

**CLARKE COUNTY PLANNING COMMISSION
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Tuesday, December 1, 2020 Work Session Packet**

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Clarke County Planning Commission

AGENDA – Work Session

Tuesday, December 1, 2020 – 3:00PM

Berryville/Clarke County Government Center– Main Meeting Room

- 1. Approval of Work Session Agenda**
- 2. Review of Agenda Items for December 1, 2020 Business Meeting**
- 3. Old Business Items**
 - A. Discussion, Short-Term Residential Rentals Text Amendment
- 4. New Business Items**
 - A. 2021 Organizational Meeting Items
- 5. Other Business**
- 6. Adjourn**



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TO: Planning Commission

FROM: Brandon Stidham, Planning Director

RE: Discussion, Short-Term Residential Rentals Draft Text Amendment

DATE: November 20, 2020

Enclosed for review and discussion is an alternate approach to a text amendment for the regulation of short-term residential rentals. The Planning Commission at the September 4 Business Meeting agreed by consensus to forward Staff's previous text amendment iteration to the Policy & Transportation Committee for further work. Commissioners had expressed concerns with the complexity of the text amendment and some of the results produced by emphasizing owner vs. non-owner-occupied rentals. Staff presented the alternate text amendment approach to the Policy & Transportation Committee at their meeting on November 4. Below is a summary of this text amendment and the Committee's recommendations.

Proposed Text Amendment

Based on the discussions at recent Commission and Board of Supervisors meetings, Staff has developed a simplified alternate approach that prioritizes verifying compliance with onsite sewage disposal system regulations and de-emphasizes whether or not the short-term residential rental operation is owner-occupied. The approach also reflects comments that the proposed regulations should not be burdensome for small-scale rentals of 1-2 bedrooms. Unlike the original draft text amendment approach of imposing more stringent regulations on non-owner-occupied rentals and occupancies of more than ten total persons, the alternate approach focuses on the number of bedrooms in use during rental periods with a maximum occupancy of each bedroom at two persons including all transient guests and permanent residents of the single-family dwelling. This correlates to the Virginia Department of Health's (VDH) metric for determining onsite sewage disposal system capacity.

To summarize the alternate approach:

- **Occupancies of 1-2 bedrooms with a maximum of 4 guests and permanent residents of the single-family dwelling – Allowed by-right with approval of a zoning permit for a "short-term residential rental."** As a condition of zoning permit approval, written confirmation from VDH that the onsite sewage disposal system can handle the proposed maximum occupancy (guests and permanent residents of the single-family dwelling) would be required. The owner or operator of a short-term residential rental would not be required to reside in the dwelling being rented or to be present onsite when a rental is occurring.

- **Occupancies of 3 bedrooms with a maximum of 6 guests and permanent residents of the single-family dwelling – Allowed by-right with approval of a zoning permit for a “bed-and-breakfast home occupation.”** The current Zoning Ordinance limits bed-and-breakfast operations to 3 bedrooms and 5 guests, and the original text amendment proposed increasing this capacity to maximum of 5 bedrooms and 10 guests. The alternate approach would leave the maximum number of bedrooms at 3 but would increase the maximum number of guests to 6 – matching VDH’s metric for persons per bedroom. As with the original proposed text amendment, VDH confirmation of septic system capacity would be required and would include permanent residents of the single-family dwelling. The owner or operator of the bed-and-breakfast would have to reside in the dwelling, or in an accessory dwelling on the same lot, as their primary residence and be present onsite when a rental is occurring in order to comply with home occupation regulations.

- **All other occupancies** – Any proposed occupancy that cannot meet the requirements for a short-term residential rental zoning permit or a bed-and-breakfast home occupation would require approval of a **special use permit and site plan for a country inn**. These proposed occupancies would include:
 - Rentals of more than three bedrooms.
 - Rentals of three bedrooms in which the owner or operator does not reside on the property.
 - Rentals of more than six guests regardless of number of bedrooms advertised. This would apply to rentals in which the operator intends to allow more than two persons per bedroom or sleeping accommodations in other rooms (such as a living room with pull-out couch).

Following this memo, Staff has included a revised occupancy chart that outlines how the proposed regulations would affect these different occupancy scenarios. Staff has also included copies of the original proposed text amendment and the owner-occupied vs. non-owner-occupied chart for your reference. Policy & Transportation Committee members agreed by consensus to recommend the alternate text amendment approach to the full Commission.

