

**CLARKE COUNTY PLANNING COMMISSION
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Clarke County Planning Commission

AGENDA – Work Session

Tuesday, December 3, 2019 – 3:00PM

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

- 1. Approval of Work Session Agenda**
- 2. Review of Agenda Items for December 6, 2019 Business Meeting**
- 3. Old Business Items**
 - A. Discussion, Rezoning and Special Use Review Factors (Ordinance Update Project)
- 4. New Business Items**
 - A. 2020 Organizational Meeting Items
- 5. Other Business**
- 6. Adjourn**

Comparison of Current Review Criteria and Proposed Review Factors

Current 5-B-5:

Criteria for Action on Special Use Permit

Before taking action, the Board may require the applicant to furnish such information as it may deem necessary in order to determine whether the proposed special use permit is detrimental to the public health, safety, or general welfare. Such a determination shall be based on the following specific findings. The Board may make any additional findings it may deem appropriate.

Current 8-B-3:

Criteria for Action on Proposed Amendment

Before taking action, the Board may require the applicant to furnish such information, as it may deem necessary in order to determine whether the proposed amendment is detrimental to the public health, safety, or general welfare. Such a determination shall be based on the following specific findings.

Proposed 6.3.1C-2:

Special Use Permit Review Factors. The following factors, as applicable, together with other factors deemed applicable, may be considered by the advisory body and the Board of Supervisors in acting upon a special use permit application. The advisory body and Board of Supervisors may require the applicant to furnish information which the advisory body or Board of Supervisors deems necessary to address such factors and any conditions to be applied:

Proposed 6.3.3D-2:

Rezoning Review Factors. The following factors, as applicable, together with other factors deemed applicable, may be considered by the advisory body and the Board of Supervisors in acting upon a rezoning application. The advisory body and Board of Supervisors may require the applicant to furnish information which the Planning Commission or Board of Supervisors deems necessary to address such factors:

Current Review Criteria	Proposed Review Factors
Will be consistent with the Comprehensive Plan of the County.	<i>(a) Consistency with the Clarke County Comprehensive Plan and any applicable implementing component plans.</i>
Will be consistent with the Purposes and Intent of this Ordinance.	None
Will not have an undue adverse impact on the short-term and long-term fiscal resources of the County for education, water, sewage, fire, police, rescue, solid waste disposal or other services, and will be consistent with the capital improvement goals and objectives of the Comprehensive Plan, to the end that growth of the community will be consonant with the efficient and economic use of public funds.	<i>(b) Impacts on the short-term and long-term fiscal resources of the County for education, water, sewage, fire, police, rescue, solid waste disposal or other services, and consistency with the capital improvement goals and objectives of the Comprehensive Plan, to the end that growth of the community will be consonant with the efficient and economic use of public funds.</i>
Will not cause an undue adverse effect on neighboring property values without furthering the goals of the Comprehensive Plan to the benefit of the County.	None
Will not cause an undue adverse effect on the preservation of agricultural or forestal land.	<i>(c) Mitigation of impacts that would reduce the conservation value of adjacent or nearby agricultural or forestal land or would impede the operations of an active agricultural or forestal operation.</i>
Will not cause unreasonable traffic congestion or unsafe conditions on existing or proposed public roads and has adequate road access.	<i>(d) Compliance with Virginia Department of Transportation (VDOT) regulations and recommendations of VDOT deemed necessary for safe and efficient movement of traffic.</i>
Will not cause destruction of or encroachment upon historic or archeological sites, particularly properties under historic easement.	<i>(e) No destruction of or encroachment upon historic or archeological sites, particularly properties under historic easement.</i>

<p>Will not cause an undue adverse effect on rare and irreplaceable natural areas, areas of outstanding natural beauty, state-designated scenic byways or scenic rivers or properties under open space easement.</p>	<p><i>(f) Effective mitigation of potential adverse impacts on the following important resources located on the subject property or surrounding properties:</i></p> <ul style="list-style-type: none"> • <i>Surface or groundwater resources including but not limited to mitigation of pollution of such resources.</i> • <i>Natural areas such as unique geological features, rare plant habitats, or wildlife nesting areas.</i> • <i>Areas designated for conservation, recreation, or natural preservation including but not limited to properties under permanent conservation easement, State-designated scenic byways, scenic rivers, Blandy Experimental Farm, and the Appalachian National Scenic Trail corridor.</i>
<p>Will not cause an undue adverse effect on wildlife and plant habitats.</p>	<p>See (f) above</p>
<p>Will have sufficient water available for its foreseeable needs.</p>	<p><i>(h) Availability of sufficient water for foreseeable needs.</i></p>
<p>Will not cause unreasonable depletion of or other undue adverse effect on the water source(s) serving existing development(s) in adjacent areas.</p>	<p><i>(i) No unreasonable depletion of or other undue adverse effect on the water source(s) serving existing development(s) in adjacent areas.</i></p>
<p>Will not cause undue surface or subsurface water pollution.</p>	<p>See (i) above</p>
<p>Will not cause an undue adverse effect on existing or proposed septic systems in adjacent areas.</p>	<p>None – would be addressed by Virginia Department of Health (VDH) review</p>
<p>Will not cause unreasonable soil erosion.</p>	<p>None – would be addressed by County erosion and sediment control review and Virginia Department of Environmental Quality (DEQ) stormwater review (if applicable)</p>

Will have adequate facilities to provide safety from flooding, both with respect to proposed structures and to downhill/downstream properties.	None – would be addressed by Zoning Ordinance flood plain regulations (if applicable), County erosion and sediment control review and DEQ stormwater review (if applicable)
Will not cause undue air pollution.	See (g) below; also DEQ review of pollutant emissions (if applicable)
Will not cause undue noise, light or glare, dust, odor, fumes, or vibration.	<i>(g) Effective mitigation of potential adverse impacts caused by undue noise, light or glare, dust, odor, fumes, or vibration.</i>
If in the AOC or FOC zoning districts, will not result in scale or intensity of land use significantly greater than that allowed under the permitted uses for these districts. (SUP ONLY)	None
Will not cause a detrimental visual impact. (SUP ONLY)	<i>(j) Effective screening and buffering is provided, or the proposed development will be situated away from adjacent properties in a manner to mitigate detrimental visual impacts.</i>



Clarke County Planning Department

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TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: 2020 Organizational Meeting Materials

DATE: November 18, 2019

Enclosed for informational purposes are several documents to help prepare you for the Organizational Meeting that is scheduled for the Commission's **Tuesday, January 7, 2020** Work Session:

- Current (2019) Committee List
- Draft 2020 Meeting Schedule
- Current (2019) Planning Commission By-Laws
- Current (July 2019) Project Priorities List (Staff will provide an updated Priorities List in your January meeting packet)
- Comprehensive Plan/Component Plan Review Schedule (updated)

If you have questions in advance of the Work Session, please do not hesitate to contact me.

CLARKE COUNTY PLANNING COMMISSION 2019 COMMITTEE APPOINTMENTS

Permanent Committee Descriptions

- Policy and Transportation. Charged with focused study of general planning-related policy issues and matters affecting the County’s transportation network.
- Plans Review. Charged with review and comment on the following:
 - Site plan applications for Commission review (including those filed in conjunction with rezoning and special use permit applications)
 - Major subdivisions
 - Other administrative site plan, minor subdivision, or other land development applications on which Staff requests input from the Committee.
- Comprehensive Plan. Charged with initial management of the five-year review process for the Comprehensive Plan and implementing component plans.
- Ordinances. This Committee was created initially to serve as the steering committee for the project to review and update the Zoning and Subdivision Ordinances. Following completion of the project, the Ordinances Committee could also be charged with work on future proposed text amendments.

2019 Permanent Committees

Policy & Transportation	Scott Kreider	Robina Bouffault	Gwendolyn Malone	Douglas Kruhm
Plans Review	Frank Lee	Anne Caldwell	Scott Kreider	Robina Bouffault
Comprehensive Plan	Robina Bouffault	Douglas Kruhm	Pete Maynard	Bob Glover
Ordinances	Randy Buckley	Anne Caldwell	Frank Lee	Gwendolyn Malone

Special Subcommittees and Appointments – 2019 Members

Board of Zoning Appeals (BZA)	Anne Caldwell
Berryville Area Development Authority (BADA)	George L. Ohrstrom, II
Historic Preservation Commission (HPC) – Liaison	Douglas Kruhm
Board of Supervisors (BOS) – Liaison	Mary L.C. Daniel Barbara Byrd (alternate)
Conservation Easement Authority (CCEA)	George L. Ohrstrom, II

Board of Septic and Well Appeals (Planning Commission Chair and Vice-Chair)	George L. Ohrstrom, II Randy Buckley (alternate)
Agricultural & Forestal District (AFD) Advisory Committee – Liaison	Randy Buckley
Broadband Implementation Committee	Robina Bouffault Douglas Kruhm

Past Special Subcommittees

Telecommunications Subcommittee (work completed on January 24, 2017)	Jon Turkel Douglas Kruhm Robina Bouffault
Business Intersection Area Plans Subcommittee (work completed on August 30, 2016)	Robina Bouffault Anne Caldwell Gwendolyn Malone
Agricultural Land Plan Subcommittee (work completed on November 29, 2016)	Robina Bouffault Randy Buckley Jon Turkel Corey Childs (AFD Advisory Committee member) Emily Day (AFD Advisory Committee member)

NOTE: The Commission Chair is ex-officio member of all committees, but will chair no committee.

