Route 9 on certain days at certain times based on the construction schedule. She said it has not been approved by the VDOT Commissioner and he has the final approval. She said that the Board of Supervisors are still looking at things we have been concerned about but it is not our responsibility to come up with the right plan. She said that the Route 7 safety audit that that Board of Supervisors requested back in January arrived last

month and it is on the County website. She said the audit is about what the case may be, not what it already is. She said that there are improvements to be made to Route 7 by VDOT.

Chair Ohrstrom said that he knows someone at VDOT and he asked him why the nearby counties were not informed about this going on with Route 9. He said he was told that VDOT never tells the counties until a contract is made due to the potential for upsetting the public.

Commissioner Bouffault stated that if VDOT does a revised study and takes whatever they decide into account would it have a financial impact on the County and is there any legal way to have the County to claim expenses for that. Commissioner Daniel stated that she does not think that the State allows for recouping our expenses based on a VDOT project. She stated that we have our own budget with VDOT and we are welcome to prioritize that money for Clarke County. She said that we have been promised additional State Police specifically on Route 7 and Route 340. She said that the Lieutenant of the State Police has made this pledge. She stated that the additional State Police will be on Route 7 and Route 340 east bound in the morning between Clarke and Warren and west bound in the afternoon.

She stated on the mountain where people thought the County line is not exactly where they thought it as. She said that the County Planning Directors and the County Administrators have come up with a new line that puts people where they thought they were. She said that the subdivisions were done so long ago and there was not a whole lot of concern at the time and the surveying equipment has gotten much better now. She stated that this has been in the works for a while. She stated that when everyone is satisfied with a final plan it will go through public hearings and all the proper procedures. She said that this is strictly the line between Clarke and Warren Counties.

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

No Report.

Board of Zoning Appeals (Anne Caldwell)

Commissioner Caldwell said that the Board of Zoning Appeals denied the variance that Crown Castle applied for. She said that it was discussed at some length at the Work Session meeting.

Historic Preservation Commission (Doug Kruhm)

Commissioner Kruhm stated that the Historic Preservation Commission approved a Certificate of Appropriateness for Edward Alex Lee at 24 Tannery Lane to construct a deck to a workshop. He said another Certificate of Appropriateness for Brian Legge at 140 White Post Road to build a garage in the front of his home and the request was denied. He said the applicant is now applying for another Certificate of Appropriateness for another area and a smaller garage.

Conservation Easement Authority (George Ohrstrom, II)

Chair Ohrstrom stated that there is a party this evening thanking everyone who has made donations to the Conservation Easement Authority and anyone else that wants to come is invited. He said we currently have several easements in the work. He said that Alison Teetor has sent out letters to land owners to see if they would be interested in putting their land in easement and we are getting a lot of responses. Commissioner Buckley said that they have closed on an easement on Wrights Mill Road which protects the Opequon.

Broadband Implementation Committee (Mary Daniel)

Commissioner Daniel stated that the Committee has not met but we are looking at updating the Clarke Connect website. Commissioner Bouffault said she is looking at what other counties are doing. She said she was talking to Fauquier County and they are going with a company called Segra. She said she looked at the Segra website and they are all down the east coast and they lay dark fiber. She said that what she discovered is that have a dark line the full length of Route 7 in Clarke County. She stated that once it gets to the mountain in Bluemont it does not continue on Route 7 it drops down to go to Middleburg on two side roads. She said then it goes to Fauquier County and in this particular area a lot of people are well funded. She said she thinks the Broadband Implementation Committee she look into this as a way of improving some of our broadband in the Route 7 area. She stated that we should start looking at this to improve our broadband and possibly get grants for it.

Commissioner Daniel said that Tim Kaine was in Winchester on Wednesday and she was able to talk to him specifically about rural broadband. He was so optimistic and he said that everyone sees the problem and they are working on an omnibus infrastructure bill and it is their intention to include high speed internet.

Other Business

Mr. Stidham said that this is the continued discussion of the Economic Strategic Plan 5 year review. He said that there two documents for this item and one is on yellow paper which is a revised draft of Staff's Resolution to initiate review of the Clarke County Economic Development Strategic Plan and this is the version that first came to the Commission in September and per our discussions at the Work Session meeting on Tuesday.

Chair Ohrstrom called for a motion.

The Commission voted to approve this Resolution.

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

No: No one

Ms. Bouffault read the 2nd proposed resolution to the Commission. She made a motion to approve this amended resolution.

Chair Ohrstrom asked if there is any discussion on this Resolution.