Enforcement Approach

The Commission previously expressed interest in retroactive application of any short-term residential rental regulations that are adopted, primarily to address any onsite sewage disposal system deficiencies at existing rental operations. Among the different models for enforcement, Staff noted that there may be some support for the “Business License” enforcement model. To recap this approach (from July Planning Commission memo):

- *The approach would apply standard application of the proposed regulations and complaint-basis enforcement instead of retroactive application and proactive enforcement. The approach would rely on the rental operator’s business license status to determine whether they are “grandfathered” from having to comply with the new regulations.*

- *The Commissioner of the Revenue’s office requires a business license if you are making money from a short-term residential rental operation. Any existing rental operator with a valid business license when the regulations are adopted would be “grandfathered” from the new regulations. Any existing rental operator without a valid business license would be given a grace period of 6 months from the adoption date of the regulations to obtain a business license and be “grandfathered” from the new regulations. The regulations and business license requirement would be publicized to notify operators.*
- *Existing rental operators who come in for business licenses during the grace period would be reviewed by the Zoning Administrator who would note on the application form that the rental operation is nonconforming as of the application date and that they must not discontinue the operation for two or more years in order to preserve this nonconforming status. This would accomplish the following:*
 - *Rental operators would register their name and business location in the process of getting a business license. This would enable Planning Staff to maintain a list of all nonconforming rental operations and track their status. If a rental operation fails to maintain a business license thereafter for two or more years, Planning Staff can notify the operator that they have lost their nonconforming status.*
 - *Rental operators can also be asked to provide their maximum occupancy – this information can be forwarded to the Building Department or Virginia Department of Health (VDH) for their information and potential enforcement action.*
 - *Any operator who chooses not to get a business license within the specified time frame would lose the opportunity to have a nonconforming status. Staff would not proactively initiate an enforcement action but could act if a formal complaint is filed.*
- *Planning Staff would include any existing rental operations with business licenses in the list and track them along with operators who obtain business licenses during the grace period.*

PROS:

- *A customer-friendly approach using an incentive in the form of a grace period to get operators to obtain business licenses.*

CONS:

- *Relies on another department’s regulatory process (the business license) as a metric for compliance determination – not a preferred approach.*
- *Passive approach to enforcement – must have a complaint in order to investigate potential violation.*
- *Not an effective method of enforcement if the new regulations are applied retroactively.*

Policy & Transportation Committee members expressed concerns with the Business License enforcement model, specifically due to the element of “grandfathering” existing operators from having to comply with the proposed regulations. Members felt strongly that by not applying the requirements for onsite sewage disposal system compliance to existing operators, we would not be addressing the primary concern of avoiding septic system failures and groundwater contamination. Members agreed that the regulations should be applied retroactively to all existing operators even if this resulted in some operators refusing to obtain permits. They also agreed that enforcement of new regulations should be on a complaint basis.

The Committee did agree with a suggestion by Staff that any regulations that are adopted could be done so with a delayed implementation date, perhaps six months from the date of adoption. Unlike the grace period in the Business License model that would allow time for existing operators to obtain business licenses and a “grandfathered” status, the delayed implementation period would provide an opportunity for existing operators to comply with the regulations without being considered in violation of the regulations on the adoption date. This delayed implementation period would give the County sufficient time to publicize the new regulations and existing operators time to obtain required permits and work with VDH on any necessary upgrades to their onsite sewage disposal systems. The down side is that there is a likelihood that some existing operators may see no benefit in complying with the new regulations without a “grandfathering” option or other incentive.

Next Steps

Staff recommends that the Commission discuss the alternate approach and provide direction on the following:

- Whether to make further changes to the text amendment and/or enforcement approach as described above.
- Formal consideration of the text amendment – should this be an amendment of the current Zoning Ordinance, an addition to the revised Zoning Ordinance being developed in the Ordinance Update Project, or considered after adoption of the revised Zoning Ordinance?
- Whether the Commission would like to send an informal recommendation to the Board of Supervisors for their feedback before initiating any formal consideration.