2020 PLANNING COMMISSION MEETING SCHEDULE -- **DRAFT**

Work Sessions

Work Sessions are held monthly (except August) on the Tuesday before the Planning Commission's Business Meeting at 3:00PM in the Government Center A/B Meeting Room, 101 Chalmers Court, 2nd Floor (unless otherwise scheduled). The purpose of the Work Session is to review agenda items for the upcoming Business Meeting and to discuss projects and issues in a workshop setting. Formal actions may be taken at Work Sessions but are limited to the annual organizational meeting items and those items specifically deferred from a previous Business Meeting. Work Sessions are open to the public.

Business Meetings

Business Meetings are held monthly on the first Friday of every month (except August) at 9:00AM in the Government Center Main Meeting Room, 101 Chalmers Court, 2nd Floor (unless otherwise scheduled). The Commission conducts official business at these meetings including taking formal action on pending land use applications and text amendments, conducting required public hearings, and receiving reports from committee and board representatives. Business Meetings are open to the public.

Work Session Meeting Dates	Business Meeting Dates
Tuesday, February 4	Friday, February 7
Tuesday, March 3	Friday, March 6
Tuesday, March 31	Friday, April 3
Tuesday, April 28	Friday, May 1
Tuesday, June 2	Friday, June 5
Tuesday, July 7*	Friday, July 10*
No meeting in August	No meeting in August
Tuesday, September 1	Friday, September 4
Tuesday, September 29	Friday, October 2
Tuesday, November 3	Friday, November 6
Tuesday, December 1	Friday, December 4
Tuesday, January 5, 2021**	Friday, January 8, 2021**

* **Schedule deviation to avoid July 4 Holiday**

** **Schedule deviation to avoid January 1, 2021 Holiday**

Standing Committee and Special Subcommittee Meetings

Meetings of Planning Commission committees and subcommittee are scheduled on an as-needed basis, often immediately following Work Sessions and Business Meetings in the A/B Meeting Room. Dates and times for committee and subcommittee meetings are posted to the meeting calendar on the County website (www.clarkecounty.gov).

Inclement Weather and Other Schedule Deviations

In the event that a meeting is cancelled due to inclement weather, efforts will be made to reschedule the meeting within one week of the original meeting date. If this cannot be accomplished, the agenda items will be forwarded to the next Work Session or Business meeting date. Deviations in the meeting schedule may be made to account for conflicts with holidays, government meetings, or other events of significance.

BY-LAWS OF THE CLARKE COUNTY PLANNING COMMISSION
(Adopted January 2, 2019)

Article 1 – Purposes, Duties, and Authority

The Clarke County Planning Commission is created and organized pursuant to Code of Virginia §15.2-2210, et seq., and shall have the purposes, duties, and authority set forth therein. Meetings shall be held in accordance with Code of Virginia §15.2-2214. Provisions regarding conflicts of interest are set forth in Code of Virginia §2.2-3100 et. seq.

Provisions regarding Commission membership, terms of office, required oath of office, quorum, and officers are located in the Article 1, Section C of the Clarke County Zoning Ordinance.

Article 2 – Election of Officers

- A. Selection of Chair and Vice-Chair. As required by Article 1, Section C of the Clarke County Zoning Ordinance, the Commission shall elect from its membership a Chair and a Vice-Chair to serve a one year term. Election of officers shall be held at the Commission’s annual organizational meeting.

- B. Election procedure. The Director of Planning or other Staff designee shall open the floor for nominations for Chair. Once all nominations are made, the floor shall be closed to nominations and opened for discussion of the nominees. Once discussion is complete and floor closed, the Director of Planning or Staff designee shall call for a vote on each candidate in the order of their nomination. The candidate receiving a majority vote of the members present shall be declared elected and shall assume office immediately. The Chair-Elect shall repeat the process above for election of the Vice-Chair.

- C. Vacancies. Any vacancies in office shall be filled at the next regular Commission meeting by the election procedure outlined in Section B above. Vacancies shall be filled for the unexpired term.

Article 3 – Duties of Officers

- A. Duties of the Chair. The Chair shall preside at all meetings, appoint standing and special committees, rule on all procedural questions subject to a reversal by 2/3 majority vote of the members present, coordinate the work of the Commission staff through close and continuing cooperation with the County Administrator, and carry out other duties as assigned by the Commission.

- B. Duties of the Vice-Chair. The Vice-Chair shall act in the absence or inability of the Chair, have the power to function in the same capacity as the Chair whenever so authorized by the Chair, and carry out other duties as assigned by the Chair.

Article 4 – Committees and Liaison Members

- A. The Chair shall appoint such standing and special committees as the Commission shall direct and may designate the member who shall chair each committee. The Chair is an ex-officio member of all committees.
- B. Membership on committees shall be limited to members of the Commission provided, however, that nonvoting advisory persons may be appointed by the Commission Chair from outside the Commission membership. Each committee shall determine its own policies as to attendance at meetings by advisory persons.
- C. The Chair shall confirm or revise the membership and chairmanship of all standing committees annually at the Commission’s organizational meeting.
- D. The Chair shall designate Commission members to serve as liaisons to other public organizations as the Commission shall direct. The designated liaison member shall be responsible for maintaining continuing communication and cooperation between the Commission and the organization to which the member is designated.

Article 5 – Meetings

- A. All meetings and public hearings shall be open to the public and conducted in accordance with Code of Virginia §15.2-2200 et. seq. and the Virginia Freedom of Information Act (§2.2-3700 et. seq.). Meetings shall be subject to the additional requirements included in this Article.
- B. Scheduling and Purpose of Meetings. The Commission shall schedule, on a monthly basis, a work session and a business meeting as described below. No work session or business meeting shall be scheduled for the month of August, however special meetings and committee meetings may be scheduled. The Commission shall establish the meeting schedule for the upcoming year at the Commission’s annual organizational meeting according to the dates described below. Deviations in this schedule may be made to account for conflicts with holidays, government meetings, inclement weather, or other events of significance.
 - 1. Business meetings. The purpose of the business meeting is to conduct scheduled Public Hearings; to take formal action on zoning and subdivision applications, ordinance or plan amendments, or other planning matters; and to discuss other matters pertinent to the Commission’s responsibilities. Business meetings shall be scheduled for the first Friday of each month.
 - 2. Work sessions. Formerly known as briefing meetings, the purpose of the work session is to receive information on the agenda items for the upcoming business meeting and to discuss projects and issues pertinent to the Commission’s responsibilities in a workshop setting. Formal actions taken at work sessions shall be limited to the annual organizational meeting action items and those items

specifically deferred from a business meeting to a work session. Work sessions shall be scheduled for the Tuesday prior to the Friday business meeting.

3. Committee meetings. Meetings of the Commission's standing and special committees may be scheduled on an as-needed basis at the discretion of Planning Staff or at the request of the Chair or Vice-Chair.
4. Special meetings. Special meetings of the Commission may be scheduled on an as-needed basis at the request of the Chair or Vice-Chair. Formal actions taken at special meetings shall be limited to those items specifically deferred from a business meeting to a special meeting.
5. Annual organizational meeting. The annual organizational meeting shall be conducted as the first item of business at the first Commission meeting of the calendar year. The annual organizational meeting shall consist, at a minimum, of:
 - a. Election of Chair and Vice-Chair;
 - b. Member assignments to committees;
 - c. Review and adoption of the meeting schedule for the year;
 - d. Review and adoption of the By-Laws; and
 - e. Review and adoption of the Commission's project priorities for the year.

C. Agendas. Planning Staff, under the direction of the Chair, shall be responsible for preparing the Commission's meeting agendas.

1. The regular meeting agenda shall include, at a minimum, the following items:
 - a. Call to order and determination of quorum
 - b. Approval of the agenda
 - c. Approval of minutes
 - d. Public hearing items
 - e. Technical reviews (e.g., site plans, subdivisions)
 - f. Board and Committee reports from designated liaisons
 - g. Other business items
2. The contents of work session agendas shall be prepared at the Planning Staff's discretion. The contents of special meeting agendas shall be prepared by Planning Staff at the Chair's or Vice-Chair's direction.
3. The order and content of the agenda may be changed by a majority vote of the members present at the meeting.

D. Parliamentary procedure in Commission meetings shall be governed by the most current edition of Robert's Rules of Order as modified by any applicable provisions of these By-Laws.

Article 6 – Meeting Decorum

- A. The purpose of this article is to establish rules for public participation and conduct during Planning Commission meetings. The general conduct of the public must be civil in manner, directed to the business at hand, and must conform to the rules listed in this article.

- B. Public Hearings.
 - 1. Members of the public are encouraged to provide comments on matters before the Commission during the scheduled public hearings. At the Chair’s discretion, speakers may be required to fill out a sign-in sheet prior to commencement of the public hearing.
 - 2. Speakers shall state their name and address for the record prior to addressing the Commission.
 - 3. Speakers shall have a maximum of 3 minutes to address the Commission or 10 minutes if the speaker is identified as representing a recognized group or if they are speaking on behalf of a group of citizens present at the public hearing. The time limit may be extended or waived at the Chair’s discretion.
 - 4. Speakers shall be civil in tone and demeanor and shall not make personal, impertinent, slanderous, or profane remarks, or any threatening or intimidating gestures, to any member of the Board, the staff, or the general public.
 - 5. Speakers shall address the Commission and shall not address the audience, answer questions from the audience, or engage in debate with anyone in the audience.

- C. Conduct of Meeting Attendees
 - 1. Meeting attendees are to be respectful of the opinions of others and shall refrain from shouting, booing, hissing, stomping, clapping, holding side conversations, or any other disruptive behaviors which impede the orderly conduct of Commission meetings.
 - 2. Any meeting attendee that participates in unacceptable behavior shall be ruled out-of-order by the Chair and, if necessary, be asked to leave the premises.