Commissioner Kreider stated that he is against this resolution and he feels this is in opposition to what we agreed to do when we reviewed the Comprehensive Plan we were not going to do ad hoc amendments in this form.

Commissioner Bouffault stated she believes this is up to the Board of Supervisors. She said that they have two resolutions and they can choose what they want.

Vice Chair Buckley stated that he does not want to discount the work of the Comprehensive Plan Committee for their work on this. He said that he is not satisfied that we are following our own procedure. He said he does not believe it is in our best interest to add what Commissioner Bouffault described as a band-aid to the Comprehensive Plan when it is our plan to review the entire Comprehensive Plan in the next few months. He said his plan is to vote no on this resolution.

Commissioner Caldwell stated that she has very significant and serious concerns about the entire process which has been followed here. She said that we have never received a formal letter from the Industrial Development Authority (IDA) or the Economic Development Advisory Committee (EDAC) approving this draft Strategic Plan and as far as she can determine the draft Strategic Plan was never actually discussed formally in an EDAC meeting or an IDA meeting. She said that contacting the members in an email about the draft plan does not constitute a formal meeting for approval of that draft plan. She said that is not the way things get done. She said the Commission itself has spent 2 months saying I am confused about the process and we have discussed the process and the details of what has gone on but we have never discussed the content of this draft Strategic Plan. She stated that to say that we as a Planning Commission want to forward this to the Board of Supervisors with our approval again is way outside the normal process of how things should go. She said she has very significant concerns that this is just not an appropriate process for getting this done. She said she thinks there are many other issues that need to be addressed and we need to follow the formal process. She said that she has had the good luck to run into a few people on the EDAC in the last few days and ask them about this. She stated that they said to me they have significant concerns about the process and the content of this draft Strategic Plan. She said that obviously there is no unanimous thinking on the EDAC about this draft Strategic Plan. She said it is needed to be discussed in an open meeting with all the members present before it is forwarded to us. She said she will vote no on this resolution.

Chair Ohrstrom stated that he has concerns about this. He stated that he would love to see a note in the file from the IDA and the EDAC on their stationery that they have agreed to this proposal and then are ready to forward it to us. Commissioner Bouffault asked Chair Ohrstrom if he does not consider Len Capelli's memo on behalf of the EDAC. Chair Ohrstrom stated that he saw the July minutes from the EDAC and it was not even mentioned in that document. Commissioner Bouffault stated that it was approved in May. Chair Ohrstrom said that he did not see the May minutes from the EDAC. Commissioner Bouffault suggested that she could amend it to say that we recommend the approval but we send it forward as per the original request without any recommendation at all. Chair Ohrstrom said we could do that but he does not see where that does much good for us. He said we could also table it until the EDAC gives us a piece of paper saying we approve this.

Commissioner Daniel said what we discussed was that the EDAC Director was not on his own to update the plan. She said that rather than trying to do anything in a bubble in this building there would be others included. She stated that she does know that a memo in government from a Staff member is an official document. She said that the strength of Clarke County is that we plan and if we do not plan we lose our strength. She stated that this is an implementing component plan and everyone needs to be on the same level and she is not seeing that. She said one thing she would like to mention is that Mr. Stidham goes through process and procedure and he makes sure it is in accordance with the requirements and he has thought it through.

Commissioner Bouffault stated that in the resolution she literally took the language in the minutes from the Board of Supervisors meeting. She said that she took it word for word.

Commissioner Buckley said he wants to reiterate that he is not comfortable that we have followed the proper procedure. He said that particularly since we have adopted a work plan and we have a goal of visiting the Comprehensive Plan. He said he believes in 20/20 and he is not confident in the fact that the EDAC has reached a conclusion given their minutes of September 18th or their draft minutes all there is are comments from the EDAC members in regards to the plan.

Commissioner Bouffault said you are saying that they never formally voted on it.

Commissioner Buckley said he does not think they have and he does not believe they have ever agreed or disagreed that they approved it.

Vice Chair Buckley said if it is appropriate I would like to call for the question.

Chair Ohrstrom called for a vote.

The Commission voted 10-opposed and 1-abstention against this Resolution.

Yes: No one

No: Buckley (moved), Caldwell, Daniel, Glover, Kreider (seconded), Kruhm, Lee, Malone, Maynard and Ohrstrom

Abstain: Bouffault

On motion by Commissioner Caldwell and seconded by Commissioner Kruhm the meeting was adjourned at 9:41 a.m.

George L. Ohrstrom, II

Debbie Bean, Recording Secretary