OCCUPANCY SCENARIOS – ALTERNATE TEXT AMENDMENT APPROACH

The alternate text amendment approach focuses on the occupancy of the single-family dwelling rather than whether the dwelling is owner-occupied or non-owner-occupied. In this approach, occupancy is based on the maximum number of bedrooms in use with the maximum number of transient guests and permanent residents limited to two persons per bedroom (consistent with Virginia Department of Health requirements for onsite sewage disposal systems). Owner-occupancy is a secondary focus for rentals of more than two bedrooms – owner-occupied rentals up to three bedrooms and six persons can be as a bed-and-breakfast home occupation while non-owner-occupied rentals require approval of a country inn special use permit and site development plan.

Occupancy	Short-Term Residential Rental (Zoning Permit)	Bed and Breakfast Home Occupation (Zoning Permit)	Country Inn (Special Use Permit and Site Plan)
1. Rental of <u>one</u> bedroom to maximum of <u>two</u> guests. Owner/operator may or may not live on the property and may or may not be present during rental periods. ¹	X		
2. Rental of <u>two</u> bedrooms to a maximum of <u>four</u> guests. Owner/operator does not live on the property and may or may not be present during rental periods.	X		
3. Rental of <u>three</u> bedrooms to a maximum of <u>six</u> guests. Owner/operator lives on the property and is present during rental periods.		X	
4. Rental of <u>three</u> bedrooms to a maximum of <u>six</u> guests. Owner/operator does not live on the property and is not present during rental periods.			X
5. Rental of <u>more than three</u> bedrooms and/or to <u>more than six</u> guests, regardless of number of bedrooms or owner/operator residency.			X

¹ – Can also be permitted as a bed-and-breakfast home occupation if owner/operator lives on the property

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
ALTERNATE APPROACH (12/1/2020 COMMISSION WORK SESSION)

STEP 1 – Add “short-term residential rental” to the use regulations for single-family dwellings to establish that such activities will now require zoning approval.

3-C-2-i – Dwellings, Single-Family

- 1.** The number of persons, who are permanent full-time residents occupying a single-family dwelling served by an on-site sewage disposal system with a Virginia Department of Health Permit, shall not exceed two for the number of bedrooms allowed by that permit.
 - a 1.** If it is found that a property is not in compliance with this requirement, then the owner of the property shall apply for a permit with the Health Department, to expand the current disposal system for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling.
 - b 2.** If the Health Department denies the expansion, the owner of the property shall apply for variance from Board of Septic and Well Appeals for a system designed for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling and install such a system if approved. Such a variance can only be requested for owner occupied property.

- 2. *Short-term residential rental.***
 - a.** *A short-term residential rental is the rental of a room within or a portion of a single-family dwelling or accessory dwelling, or the rental of an entire single-family dwelling or accessory dwelling, by the owner of the dwelling to one or more transient renters for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge. Accessory dwellings include tenant houses and dwellings of less than 600 square feet of heated area on properties of six acres or more.*

 - b.** *A short-term residential rental may be conducted in a single-family dwelling or accessory dwelling subject to the following requirements:*
 - (1)** *The maximum occupancy shall not exceed two bedrooms and four persons during the rental period including transient guests and permanent residents of the single-family dwelling. In no case shall the maximum occupancy exceed the maximum occupancy allowed by the onsite sewage disposal system permit for the single family dwelling. The property owner is not required to reside in the single-family dwelling during rental periods or to maintain the single-family dwelling as their primary residence.*

 - (2)** *An application for a short-term residential rental that is served by an onsite sewage disposal system shall be reviewed by the Virginia Department of Health (VDH) in conjunction with the zoning permit application review. Written confirmation by VDH that the existing*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
ALTERNATE APPROACH (12/1/2020 COMMISSION WORK SESSION)

onsite sewage disposal system can support the proposed maximum capacity of the short-term residential rental shall be a prerequisite to issuance of a zoning permit.

(3) *If a short-term residential rental is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by VDH, the Zoning Administrator may issue a notice of violation to cease the short-term residential rental use until the system is repaired or replaced and is approved in writing by VDH.*

(4) *For occupancies greater than those described in subsection (1) above, a short-term residential rental may only be operated as a bed and breakfast home occupation or as a country inn.*

STEP 2 – Modify bed and breakfast home occupation use regulations to regulate short-term residential rentals of up to six occupants in an owner or permit-holder occupied situation, including onsite sewage disposal permit requirements.