Article 7 – Removal of Commission Member

- A. Whenever a commission member has been absent from three (3) consecutive regular meetings, or absent from four (4) or more regular meetings in any twelve (12) month period, the Board of Supervisors shall inquire of the Commission Chair if there has been any mitigating circumstance that indicates the member’s attendance will improve in the future. In the absences of such an indication, the Board, in its discretion, may request the resignation of the member or may remove the member in accordance with Code of Virginia §15.2-2212.

- B. A commission member may be removed by the Board of Supervisors for malfeasance of office in accordance with Code of Virginia §15.2-2212.

**2019 PROJECT PRIORITIES – PLANNING COMMISSION
(FINAL UPDATED – July 2019)**

The list is intended to aid the Commission and Staff to ensure that work on critical projects is prioritized and completed in a timely fashion. Project start dates and priorities may be affected by the Commission’s zoning case load (e.g., SUPs, rezoning, site plans, subdivisions), text amendments, or other special projects requested by the Board of Supervisors.

1. Comprehensive Review and Update of the Zoning and Subdivision Ordinances

UNDERWAY – Project tasks are scheduled throughout 2018 with estimated completion and adoption by Spring 2020.

2. Five-Year Review of Economic Development Strategic Plan (due October 21, 2019)

INCOMPLETE – Adopt five-year review resolution by October 21, 2019. Upon adoption of the resolution, determine task assignments and timeline for completion of the Strategic Plan update.

3. Five-Year Review and Update of Comprehensive Plan

INCOMPLETE – Five-year review resolution adopted by the Planning Commission. Assign review tasks to Comprehensive Plan Committee with work to begin in 2020 pending completion of the initial draft Zoning and Subdivision Ordinances.

4. Five-Year Review and Update of Transportation Plan

INCOMPLETE – Five-year review resolution adopted by the Planning Commission. Assign review tasks to Comprehensive Plan Committee with work to begin in 2020 pending completion of the initial draft Zoning and Subdivision Ordinances.

Updated November 20, 2019

COMPREHENSIVE PLAN/COMPONENT PLAN REVIEW SCHEDULE

Plan	Last Adoption Date	Next Review Deadline	Begin 5-Year Review Evaluation By
Comprehensive Plan	March 18, 2014	5-year review initiated 1/4/2019	n/a
Transportation Plan	March 18, 2014	5-year review initiated 1/4/2019	n/a
Economic Development Strategic Plan	October 21, 2014	5-year review initiated 10/4/2019	n/a
Recreation Component Plan	August 18, 2015	August 18, 2020	Early 2020
Berryville Area Plan	May 10/17, 2016	May 2021	Late 2020
Double Tollgate Area Plan	December 20, 2016	December 20, 2021	Mid 2021
Waterloo Area Plan	December 20, 2016	December 20, 2021	Mid 2021
Agricultural Land Plan	February 21, 2017	February 21, 2022	Mid 2021
Historic Resources Plan	June 19, 2018	June 19, 2023	Early 2023
Water Resources Plan	September 25, 2018	September 25, 2023	Early 2023
Mountain Land Plan	June 21, 2005	Not scheduled	Not scheduled
Village Component Plan – NEW	Not started	Not started	Not started



Clarke County Planning Commission

AGENDA – Business Meeting

Friday, December 6, 2019 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

1. Approval of Agenda
2. Approval of Minutes
 - A. October 17, 2019 Joint Workshop #1 with Board of Supervisors
 - B. November 1, 2019 Business Meeting
 - C. November 1, 2019 Joint Workshop #2 with Board of Supervisors
 - D. November 14, 2019 Joint Workshop #3 with Board of Supervisors

Board/Committee Reports

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

Other Business

Adjourn

UPCOMING MEETINGS:
Joint Work Session with Board of Supervisors – Ordinance Update Project Friday, December 6 (immediately following Commission Business Meeting)
Commission Work Session Tuesday, January 7, 2020 (3:00PM)
Commission Business Meeting – Organizational Meeting Friday, January 10 (9:00AM)
Joint Work Session with Board of Supervisors – Ordinance Update Project Date and Time – TO BE DETERMINED

Clarke County

**PLANNING COMMISSION AND BOARD OF SUPERVISORS
JOINT WORKSHOP MINUTES -- DRAFT
THURSDAY, OCTOBER 17, 2019**



A joint workshop of the Clarke County Planning Commission and Board of Supervisors was held at the Berryville-Clarke County Government Center, Berryville, Virginia, on Thursday, October 17, 2019.

ATTENDANCE

Commissioners Present: Robina Bouffault; Randy Buckley; Mary Daniel; Bob Glover; Frank Lee; Gwendolyn Malone; Pete Maynard; and George L. Ohrstrom, II

Supervisors Present: Barbara Byrd; Terri Catlett; Bev McKay; and David Weiss

Absent: Anne Caldwell; Scott Kreider; Doug Kruhm

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

Others Present: None

CALLED TO ORDER

Mr. Stidham opened the meeting at 6:35PM and asked the chairs of the Planning Commission and Board of Supervisors to call their meetings to order. Chair Weiss called the Board meeting to order and Chair Ohrstrom called the Commission meeting to order.

Mr. Stidham began the workshop with a brief overview of the project history and steps completed to date. He then provided a power point presentation consisting of a general overview of the revised Zoning Ordinance, Subdivision Ordinance, Definitions Article, and Guidance Manual.

Regarding the proposed public hearing schedule, Chair Ohrstrom asked if the Commission were to set public hearing in January why would they wait until March to conduct it. Mr. Stidham said that Staff is recommending that public hearings be scheduled two months in advance as this would allow more time to get information on the Ordinances to the public and to hold informal public information sessions if needed. He also said that the Commission could schedule public hearing in January and hold it in February but not take action until the Commission's March meeting. He added that this helps ensure that the process is careful and deliberate and that there is plenty of opportunity for public comment.

Regarding current Article 4 general regulations for lots and structures, Commissioner Maynard asked whether the regulations referenced in current Section 3-B are all duplicated from Article 4. Mr. Stidham replied that the general regulations for lots and structures currently located in Article 4 and Section 3-B are not duplicated, they are just not consolidated in a single location. He noted that this can happen over time with text amendments with different Staff members choosing to place amendments in different locations instead of a consolidated location.

Regarding current Subdivision Ordinance Article 12, Chair Ohrstrom asked about the meaning of the term “effectual clauses.” Mr. Stidham replied that it appears to be an archaic term that references “legal provisions” and he noted that the term is not being carried over to the revised Subdivision Ordinance.

Regarding the subdivision review process, Chair Weiss said that in the past the Commission has worked with applicants to move proposed lots in a subdivision to other areas on the property. He asked how this can be accomplished under the new proposed review process that does not have a preliminary plat review step. Mr. Stidham replied that you would still be able to negotiate voluntary changes to a proposed subdivision with an applicant. He added that the new process will require submission of construction plans with the final plat which will give the Commission the full picture of a proposed subdivision, which you do not have with the current preliminary plat process. Chair Ohrstrom asked if the new process would enable the Commission and applicant to discuss proffers without having an approved preliminary plat in place. Mr. Stidham noted that proffers would only apply with a rezoning application and not a subdivision review without a rezoning. He added that under the proposed process, the applicant would be required to file all required information including construction plans up front. He said that developers of large subdivisions often want the assurances of an approved preliminary plat before paying engineering expenses for construction plans. He noted that the proposed process would be similar to the current special use permit process in that a site development plan is required to be filed with the special use permit application so everything can be reviewed together and you can see the full picture. He also said that the subdivision review process will still be an administrative process so if an applicant checks off all of the boxes, the Commission will have to approve the subdivision plat.

Regarding court-ordered partitions, Commissioner Maynard asked if the court can order a lot to be divided into more lots than it has available dwelling unit rights (DURs), for example, a 100-acre lot with 5 DURs ordered by the court to be divided into five lots. Mr. Stidham replied that he thinks a court would only do this as a last resort and that they will attempt to issue an order with a result that complies with County ordinances. Mr. Stidham added that in Commissioner Maynard’s example, the recipients would have an interest in a lot and not necessarily a lot recognized in accordance with the County’s Zoning and Subdivision Ordinances. He said they would not be able to obtain a building permit until a subdivision plat is submitted for review that complies with the Ordinances.

Chair Ohrstrom asked why we would have a “non-subdivision review process” in the Subdivision Ordinance. Mr. Stidham replied that the current definition of “subdivide” describes what a subdivision is and also lists all of the things that are not a subdivision including boundary line adjustments, administrative land divisions, etc., but these are review processes. He said that the term “non-subdivision process” is used to describe review processes in the Subdivision Ordinance that are

neither a major or minor subdivision. Chair Ohrstrom suggested changing the term to something different. Mr. Stidham replied that some jurisdictions refer to these processes as subdivision exceptions and he does not like using this term. Commissioner Daniel suggested “Other Review Processes.” Chair Ohrstrom said that the term “non-subdivision process” is confusing to have in a Subdivision Ordinance. Mr. Stidham said that he would make the change to “Other Review Processes.”

Regarding the Guidance Manual, Chair Ohrstrom asked if we have rules for complete applications why would we not have those rules in those documents. Mr. Stidham replied that the Guidance Manual is a great place to have checklists for all of the required steps and items to be submitted for a complete application, along with code references to the applicable review process sections in the Ordinances. He added that there are items such as the required number of copies to be submitted or the required form of digital files that should go in the Guidance Manual and not in the Ordinances. Chair Ohrstrom said that if there are rules to be followed then they should probably be in the Ordinances as well as the Guidance Manual. He added that if there is a required number of copies for submitted applications and failure to provide the required number would be grounds to refuse acceptance of an application, then the required number of copies should be in the Ordinances. Mr. Stidham noted that in both Ordinances under the powers and duties of the zoning administrator, the zoning administrator has the authority to develop application forms and to establish administrative requirements such as required number of copies to be submitted. He noted that any elements that can change over time and are really administrative in nature should go in the Guidance Manual instead of the Ordinances. Chair Weiss said that we have been wanting a guide for many years that could be used by citizens to better understand these review processes.

Chair Weiss asked what would be the best way for Commissioners and Supervisors to focus in on the material that is most pertinent to them and to bring issues back to Staff. Mr. Stidham said that the Policy and Technical Issues report compilation is probably the most important document to review. He suggested that members start with the issues that are of most interest to them and look at how the issues were addressed in the draft Ordinances. He said that the goal is for every member to be comfortable with the Ordinances when they are ready to be presented to the public for comment. He also asked members to email, call, or stop by with any questions or things that do not look right and should be addressed. He reminded members that the current draft is an interim draft and there are going to be things that need to be fixed before moving to the next version.

Mr. Stidham noted that the next joint workshop will be after the Planning Commission Business Meeting on November 1. Supervisor McKay asked for an approximate start time and Mr. Stidham said that the Commission typically finishes up around 9:30 without additional applications on the agenda.

The meeting was adjourned by consensus at 7:45PM.

George L. Ohrstrom, II (Chair)

Brandon Stidham, Planning Director

Clarke County

PLANNING COMMISSION BUSINESS MEETING MINUTES - **DRAFT** 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)

Commissioner 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

Clarke County

PLANNING COMMISSION AND BOARD OF SUPERVISORS JOINT WORKSHOP MINUTES -- **DRAFT** FRIDAY, NOVEMBER 1, 2019



A joint workshop of the Clarke County Planning Commission and Board of Supervisors was held at the Berryville-Clarke County Government Center, Berryville, Virginia, on Friday, November 1, 2019.

ATTENDANCE

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

Supervisors Present: Barbara Byrd; Terri Catlett; Bev McKay; and David Weiss

Absent: None

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

Others Present: None

CALLED TO ORDER

Mr. Stidham opened the meeting at 10:07AM and asked the chairs of the Planning Commission and Board of Supervisors to call their meetings to order. Chair Ohrstrom called the Commission meeting to order and Chair Weiss called the Board meeting to order.

Mr. Stidham stated that prior to beginning the presentation on Zoning Ordinance uses, he wanted to provide additional comments on process. He said that in his prior employment, he participated in a similar ordinance update project that was managed by a consultant. He said he learned from this project that the task of educating, informing, and getting the Commissioners and Board members comfortable with the finished product in a lot of ways can be more complicated than the task of drafting the new ordinances. He said that everyone learns in different ways, has different levels of interest, and different issues that they will be interested in dealing with. He added that everyone can be overwhelmed by the size of the project and the need to ensure that everything is addressed properly. He said we will definitely keep the timeline fluid and will not move on to Step 6 until everyone is comfortable with the work product. He noted that Staff needs as many eyes as possible to review the documents and his door is always open if anyone would like to come by and discuss issues with the update project.

Mr. Stidham made a power point presentation on draft Zoning Ordinance Section 5 dealing with uses, use definitions, and use standards.

Regarding the length of the draft Zoning Ordinance, Chair Weiss asked if the draft Ordinance is longer than the current Ordinance in part because of new formatting that is being used. Mr. Stidham replied yes and noted that tables can take up a lot of space along with new cross-references that have been added. He also said that the draft Ordinance text has more space than the current Ordinance and uses standard font size and formatting to help with readability.

Chair Ohrstrom asked if any new definitions created by Staff have been reviewed by the County Attorney. Mr. Stidham replied that he has reviewed the definitions in Article III and will review the use definitions when he goes back for a more comprehensive review of the Zoning Ordinance.

Regarding the new cross-references, Chair Ohrstrom asked if in the electronic version they will be formatted as a clickable link. Mr. Stidham said that ultimately Staff will set the cross-references up to be clickable links but that it will be a significant undertaking. He added that Staff chose the blue underlined font both for future use as clickable links but also to make the cross-references stand out visually to aid with future updates of the Ordinance. He said that finding cross-references in the current Ordinances is difficult if you do not know where to look for them.

Regarding County versus annexation area uses, Chair Ohrstrom said that he is confused by Mr. Stidham's statement that the two categories of uses are intended to bear no relationship to one another. Mr. Stidham replied that these are separate categories of uses. Chair Ohrstrom added that the uses do relate to one another since the intent with annexation area uses is to ensure that property owners are not left with nonconforming uses after annexation. Mr. Stidham noted that home occupation regulations in the County and annexation areas are very different from one another so they are treated differently. He also noted that annexation area uses only apply to lots that are designated for annexation, and are zoned one of the annexation area districts such as DR-1 rather than a County district such as AOC. As an example, he said that a DR-1 District home occupation is very different from an AOC District home occupation and the two bear no relation to the other. Commissioner Bouffault said that from her experience on the Berryville Area Development Authority (BADA), there are three development areas – the Town, the annexation area and the County – and that the BADA oversees development in the annexation area. She added that she did not understand why we are dealing with annexation area regulations in a County Zoning Ordinance because we would not be reviewing those applications. Mr. Stidham replied that she is correct that any uses that would require Planning Commission review would be reviewed instead by the BADA in the annexation area. He added that there are a number of by-right uses that could be developed without BADA review. As an example, he said that the owner of a DR-1 zoned property that is currently in the County could apply to build a single-family dwelling and conduct a home occupation and the Town's DR-1 regulations would have to be followed. Commissioner Bouffault asked if a property owner has the option to do this and Mr. Stidham replied yes because the property has not been annexed yet. Mr. Stidham added that typically the trigger for annexation is a larger development that requires public water and sewer. Commissioner Bouffault asked how many examples of this currently exist and Mr. Stidham replied that the Friant property is one as is the adjacent Audley property. Supervisor Byrd asked if they could develop using a private well and septic system and Mr. Stidham replied that it would depend on what

the proposed use would be. Mr. Stidham added that annexation has been triggered for different reasons in the past but most often it is development that needs public water and sewer. He also said there is the possibility that these properties may not be annexed for years, noting the fairgrounds and the funeral home properties as examples that currently have public water and sewer but remain in the County and may not be annexed for a number of years. Supervisor Byrd asked if the Ruritans wanted to develop the fairgrounds into a different use, would the property have to be annexed by the Town. Mr. Stidham replied that it would depend on the scope of the proposed use and whether it would require more water and sewer capacity than they currently have. He added that the Ruritans would be working with Town staff and Town Council to determine whether annexation would be appropriate. Supervisor McKay asked what would happen if the Ruritans proposed to build a house for a caretaker and wanted to connect to Town utilities. Mr. Stidham replied that the Town could refuse to allow them to connect unless the property were annexed.

Regarding major recreational equipment, Vice-Chair McKay asked if we have a definition for the term. Mr. Stidham replied yes and said that it is in Article III Definitions. Commissioner Bouffault asked for a status report on a property owner on Withers Larue Road advertising on AirBNB a recreational vehicle for short-term rental. Mr. Stidham said that Planning Staff has not been able to find evidence of a zoning violation and he was not sure whether the Building Department is continuing to investigate it for potential code violations. Mr. Fincham added that the Health Department conducted a thorough investigation but did not find any violations. Commissioner Bouffault said that they are advertising a short-term rental for six people. Mr. Fincham replied that advertising alone is not sufficient evidence of a zoning violation. Mr. Stidham added that visual confirmation of extension cords going into the house or piping connected to the septic system would be examples of additional evidence.

Regarding the proposed agritourism activity temporary use, Supervisor Byrd asked if this use would include horse shows. Mr. Stidham replied that we did not include horse shows when we discussed the agritourism activity use but that we could specifically exclude horse shows in the use regulations. Chair Ohrstrom asked if you are trying to exclude horse shows. Chair Weiss replied that this is not the question, it is whether you want to regulate horse shows as an agritourism activity. Mr. Stidham said that it would be a good idea to specifically exclude horse shows from the use regulations for agritourism activity if that is what you want to accomplish. Commissioner Bouffault asked what use horse shows would be considered and Mr. Stidham replied agriculture as it is now. Vice-Chair McKay said that if you go to Wayside Fun Farm, they are providing all of the entertainment but if you are going to a horse show, you are bringing your own horse. Mr. Stidham said that horse shows are not typically open to the public and Supervisor Byrd replied that they are all open to the public and sometimes have food sales. Commissioner Bouffault said that some horse shows are closed to the public. Mr. Stidham said that if they are open to the public, then maybe there needs to be a discussion about whether they should be included in agritourism activities. Chairman Weiss said that if horse shows are open to the public and have vendors, then maybe they should be regulated. He added that in general, they do not typically have vendors. Commissioner Bouffault said that large events open to the public such as those held at Long Branch will likely be considered a special event because of the event size. Vice-Chair McKay said that some horse shows may have 30-40 horse trailers but you can only attend as a participant, and Vice-Chair Buckley added that you do not have bleachers and grandstands for the public with these horse shows. Mr. Stidham said that if the activity is advertised

as open to the public with vendors and attractions, then it is an agritourism activity. If it is just a horse show for members of the community to attend and participate, then it may not be an agritourism activity. Chair Weiss likened it to a bull sale. Vice-Chair McKay added that horse shows generate enthusiasm for the activity and potential sales of the horses. Mr. Stidham said that he would note this issue for further discussion.