To Article 9 Definitions:

Bed and Breakfast -- A home occupation where lodging or lodging and meals are provided for compensation ~~for up to five~~ transient guests *for a period of fewer than 30 consecutive days*.

3-C-2-n-6 – Bed and breakfast regulations.

A. Maximum occupancy.

1. *The maximum occupancy of a bed and breakfast shall not exceed three bedrooms and six persons during the rental period including transient guests and permanent residents of the dwelling. In no case shall the maximum occupancy exceed the maximum occupancy allowed by the onsite sewage disposal system permit for the single-family dwelling.*

2. *A bed and breakfast may use a maximum of three ~~guestrooms~~ bedrooms for the conduct of the home occupation, regardless of the floor area of the dwelling unit subject to Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable. Bedrooms may be located in accessory structures located on the same lot subject to compliance with Building Code requirements and VDH regulations.*

B. Use of onsite sewage disposal system.

1. *The applicant shall state the maximum occupancy of the bed and breakfast, including transient guests and permanent residents of the dwelling, on the home occupation zoning permit application. The maximum occupancy of a bed and breakfast shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit*

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ALTERNATE APPROACH (12/1/2020 COMMISSION WORK SESSION)

issued by the Virginia Department of Health (VDH). If the onsite sewage disposal system serving the bed and breakfast is shared with another structure, the maximum occupancy of both structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.

2. *An application for a bed and breakfast that is served by an onsite sewage disposal system shall be reviewed by the Virginia Department of Health (VDH) in conjunction with the zoning permit application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the bed and breakfast shall be a prerequisite to issuance of a home occupation zoning permit.*
 3. *If a bed and breakfast is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by VDH, the zoning administrator may issue a notice of violation to cease the bed and breakfast use until the system is repaired or replaced and is approved in writing by VDH.*
 4. *A bed and breakfast shall not be subject to the maximum allowable area for home occupation uses set forth in Section 3-C-2-n-5.*
- C. As an accessory use to a bed and breakfast, breakfast meal service may be provided only for overnight guests.

STEP 3 – Modify country inn use regulations to regulate short-term residential rentals that do not meet the requirements of a bed and breakfast home occupation.

To Article 9 Definitions:

Country Inn -- ~~An establishment~~ *A business* offering for compensation to the public guestrooms for transitory lodging or sleeping accommodations *for a period of fewer than 30 consecutive days*. As accessory uses to a country inn, meal service and/or permanent place(s) of public assembly may be provided. ~~The term Country Inn includes Tourist Home, Guest Ranch, Guest Farm, or other similar use.~~

3-C-2-g – Country Inn

1. ~~An establishment offering, for compensation to the public, not more than A country inn may use a maximum of~~ 15 guest rooms for transitory lodging or sleeping accommodations ~~of not more than 14 days of continuous occupancy, subject to Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable.~~

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
ALTERNATE APPROACH (12/1/2020 COMMISSION WORK SESSION)

2. **Maximum occupancy and use of onsite sewage disposal system.**
 - a. *The applicant shall state the maximum occupancy of the country inn on the special use permit and site development plan applications. The maximum occupancy of a country inn shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). If the onsite sewage disposal system serving the country inn is shared with another structure, the maximum occupancy of both structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.*
 - b. *An application for a country inn that is served by an onsite sewage disposal system shall be reviewed by VDH in conjunction with the site development plan application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the country inn shall be a prerequisite to approval of a site development plan.*
 - c. *If a country inn is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by the Virginia Department of Health (VDH), the zoning administrator may issue a notice of violation to cease the country inn use until the system is repaired or replaced and is approved in writing by VDH.*
- ~~2. As accessory uses to a Country Inn, meal service and/or permanent places(s) of public assembly may be provided. The total maximum capacity of areas used for meal service and/or permanent places of public assembly shall be 149 people and as regulated by the Virginia Department of Health.~~
3. *The sale of meals or prepared food, which may include beverages and confections, is permitted as an accessory use to a country inn. Approvals or permits by applicable State agencies shall be obtained and remain active for the lifespan of this activity.*
4. *Assembly activities for compensation are permitted as an accessory use. The maximum number of building occupants during an assembly activity shall not exceed 149, or the maximum occupancy of the facility as approved by the Building Department, whichever is less.*
5. One bathroom shall be provided per each bedroom in structures less than 50 years old or one bathroom shall be provided per each two bedrooms in structures 50 years or older.
6. Any need for parking shall be met off the street and other than in a required front yard, and shall conform in all other ways with the provisions of Section 4-J of this Ordinance;
7. No equipment, process, or vehicles which create unreasonable noise, vibration, glare, fumes or odors which are detectable to the normal sense off the premises shall be permitted;

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ALTERNATE APPROACH (12/1/2020 COMMISSION WORK SESSION)

- ~~6. The structure satisfies all applicable requirements of the Commonwealth of Virginia and the local Health Official;~~
- ~~7. *All applicants for a country inn in an AOC zoning district shall accept the fact that adjoining agricultural land, due to fertilizing, manure spreading, lime spreading, feedlots, and other farming methods may produce offensive odors.*~~
- ~~8. In the AOC or FOC Zoning Districts, a country inn shall be allowed only as an accessory use to a Single Family Detached Dwelling. Guestrooms shall be located in or attached to such a dwelling. For parcels larger than 20 acres, the Single Family Detached Dwelling may be the principal dwelling on the property and/or a tenant house. The defined accessory uses of meal service and/or permanent place(s) of public assembly shall be located in or attached to such a Single Family Dwelling.~~
- ~~9. Events, as defined by Clarke County Code Chapter 57, shall obtain all necessary approvals.~~
8. ***Regulations for country inns in the AOC and FOC Districts:***
 - a. ***A country inn shall require the use of a dwelling unit right (DUR).***
 - b. ***If a country inn is developed in a structure other than an existing single-family dwelling, the structure shall be designed to resemble a single-family dwelling and constructed to enable the structure to be converted to a single-family dwelling if the country inn use is discontinued. Architectural renderings and construction plans for the proposed structure shall be submitted for review with the special use permit application.***
9. ***Special events shall comply with Chapter 57 of the Code of Clarke County.***

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

STEP 1 – Add “short-term residential rental” to the use regulations for single-family dwellings to establish that such activities will now require zoning approval.

3-C-2-i – Dwellings, Single-Family

- 1.** The number of persons, who are permanent full-time residents occupying a single-family dwelling served by an on-site sewage disposal system with a Virginia Department of Health Permit, shall not exceed two for the number of bedrooms allowed by that permit.
 - a 1.** If it is found that a property is not in compliance with this requirement, then the owner of the property shall apply for a permit with the Health Department, to expand the current disposal system for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling.
 - b 2.** If the Health Department denies the expansion, the owner of the property shall apply for variance from Board of Septic and Well Appeals for a system designed for a sufficient number of bedrooms to accommodate the number of permanent full-time resident occupants in the dwelling and install such a system if approved. Such a variance can only be requested for owner occupied property.

- 2. *Short-term residential rental.***
 - a.** *A short-term residential rental is the rental of a room within or a portion of a single-family dwelling or accessory dwelling, or the rental of an entire single-family dwelling or accessory dwelling, by the owner of the dwelling to one or more transient renters for lodging purposes for a period of fewer than 30 consecutive days in exchange for a charge. Accessory dwellings include tenant houses and dwellings of less than 600 square feet of heated area on properties of six acres or more.*
 - b.** *A short-term residential rental may be conducted in a single-family dwelling or an accessory dwelling as a bed and breakfast home occupation or as a country inn. No short-term residential rental shall be conducted without prior zoning approval for a bed and breakfast home occupation or country inn, as applicable.*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

STEP 2 – Modify bed and breakfast home occupation use regulations to regulate short-term residential rentals of up to 10 occupants in an owner or permit-holder occupied situation.

To Article 9 Definitions:

Bed and Breakfast -- A home occupation where lodging or lodging and meals are provided for compensation ~~for up~~ to ~~five~~ transient guests *for a period of fewer than 30 consecutive days*.

3-C-2-n-6 – Bed and breakfast regulations.