Regarding permit requirements for agritourism activities, Chair Weiss asked which Federal and State requirements an applicant would have to comply with per the use regulations. Mr. Stidham replied that it depends on the nature of their activity and which agency permits the applicant would have to obtain. Chair Weiss noted that with special event permits, the County provides a list of outside agencies that require permits and he wanted to know how an applicant would be informed of which outside agency permits they would have to get. Mr. Stidham replied that we can provide applicants with a list of agencies to contact for permitting requirements but we will not be telling them that they have to get an outside agency permit. Chair Ohrstrom asked what an example of a Federal permit would be. Mr. Stidham said that one example could be a Federal permit for activities along the river. Supervisor Byrd said that horses brought from out of state require a Federal health certificate. Vice-Chair McKay said that we do not want to get in the business of regulating USDA health certificates. Commissioner Maynard said that certain birds of prey brought to an event have to be federally licensed. Mr. Stidham said that just like the special event permit process, the agritourism activity permitting process creates a clearinghouse of information for each activity that can be shared with applicable agencies and departments. Chair Weiss asked if this would be treated as a by-right use and Mr. Stidham replied yes.

Vice-Chair McKay asked how farm wineries are defined by the State. Mr. Stidham replied that farm wineries, farm breweries, and farm distilleries all have to be permitted by the State under a limited license for these uses that limits how much product can be produced. Commissioner Maynard said that temporary vendors would be able to remain onsite throughout the duration of an agritourism activity to a maximum of 180 days in a calendar year. He asked if this means that a food truck can remain parked on an agritourism activity site on days when the activity is not being conducted. Mr. Stidham replied that temporary vendors can remain onsite for a series of consecutive days in which an activity is being conducted but must leave a site on days when the activity is not being conducted.

Regarding temporary vendors, Commissioner Kreider asked who regulates the activities of temporary food vendors such as trash removal and water usage. Mr. Fincham replied that they should have an annual permit from the Virginia Department of Health to be a licensed mobile vendor and they would be responsible for complying with the rules associated with that permit.

Regarding removal of agriculture as a special use in the Rural Residential (RR) District, Chair Ohrstrom asked if this would make agriculture a prohibited use or just not a regulated use. Mr. Stidham replied that this change would make it a prohibited use in the RR District. He added that the owner of an RR-zoned property could apply for a special use permit to conduct agricultural activities that may be in conflict with their homeowners' association (HOA) covenants. He noted that we cannot consider private restrictive covenants in determining whether to rule on a special use permit, and that covenants are a separate body of law that the HOA would have to enforce. Vice-Chair McKay asked whether the owner of RR-zoned property with a home garden would be able to sell their

excess produce. Mr. Stidham replied that would not want to have that property owner setting up a roadside stand to sell produce from their property in the RR District. Supervisor Byrd asked whether you could have chickens and sell eggs. Mr. Stidham replied that this is considered agriculture and would not be allowed. Commissioner Maynard asked if this change just prohibits agriculture as a business and Mr. Stidham replied that it would prohibit agriculture entirely in the RR District. Chair Ohrstrom asked if this means you cannot have chickens in Shenandoah Retreat. Mr. Stidham replied that currently if someone in the Retreat asks Staff whether or not they can have chickens, we would tell them that they have to get a special use permit and would also advise them to check with the HOA to see if they can have chickens under their rules. Commissioner Kreider said that the HOA rules in the Retreat prohibit chickens and that granting a special use permit would be in conflict with their rules. Chair Weiss said that we need to decide whether or not to allow agriculture in neighborhoods and added that he thinks it should not be allowed in neighborhoods. Commissioner Bouffault said that in the Retreat you have people buying up multiple lots and potentially assembling enough land for agriculture, and she asked if you could place a size limitation on it instead. Mr. Stidham replied that the reason we went with this approach is because we have never had anyone apply for a special use permit to conduct agriculture in the RR District. Vice-Chair McKay noted that there are some large lots in Millwood and that some owners with large gardens may want to sell their excess produce to local businesses. Mr. Stidham said that the change in the regulations would prevent this. Commissioner Maynard asked if home garden is defined and Mr. Stidham replied yes. Vice-Chair McKay asked if this would make all of the existing gardens illegal and Mr. Stidham replied that technically they are all illegal now because no special use permits have been issued to allow them. Mr. Stidham added that we do not want to have to regulate home gardens or require people to go through a special use permit process, and this change would address these issues. Supervisor Byrd asked about exemptions for 4-H program participants. Mr. Stidham replied that we do have regulations for keeping livestock on small AOC-zoned lots. Mr. Fincham added that keeping poultry for a 4-H activity would currently require a special use permit in the RR District. Mr. Stidham said that he did not think that the Commission or Board would want to entertain a special use permit application to keep chickens in the Retreat. Supervisor Catlett asked about leaving out an unattended table with produce on it for sale. Mr. Stidham replied that we would have to treat it as a violation if we received a complaint about it. Chair Weiss asked where the home garden use is located in the draft Zoning Ordinance and Mr. Stidham replied that it is listed under residential uses.

Regarding removal of forestry as a permitted use in the RR District, Commissioner Kreider asked about forestry activities on Shenandoah Retreat's park land. Mr. Fincham replied that the Retreat's park land is zoned FOC and not RR.

Several members asked about the removal of broadcast studios as an allowable use. Mr. Stidham said that the use is currently a by-right use in the Neighborhood Commercial (CN) District. Supervisor Byrd asked if it is because of the antennas and Mr. Stidham replied that there is a lot of equipment that comes with a broadcast studio. Commissioner Caldwell asked for confirmation that the CN District is in Millwood and White Post and Mr. Stidham replied yes. Commissioner Bouffault noted that this would remove the use from being allowed in any district. Mr. Stidham replied that if the Commission and Board think it is important to keep the use, it could be added to the list of allowable uses in the Highway Commercial (CH) District. Commissioner Maynard asked about the recording studio in Boyce. Mr. Stidham said that this would be considered a music studio and not a broadcast studio.

Commissioner Maynard noted that broadcast studios could be internet only and not require antennas. Mr. Stidham replied that we could treat internet broadcasting studios under a different use but that broadcast studios are considered to be radio or television studios with antennas and satellite dishes. He said that a podcasting operation could be considered a professional service business. Commissioner Maynard suggested adding more descriptive elements to the definition of broadcast studio. Mr. Stidham replied that if we take out the use, we will not have a need to define it. Chair Weiss asked for confirmation that we are taking the use out because it is only allowed by right in the CN District. Mr. Stidham replied yes and that it is not defined as has no use regulations. Chair Weiss said that if we want to keep the use, we will need to determine in which district we want to allow it. Mr. Stidham said that another way to look at it is do you want to attract a broadcast studio to the County. Chair Ohrstrom said that it certainly should be allowed in the Business Park (BP) District. Mr. Stidham said that he will note this issue for further discussion and will check to see if broadcast studios are allowed in the BP District. Chair Ohrstrom said that we want to make sure that removing the use will not remove it as being allowed in the BP District. Mr. Stidham replied that the change would only remove it from the CN District and would not impact the BP District uses. Chair Ohrstrom said that if you are saying that the use would not be allowed in any district, then it would also not be allowed in the BP District. Mr. Stidham replied that this would only be the case if we were creating a list of specifically prohibited uses including broadcast studio but that we are not doing this. Commissioner Glover said that an important word to use is “transmitting,” and Mr. Stidham replied that part of the problem is that we do not have a definition for this use. Mr. Fincham said that we typically do not prohibit uses in the Ordinance. He said that if he is asked where a broadcast studio is currently allowed, the answer would be that it is allowed by-right in the CN District and is prohibited in all other districts because it is not specifically listed as an allowable use in any other district.

Regarding enclosed outdoor storage, Supervisor Byrd asked if this is outdoor storage with a roof. Mr. Stidham said that warehousing would be storage under roof and enclosed outdoor storage would be storage without a roof that is fenced in, such as an impound lot. Commissioner Maynard asked if this would include shipping containers. Mr. Stidham replied that shipping containers could be stored in an enclosed outdoor storage area. Chair Weiss said that this was added to curtail activities involving property owners renting out enclosed outdoor spaces for parking RVs and other vehicles. Supervisor Byrd asked about storage areas on farms and Mr. Stidham replied that these would be considered agricultural structures. He added that enclosed outdoor storage does not include agricultural buildings and also does not include self-storage facility which is a separate use. Supervisor Byrd asked if enclosed outdoor storage would require screening such as arborvitae. Mr. Stidham said that we do not currently have use regulations to require screening in all cases but such regulations could be considered.

Regarding automobile repair businesses, Chair Ohrstrom asked if the use is being taken out of the BP District. Mr. Stidham replied that we are only talking about uses allowed in County zoning districts and the BP District is an annexation area use. Chair Weiss asked why it would require a special use permit in the CH District. Mr. Stidham replied that the use has a greater potential for adverse impacts but that consideration could be given to making it a permitted use instead. He noted that these businesses tend to have adverse visual impacts with customer vehicles being stored outside and Chair Weiss said that the thought is that a special use permit gives you more control over the use. He also asked why painting is a prohibited activity and Mr. Stidham replied that it is currently listed as a

prohibited activity in the gasoline filling station use. Vice-Chair McKay asked where automotive painting and body shops would be allowed and Mr. Stidham replied that he thinks both would be allowed in the BP District. Commissioner Glover asked about the impact on existing repair shops and Mr. Stidham replied that they would become nonconforming. Supervisor Byrd asked about impact on Trip's Auto Sales and Mr. Stidham replied that this business is zoned AOC and is already considered to be nonconforming.