A. Maximum occupancy.

- 1. The maximum occupancy of a bed and breakfast shall not exceed 10 persons during the rental period including transient guests and permanent residents of the dwelling, and in no case shall exceed the maximum occupancy allowed by the onsite sewage disposal system permit.***
- 2. A bed and breakfast may use a maximum of ~~three~~ five guestrooms for the conduct of the home occupation, ~~regardless of the floor area of the dwelling unit and subject to Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable.~~ Guestrooms may be located in accessory structures located on the same lot subject to compliance with Building Code requirements and VDH regulations.***

B. Use of onsite sewage disposal system.

- 1. The applicant shall state the maximum occupancy of the bed and breakfast, including transient guests and permanent residents of the dwelling, on the home occupation zoning permit application. The maximum occupancy of a bed and breakfast shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). If the onsite sewage disposal system serving the bed and breakfast is shared with another structure, the maximum occupancy of both structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.***
- 2. An application for a bed and breakfast that is served by an onsite sewage disposal system shall be reviewed by the Virginia Department of Health (VDH) in conjunction with the zoning permit application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the bed and breakfast shall be a prerequisite to issuance of a home occupation zoning permit.***
- 3. If a bed and breakfast is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by VDH, the zoning administrator may issue a notice of violation to cease the bed and breakfast use until the system is repaired or replaced and is approved in writing by VDH.***

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RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

4. *A bed and breakfast shall not be subject to the maximum allowable area for home occupation uses set forth in Section 3-C-2-n-5.*
- C. As an accessory use to a bed and breakfast, breakfast meal service may be provided only for overnight guests.

STEP 3 – Modify country inn use regulations to regulate short-term residential rentals that do not meet the requirements of a bed and breakfast home occupation (non-owner or non-permit holder occupied situation and/or more than 10 occupants)

To Article 9 Definitions:

Country Inn -- ~~An establishment~~ *A business* offering for compensation to the public guestrooms for transitory lodging or sleeping accommodations *for a period of fewer than 30 consecutive days*. As accessory uses to a country inn, meal service and/or permanent place(s) of public assembly may be provided. ~~The term Country Inn includes Tourist Home, Guest Ranch, Guest Farm, or other similar use.~~

3-C-2-g – Country Inn

1. ~~An establishment offering, for compensation to the public, not more than A country inn may use a maximum of 15 guest rooms for transitory lodging or sleeping accommodations of not more than 14 days of continuous occupancy, subject to Virginia Department of Health (VDH) regulations for onsite sewage disposal systems if applicable.~~
2. Maximum occupancy and use of onsite sewage disposal system.
 - a. *The applicant shall state the maximum occupancy of the country inn on the special use permit and site development plan applications. The maximum occupancy of a country inn shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit issued by the Virginia Department of Health (VDH). If the onsite sewage disposal system serving the country inn is shared with another structure, the maximum occupancy of both structures shall not exceed the maximum occupancy allowed by the onsite sewage disposal system permit.*
 - b. *An application for a country inn that is served by an onsite sewage disposal system shall be reviewed by VDH in conjunction with the site development plan application review. Written confirmation by VDH that the existing onsite sewage disposal system can support the proposed maximum capacity of the country inn shall be a prerequisite to approval of a site development plan.*
 - c. *If a country inn is served by an onsite sewage disposal system, that system shall be maintained and remain in an operable condition for the life of the use. In the event that the system fails as determined by the Virginia Department of Health (VDH), the zoning administrator may issue a notice of violation to cease*

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RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

the country inn use until the system is repaired or replaced and is approved in writing by VDH.