Regarding removal of stonecutting and monument business uses, Supervisor Byrd asked about granite countertop businesses. Mr. Stidham replied that stonecutting businesses are usually considered to be light industrial and not commercial, adding that these businesses would be permitted in the BP District. Chair Ohrstrom asked if it could be done as a home occupation and Mr. Stidham replied yes if you could comply with all of the home occupation regulations.

Regarding removal of sanitary landfills, Chair Weiss asked if we would be retaining the use for clay extraction and Mr. Stidham replied yes.

Regarding intensive livestock facilities, Vice-Chair McKay asked what rules would be changing. Mr. Stidham replied that it is currently considered agriculture but it acts as its own use with its own special regulations and review process, so it is being proposed as a use separate from agriculture.

Regarding onsite sales of agricultural products, Chair Weiss said that current regulations limit sales to items produced in whole or in part from that farm's products. He added that smaller producers could sell their products at a larger farm but cannot do so because of the regulations. He also said that consideration should be given to allowing sale of items produced in whole or in part from Clarke County products. He added that if we want to promote niche agriculture, then we need to provide more opportunities for them to sell their products. Mr. Stidham noted that the previous use distinguished between whether the products were or were not produced in the County. He added that current regulations allow all agricultural producers to sell their products onsite but not every producer wants to have onsite sales. Supervisor Byrd said that agricultural operations should be able to sell the products they produce onsite. Mr. Stidham said that if you relax the rules on what can be sold onsite by a farm, they could potentially sell products from other parts of the state or even from out of state. Supervisor Byrd asked if you can sell feed onsite. Mr. Stidham said that a farm can sell feed that they produced but cannot re-sell feed that they bought from another operation. He said they can also mix their own feed with feed bought from another operation and sell that. He noted that any farm that wants to sell outside products can do so by getting a special use permit for retail sales, and added that the limitations apply to the by-right onsite sale of agricultural products. Chair Weiss said if a producer raises honey, they cannot sell that honey at another farm's store unless that farm has a special use permit for retail sales. He added that he did not think that we want to allow feed stores by-right in the AOC District. Mr. Stidham said that he will add this issue to the list for further discussion.

Regarding dwellings of less than 600 square feet, Commissioner Kreider said that he does not think these small dwellings should be allowed without requiring a dwelling unit right (DUR). Mr. Stidham noted that this is the current regulation.

Regarding current regulations on kitchens and bathrooms with living space constituting a dwelling unit, Chair Ohrstrom asked how this affects being able to put a bathroom in a barn or outbuilding. Mr. Stidham replied that you can put a bathroom in an outbuilding but a bathroom with a kitchen and conditioned living space is a dwelling unit.

Regarding the proposed accessory apartment use, Commissioner Kreider said that with the exception of a mother-in-law apartment he did not think they should be allowed at all. He said that you are opening the door for people to rent out apartments in their house and added that he knows people that do this using space that has access to the entire house. He also said that you do not know how many people are living in it or what it is doing to the septic system. Mr. Stidham said that you can do this right now but what you cannot do is have the County approve an apartment within a dwelling that has a kitchen, bathroom, and living space. Commissioner Bouffault said that there are several AirBNBs that are currently doing this and she asked whether this could be done under the proposed accessory apartment use. Mr. Stidham replied that we would not be regulating how you can use the accessory apartment. Commissioner Bouffault asked if you can have a separate exterior ingress/egress. Mr. Stidham replied yes but you also have to have internal ingress/egress to the balance of the home. He added that if the accessory apartment did not have internal ingress/egress, it would not be permitted at all because it would be a duplex. Regarding Commissioner Kreider's original concern, Mr. Stidham said it is ultimately a policy decision regarding which activities you want to encourage or dissuade. Chair Weiss said that if the building meets code and complies with well and septic system requirements, he does not really care who is living in the residence. Mr. Stidham said that Staff is often asked by homeowners whether they can provide a separate kitchen and bathroom for adult-aged children or aged relatives who are moving back home and we have to tell them no under the current regulations. Commissioner Kreider said that he thought State law required you to allow mother-in-law apartments. Mr. Stidham replied that this only applies to temporary family health care structures which are different from accessory apartments. He added that you can build a wing on to your house for anyone to live in but it is prohibited if you want to put both a kitchen and a bathroom in that wing. Commissioner Kreider asked if you can eliminate the second kitchen rule and not have an accessory apartment regulation. Mr. Stidham said that you could eliminate the use and fold the regulations into the single-family dwelling use. He asked Commissioner Kreider if this would address his concerns and he replied yes. Mr. Stidham noted that he will add this to the list of issues for later discussion. Commissioner Kruhm asked if you have a second dwelling on your property, does it require separate addresses for emergency response purposes. Mr. Stidham replied that structures used for residential purposes are assigned addresses.

Regarding minor dwellings, Vice-Chair McKay asked about the floor area requirements. Mr. Stidham replied that it has to be less than 600 square feet as per current regulations. Commissioner Kreider asked if these would be limited to one per lot and Mr. Stidham replied yes. Commissioner Kruhm asked for confirmation that no DUR is required for a minor dwelling and Mr. Stidham replied that he is correct. Regarding tenant houses, Commissioner Maynard said that he did not think that the proposed septic system regulations should have to apply if the tenant house is a significant distance from the main house and its existing septic system. Mr. Stidham said that the rules are imposed to ensure that a tenant house is not being added to take up the only expansion area for the main dwelling's septic system. Mr. Fincham said that this rule was specifically added for main dwellings that may be functioning but are old, do not meet current regulations, and do not have 100% reserve

areas. Chair Weiss said that if you want to build a tenant house, you have to first evaluate the main dwelling's existing system. Mr. Fincham noted that there are large properties in the County that have only one approvable area for a septic system. He added that we did not want to create a new compliant system for a tenant house using the only feasible drainfield site for the main dwelling if its existing system fails. Chair Ohrstrom asked if you have a 300 acre property with 7 DURs, can you build 7 houses on it. Mr. Stidham replied that you can build a main house and then add tenant houses until you reach the maximum. After that, you would have to subdivide new lots for each remaining DUR. Chair Ohrstrom asked if you are not allowed to own the houses and Mr. Stidham replied that we do not regulate who has to own the houses. Chair Weiss said that limits on tenant houses were set up based on a property of X number of acres needing a maximum of X number of houses. Chair Ohrstrom said that he was curious about the regulations because he always thought that if you have a DUR, you can build a house. Chair Weiss said that if you do this, you should have the house situated so that it can be sold off in the future if necessary. Vice-Chair Buckley said that if you have 8 DURs and you can only build 6 tenant houses, our rules are forcing you to create 3-acre lots if you want to use the remaining 2 DURs. Supervisor Byrd asked what happens when you pass away and are left with having to dispose of a lot with 6 tenant houses.

Mr. Stidham said that given the late hour, the remainder of the agenda can be deferred to the next Joint Workshop on Thursday, November 14 at 6:30PM. Members agreed to do so.

The meeting was adjourned by consensus at 12:03PM.

George L. Ohrstrom, II (Chair)

Brandon Stidham, Planning Director

Clarke County

PLANNING COMMISSION AND BOARD OF SUPERVISORS JOINT WORKSHOP MINUTES -- **DRAFT** THURSDAY, NOVEMBER 14, 2019



A joint workshop of the Clarke County Planning Commission and Board of Supervisors was held at the Berryville-Clarke County Government Center, Berryville, Virginia, on Thursday, November 14, 2019.

ATTENDANCE

Commissioners Present: Robina Bouffault; Randy Buckley; Anne Caldwell; Mary Daniel; Frank Lee; Gwendolyn Malone; Pete Maynard; and George L. Ohrstrom, II

Supervisors Present: Barbara Byrd and Bev McKay

Absent: Bob Glover; Scott Kreider; Doug Kruhm

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

Others Present: None

CALLED TO ORDER

Mr. Stidham opened the meeting at 6:37PM and asked the chairs of the Planning Commission and Board of Supervisors to call their meetings to order. Chair Ohrstrom called the Commission meeting to order and Vice-Chair McKay called the Board meeting to order.

Mr. Stidham continued with the workshop presentation on Zoning Ordinance Uses (Section 5) from the stopping point at the November 1 joint workshop.

Regarding group homes, Chair Ohrstrom asked if they have to follow regulations for septic systems. Mr. Stidham replied that the group home regulations in the Code of Virginia do not supersede Health Department regulations. He added that septic system compliance would be based on the number of bedrooms in the group home and not the number of residents, and also stated that the regulations apply to group homes with a maximum of 8 residents. Supervisor Byrd asked if group homes have to be approved by the Health and Building Departments and Mr. Stidham replied yes as a single-family dwelling. She clarified that she was asking if they have to be approved by those departments as a group home and Mr. Stidham replied that he thinks the licensing agency is Department of Social Services (DSS). Mr. Stidham added that State code requires group homes to be treated as single-family dwellings for zoning purposes but he did not know if there are different building code requirements for group homes. Supervisor Byrd asked if the zoning regulations were in place because

operators of group homes are accepting money for the service and Mr. Stidham replied that it is a use that is required to comply with applicable zoning regulations. Supervisor Byrd also asked if a group home is considered to be a home occupation and Mr. Stidham replied no, that it is a new by-right use that we would be creating to comply with State code requirements. Supervisor Byrd asked if they have to be licensed and Mr. Stidham replied yes, noting that Mr. Fincham's first question of a group home applicant would be if they have a State-issued license to operate a group home. Mr. Stidham added that the State issues licenses for similar uses such as assisted living facilities. Vice-Chair McKay asked if this is the only such use that we are mandated by the State to allow and Mr. Stidham replied yes in addition to the temporary family health care structures. Vice-Chair McKay asked if we can regulate the number of people that can be in a group home and Mr. Stidham said we have to allow a maximum of 8 and cannot adopt a lower number. Commissioner Maynard asked if the maximum of 8 includes residents and overnight staff. Mr. Stidham replied that the Code says a maximum of 8 residents but he did not know whether the Code allows resident staff to be included in this number.

Regarding the proposed non-residential building use, Vice-Chair McKay asked if the use includes agricultural buildings and Mr. Stidham replied that it does not. Vice-Chair McKay asked if you can build a shop building and Mr. Stidham replied that you would be limited to a maximum floor area of 256 square feet. Commissioner Caldwell asked if these buildings would require a zoning permit if they are exempt from building permit requirements and Mr. Stidham replied yes. Mr. Stidham noted that a zoning permit is currently required for any agricultural building even if they are exempted from building permit requirements. Vice-Chair McKay asked about a scenario of building a machine storage building on a 100 acre lot in conservation easement. Mr. Stidham replied that if the use of the building is for agriculture, then it would be considered an agricultural structure and not a non-residential building. He then gave an example of the owner of an FOC-zoned lot on the mountain wanting to construct a building to store equipment to cut wood and maintain the property and stated that this would be considered a non-residential building because it is not being used for agricultural purposes. Chair Ohrstrom asked if you can have agricultural buildings on the mountain and Mr. Stidham replied yes if it is being used for agricultural purposes. Chair Ohrstrom said that if the building stores equipment for a wood lot, it would be for agricultural purposes because forestry is considered to be an agricultural use. Mr. Stidham said that the non-residential building use was put in place in part to allow small buildings for people to use in cutting wood on a vacant property, and Mr. Fincham added that he would research to see how we have permitted these buildings in the past. Mr. Stidham said that for a structure to be considered agriculture and not a non-residential building in this example, it would have to be to support an active forestry operation on the lot. He said that a parallel example could be a building constructed on a vacant AOC-zoned lot to house equipment to mow and maintain the lot, noting that the use being supported by the building is property maintenance and not agriculture. Vice-Chair McKay said that you should be able to store your equipment in a building on the mountain to take care of your property. Mr. Fincham said that forestry is not included in the definition of agriculture but the term "silviculture" is and said that this is the cultivation of trees for a purpose. He said that if you want to build a building for silviculture then this is agriculture but if your building is used for storing tools and cutting firewood, then the building would be a non-residential building use. He added that the current Ordinance allows you to build a small building but that it is capped at a maximum of 150 square feet. Commissioner Maynard asked if the use distinction is tied at all to whether the lot is being used for a business such as cutting wood on a property for lumber. Mr. Fincham said that this has never come up before and noted that forestry operations in the County

have not involved the construction of a building. Commissioner Maynard asked if someone wants to construct a building to house equipment for property maintenance but is not conducting a commercial operation, then the building cannot be larger than 256 square feet. Mr. Fincham replied that it depends on if he is growing crops or maintaining livestock on the property. He added that there is no agricultural exemption from zoning permit requirements and that all accessory structures regardless of use must meet the same setback requirements. He also noted that the permit exemption for agricultural structures is for building permit requirements as determined by the building official. He then explained that agricultural structure applicants are first directed to the Building Department to determine whether they will be exempt from building code requirements. He said if the building official determines the building is exempt, then he issues a zoning permit for an agricultural structure. Commissioner Maynard asked if non-residential buildings are prohibited from having utilities like electric and water, and Mr. Stidham replied no. Supervisor Byrd said you could stay in the building for a week if it has water and electric, and Mr. Stidham replied that it cannot be used for habitation. He added that Staff will make better use of application forms with disclaimers to ensure that the permit holder understands they cannot use a structure for purposes such as habitation. Supervisor Byrd asked if a 256 square foot building would be large enough to house a tractor. Mr. Fincham said that this would be a 16' X 16' structure and several members noted that this would be a small building. Mr. Stidham added that the new rules would give property owners more flexibility than the current rules.

Regarding commercial breeding kennels, Commissioner Bouffault asked if the limitations are on adult canines and Mr. Stidham replied that the limits apply to dogs over 6 months old. Commissioner Bouffault also asked about puppies and Mr. Stidham replied that there are no limits in the current regulations.

Regarding the proposed commercial center regulations, Commissioner Caldwell asked how they would apply to the HandyMart building. Mr. Stidham replied that he thought we discussed that HandyMart would not be a commercial center because the building does not contain separate commercial tenant spaces. He said that a commercial center would have individual spaces separated by partition walls with separate ingress/egress to the outside. Regarding the CN District regulations of allowing two businesses on one lot, Vice-Chair McKay asked how the rules would apply to HandyMart. Mr. Stidham replied that HandyMart's property is in the CH District and he gave the example of Locke's Store containing two businesses on one CN-zoned lot.

Mr. Stidham moved on to a presentation on Zoning and Subdivision Ordinance review processes.

Regarding legislative review processes, Chair Ohrstrom asked whether the Planning Commission would be an approval authority for applications that are ultimately approved by the Board of Supervisors. Mr. Stidham replied that the Commission would be the advisory body for these applications responsible for providing recommendations to the Board as approval authority.

Supervisor Byrd asked about pre-harvest plans. Mr. Stidham stated that operators of forestry activities submit pre-harvest plans to describe what they will be doing in accordance with their forestry management plan. Vice-Chair McKay said that when he was on the Planning Commission, the Virginia Department of Forestry (DOF) had recommended that we include this requirement as many

property owners are not aware that they have to submit a forestry management plan. Mr. Stidham said that a forestry management plan is required to be filed with DOF. He added that State code limits what we can require with a pre-harvest plan but we will keep what we are authorized to do in the Zoning Ordinance and move the rest to the Guidance Manual. He also said that we usually get voluntary compliance with our current regulations.

Chair Ohrstrom asked whether or not we will be reviewing the Subdivision Ordinance review processes since the County Attorney has not finished reviewing the draft Ordinance. Mr. Stidham replied that with the level of review that we will be discussing at this workshop, it is not necessary to have the draft Ordinance available at this time. Chair Ohrstrom said that he thought some of the language regarding plat vacation is problematic and asked if it can be discussed at this workshop, and Mr. Stidham replied yes.

Vice-Chair McKay asked if intensive livestock facilities have always been administratively approved in the Zoning Ordinance regulations. Mr. Stidham replied yes and noted that they are approved similar to a zoning permit because they are by-right activities.

Regarding the review process summary table template, Chair Ohrstrom asked whether the deadlines could be written directly into the table instead of references to subsections. Mr. Stidham replied that he attempted to do this at first but noted that in several cases the critical deadlines have qualifying language that cannot fit well into the table. He added that he did not want to omit the qualifying language and have an applicant rely on the timeframe listed in the table alone.

Chair Ohrstrom asked if there are any types of construction projects that do not require a zoning permit. Mr. Stidham replied that all structures require zoning permits to identify where they will be located in the building envelope. Mr. Fincham noted that portable structures also require zoning permits including dog houses and swing sets.

Regarding the zoning administrator's authority to create zoning permits and application forms, Chair Ohrstrom asked if the zoning administrator can do this without any review process. Mr. Stidham replied yes because the zoning administrator would be creating administrative forms and procedures and would not be changing uses or regulations. Chair Ohrstrom asked if this means the zoning administrator is pre-approved to do anything they want to a process short of changing the use. Mr. Stidham replied that the zoning administrator cannot create a form that requires you to provide something that is not already required by the Ordinance. He gave an example that the zoning administrator could not require an engineered site plan for every new house unless this requirement were added to the Zoning Ordinance. He added that the zoning administrator needs to be able to get the information they need to enforce the Ordinance as it is written. Chair Ohrstrom said he is concerned about a zoning administrator that wants to use their power to change the regulations and processes. Mr. Fincham replied that the current zoning permit application does not ask 10% of the questions he asks on a regular basis in processing the applications and it would be nice to have the ability to create forms administratively that ask for this information up front. Mr. Stidham added that we will include detailed descriptions of the different zoning permit applications in the Guidance Manual.

Vice-Chair McKay asked how many changes are being made to the regulations for agritourism, farm winery, farm brewery, and farm distillery. Mr. Stidham said that we are making no changes to the review processes because they are set by State code.

Regarding the rezoning application review process, Chair Ohrstrom asked if rezoning applications no longer require a site plan to be submitted. Mr. Stidham replied that you cannot require a site plan if the applicant is not proposing a use or activity in conjunction with the rezoning that requires a site plan. Chair Ohrstrom asked if you are eliminating the need for a site plan and Mr. Stidham replied no. Mr. Stidham added that if an applicant is required to file a site plan to approve their activity, they would have the option of filing a site plan application after the rezoning application is approved or for review in conjunction with the rezoning application.

Regarding conditional zoning, Commissioner Maynard asked if proffers have to be tied to the development. Mr. Stidham said that State code regulations on proffers were recently tightened so that there now must be a nexus that the development is causing a need for the proffer. Chair Ohrstrom said that the proffer request has to be reasonable and Mr. Stidham noted that State code does not define what is meant by "reasonable." Mr. Stidham also said that you now have to be careful in negotiating for proffers as suggestions from the locality that may not be considered reasonable could be grounds for litigation if the conditional zoning application is denied.

Mr. Stidham reviewed the proposed regulation for special use permit applications on private access easements, noting that the owners of all property through which the private access easement passes -- from the public road to the subject property -- will be required to sign as applicants on the special use permit application. Several members stated that this is a major change. Commissioner Maynard asked why all of the property owners through which the entire private access easement are not required to be applicants when they will also be impacted by the special use traffic and have to pay for road upkeep. Mr. Stidham replied that the traffic to and from the use is part of the special use permit activity and would be occurring on properties owned by others, so those people should be on the application as applicants. He added that those people should have the ability to say they do not want the special use traffic to go through their properties. Chair Ohrstrom asked if these property owners do not sign the application, does this mean the application cannot move forward and Mr. Stidham replied yes. Vice-Chair McKay said that Commissioner Maynard is concerned that the other lot owners will also be impacted. Mr. Stidham replied that he agrees they will be impacted. He added that currently in these situations, we only look at the impacts of a special use on the private access easement's entrance on a public road and we do not get into the impacts on the private access easement itself or its ongoing maintenance. Vice-Chair McKay asked why the other lot owners are not being required to sign on to the special use application. Mr. Stidham replied that the special use traffic is impacting their road but is not crossing through land that they own and Vice-Chair Buckley added that those lot owners are not a party to the special use. Chair Ohrstrom said that it makes sense not to require those lot owners to sign the special use permit application. Mr. Stidham said that this proposed regulation should be an encouragement for special use permit applicants to work with their neighbors on the applications. He added that Staff would be able to reject applications at the front counter that do not have all the affected property owners' signatures. Vice-Chair McKay asked what we are doing to address impacts on the property owners who will not have the special use traffic crossing their land. Mr. Stidham replied that currently we do not get involved with private access

easement impacts but that this process will improve the situation. Commissioner Maynard said that applicants would likely work with the homeowners' associations to contribute to road maintenance with this rule in place. Commissioner Daniel suggested having an exhibit to explain this change when we get to the public information meetings. Commissioner Bouffault said that Bellevue Lane is an example of a private access easement in which the homeowners worked out a maintenance system.

Regarding the proposed rezoning and special use permit review factors, Mr. Stidham stated that Staff has included a spreadsheet in the meeting packet which compares the current review criteria and the proposed review factors to show the proposed changes. Chair Ohrstrom asked for clarification on the introductory language shown on the first page. Mr. Stidham said that the first two paragraphs are the current introductory sections for the special use permit and rezoning review criteria, and the last two paragraphs are the introductory sections for the proposed review factors. He also noted that currently there are two review criteria for special use permit applications that we do not have for rezoning applications. Regarding the last paragraph, Commissioner Bouffault asked whether the Planning Commission is the advisory body and Mr. Stidham said that it could also be the Berryville Area Development Authority (BADA) for applications in the Annexation Area. Commissioner Bouffault said that these applications would not come through the Planning Commission, they would come through the BADA. Mr. Stidham said that the review authority in the County areas is the Commission and the review authority in the Annexation Area is the BADA, and asked if he was misunderstanding Commissioner Bouffault's question. Commissioner Bouffault said that the BADA in the Annexation Area is not under the Commission's purview and Chair Ohrstrom said correct. Commissioner Bouffault said that we cannot have any say-so over what the BADA does and that it is 50% County and 50% Town, and the Town ordinances are the ones that are used because after approval the properties are annexed into the Town. Mr. Stidham said that the BADA acts as the Commission and Commissioner Bouffault replied no and that it acts as the BADA and is a totally different agency. Mr. Stidham replied that he thinks we are saying the same thing. Chair Ohrstrom said that the text of the last paragraph should probably say "BADA or Planning Commission" in parentheses because the advisory body is the BADA in the Annexation Area and the Commission is the advisory body in the County area. Commissioner Bouffault said that our review factors do not impact the BADA and that they are not subject to our ordinances and Chair Ohrstrom said that this is true. Commissioner Bouffault added that it is confusing and said that when she was working on the high school project, she wanted to get the Byrd property in the County so she would be dealing with the Planning Commission instead of the Echols property in the Annexation Area which would require BADA review. She said that the Commission was far more flexible than the BADA. She also said that she knows the difference between the two and you have to be careful throwing in the BADA because it is confusing. Mr. Stidham gave the example of the Friant property located in the County and the Annexation Area. He said in a hypothetical rezoning from DR-1 to DR-4, the advisory body would be the BADA and the approval authority would be the Board of Supervisors and Commissioner Bouffault said yes. Mr. Stidham said that the County rezoning review factors would be applied in reviewing this case. Commissioner Bouffault said that the review factors of the BADA would apply. Mr. Stidham asked where those factors are located and Commissioner Bouffault said in the Town Zoning Ordinance. Mr. Stidham said that the BADA would be applying the Annexation Area regulations found in the County Zoning Ordinance. Commissioner Bouffault said that she disagrees. Commissioner Maynard said that this issue can be resolved by changing "Planning Commission" to "advisory body." He added that this would be consistent with how it is listed elsewhere.

Commissioner Bouffault said that we need to clarify this because she is not in agreement with Mr. Stidham and that he is saying one thing and she is saying another. She said we need legal clarification and Mr. Stidham replied that he would ask the County Attorney. Mr. Stidham replied that he has no doubt that if it is a County application in a County property, they would follow our review factors. Commissioner Bouffault said that if it is in the Annexation Area it is not County property and it is defined differently because it is to be incorporated into the Town. Chair Ohrstrom replied only if it has been annexed and Mr. Stidham added that we are talking about pre-annexation. Commissioner Bouffault said that this is an important question that we need to get clarified. Mr. Stidham said that as an aside a long term fix may be to amend the Annexation Area Agreement to better define when annexation should occur. He said that could result in the Annexation Area regulations coming out of the Zoning Ordinance.

Mr. Stidham continued with the presentation noting that the most important change with the rezoning and special use permit review factors language is the change from “criteria” to “factors” recommended by the County Attorney. He noted that “criteria” implies a checklist of items that if met by an applicant would warrant approval. He said that the word “factors” provides more flexibility to consider the listed factors and any other factors that may apply to a case. Commissioner Caldwell said that the dog kennel special use permit case is a good example as Staff had to recommend approval because the applicant complied with the review criteria. Commissioner Bouffault said that she is concerned about a certain watering down of some of the points. She noted in proposed factor (c) that the proposed language refers to “mitigation of impacts” instead of the current language, “will not cause an undue adverse effect.” She said that this is a subjective criteria but is also discretionary for the Supervisors, and noted that “mitigation of” is weaker than “will not cause.” She said that proposed factor (f) has the same issue. She said she thinks this wording is too soft and needs to be reinforced. Mr. Stidham replied that by using the word “mitigation,” you are focusing on judging the degree to which an applicant is attempting to address an impact as opposed to saying an absolute that it will cause no impact. Commissioner Bouffault said that this is exactly her point. Mr. Stidham said that you may have situations where it is impossible to say that a use will cause no impact. Commissioner Bouffault said that this is true but that we need to leave it to the discretion of the Board of Supervisors as they have the legislative ability to decide and it is not our authority to make this decision for them. She added that they should be the ones to determine whether an impact can be mitigated. Mr. Stidham said that he would argue that the proposed language gives the Board more flexibility because they would be asked to judge whether the impact has been adequately mitigated as opposed to being completely mitigated and it does leave it up to them. Commissioner Bouffault replied that the Board should have more solidity in their review factors and that “will not cause” puts the onus on the applicant to be very careful about what they do. Commissioner Maynard said that when we say “mitigate,” a developer will describe what they are doing to mitigate an impact and we will say that it is not sufficient. The developer will then show five other developments in other localities where the same impact has been mitigated to demonstrate that we are being unreasonable in our determination. Mr. Stidham said on the other hand that if we have an absolute with “will not cause” and determine that an applicant has addressed all impacts with typical standards and practices, we could still be sued on grounds that the impacts were not completely addressed. Commissioner Bouffault replied that she disagrees and said that the word “undue” is very important and gives the Board the ability to be flexible and “mitigation” does not. Vice-Chair McKay suggested “successful” or “acceptable” mitigation. Mr. Stidham suggested tabling discussion of this item to a future

Commission meeting and added that he would try to get the County Attorney to attend. Commissioner Maynard asked where in the revised Ordinance the review factor language will be located. Mr. Stidham replied that this will be located in the review process descriptions for rezoning, conditional zoning, and special use permit. Commissioner Maynard asked if language referring to the Board having the ability to consider any other factors would be included after the list of review factors. Mr. Stidham replied no, that it is included in the introductory paragraphs for these sections.

Regarding the text amendment review process, Commissioner Bouffault asked Mr. Stidham if the County Attorney will review whether the rules for BADA involvement in this process. Mr. Stidham replied yes and noted that this was included because text amendments affecting Annexation Area regulations should be evaluated by the BADA.

Regarding zoning violation letters, Commissioner Bouffault said that she asked Mr. Fincham about revenues from zoning violations and he said we do not have any fines. Mr. Stidham described how violations are processed and noted that you want to pursue a court order instead of fine in most cases in order to achieve compliance. Commissioner Bouffault said that in Winchester, the notice of violation letter states that fines can be issued and that this is a good deterrent. Mr. Stidham said that it is rare that violations go to court and Commissioner Bouffault replied that you do not want to go to court and this will help encourage compliance.

Regarding the review of public facility projects process, Commissioner Maynard asked if “improvements” includes expansion. Mr. Stidham replied that this is the language verbatim from the state code and that improvements could involve making a system bigger and with more capacity.

Prior to beginning the Subdivision Ordinance review processes, Commissioners and Supervisors agreed to defer the remainder of the agenda to the December 6 joint workshop. Mr. Stidham said that we can also decide at the December 6 joint workshop whether to schedule another joint workshop.

The meeting was adjourned by consensus at 8:15PM.

George L. Ohrstrom, II (Chair)

Brandon Stidham, Planning Director