- ~~2. As accessory uses to a Country Inn, meal service and/or permanent places(s) of public assembly may be provided. The total maximum capacity of areas used for meal service and/or permanent places of public assembly shall be 149 people and as regulated by the Virginia Department of Health.~~
3. *The sale of meals or prepared food, which may include beverages and confections, is permitted as an accessory use to a country inn. Approvals or permits by applicable State agencies shall be obtained and remain active for the lifespan of this activity.*
4. *Assembly activities for compensation are permitted as an accessory use. The maximum number of building occupants during an assembly activity shall not exceed 149, or the maximum occupancy of the facility as approved by the Building Department, whichever is less.*
5. One bathroom shall be provided per each bedroom in structures less than 50 years old or one bathroom shall be provided per each two bedrooms in structures 50 years or older.
6. Any need for parking shall be met off the street and other than in a required front yard, and shall conform in all other ways with the provisions of Section 4-J of this Ordinance;
7. No equipment, process, or vehicles which create unreasonable noise, vibration, glare, fumes or odors which are detectable to the normal sense off the premises shall be permitted;
- ~~6. The structure satisfies all applicable requirements of the Commonwealth of Virginia and the local Health Official;~~
- ~~7. All applicants for a country inn in an AOC zoning district shall accept the fact that adjoining agricultural land, due to fertilizing, manure spreading, lime spreading, feedlots, and other farming methods may produce offensive odors.~~
- ~~8. In the AOC or FOC Zoning Districts, a country inn shall be allowed only as an accessory use to a Single Family Detached Dwelling. Guestrooms shall be located in or attached to such a dwelling. For parcels larger than 20 acres, the Single Family Detached Dwelling may be the principal dwelling on the property and/or a tenant house. The defined accessory uses of meal service and/or permanent place(s) of public assembly shall be located in or attached to such a Single Family Dwelling.~~
- ~~9. Events, as defined by Clarke County Code Chapter 57, shall obtain all necessary approvals.~~
8. *Regulations for country inns in the AOC and FOC Districts:*
 - a. *A country inn shall require the use of a dwelling unit right (DUR).*

DRAFT SHORT-TERM RESIDENTIAL RENTAL TEXT AMENDMENT
RECOMMENDATION FROM POLICY & TRANSPORTATION COMM.

- b. If a country inn is developed in a structure other than an existing single-family dwelling, the structure shall be designed to resemble a single-family dwelling and constructed to enable the structure to be converted to a single-family dwelling if the country inn use is discontinued. Architectural renderings and construction plans for the proposed structure shall be submitted for review with the special use permit application.*
- 9. Special events shall comply with Chapter 57 of the Code of Clarke County.*

OCCUPANCY SCENARIOS
OWNER-OCCUPIED VS. NON-OWNER-OCCUPIED ISSUE

In order for a short-term residential rental to qualify as a bed and breakfast home occupation, it “must be conducted by the residents of the dwelling” (3-C-2-n-1) which can be the property owner or a tenant or other resident with the property owner’s permission. If the operator does not reside in the rental structure or on the same lot in a different dwelling, then the use cannot be permitted as a bed and breakfast home occupation and can only be approved as a country inn. The sample occupancy scenarios below presume an “AirBNB”-type operation with a maximum of 10 occupants and VDH approval of the onsite sewage disposal system.

Occupancy	Bed and Breakfast	Country Inn
1. Operator lives on the property in the rental structure	X	
2. Operator lives on the property in a different structure	X	
3. Operator lives on an adjacent or nearby lot		X
4. Operator lives on the property in the rental structure, rents the structure out when traveling (and is not on site)		X
5. Operator has a residence elsewhere but splits time residing on the property part of the year and always when renters are present	X	
6. Operator has primary residence elsewhere, claims to split time residing on the property part of the year but not always when renters are present		X
7. Operator has primary residence elsewhere, rarely or never stays onsite		X
8. Operator has primary residence elsewhere, caretaker or relative lives on the property full-time with renters present ¹		X
9. Operator has primary residence elsewhere but is onsite at all times when renters are present		X

¹ This scenario could be permitted as a bed and breakfast home occupation if the caretaker or relative is the holder of the home occupation permit and resides on the property as described in scenarios 1, 2 or 5.



Clarke County Planning Department

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TO: Planning Commission members

FROM: Brandon Stidham, Planning Director

RE: 2021 Organizational Meeting Materials

DATE: November 17, 2020

Enclosed for informational purposes are several documents to help prepare you for the Organizational Meeting that is scheduled for the Commission's **Tuesday, January 5, 2020** Work Session:

- Current (2020) Committee List
- Draft 2021 Meeting Schedule
- Draft 2021 Planning Commission By-Laws. The enclosed draft includes a new Article 9, Operating Policies, which will include the Commission's recently adopted policy for granting conditional approvals of administrative applications (new text in red font). Any future operating policies that the Commission adopts would be added to this Article.
- Current (January 2020) Project Priorities List. Staff will provide an updated draft 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
2020 COMMITTEE APPOINTMENTS (updated 6/15/2020)**

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.

2020 Permanent Committees

Policy & Transportation	Scott Kreider	Douglas Kruhm	Gwendolyn Malone	Bob Glover
Plans Review	Anne Caldwell	Scott Kreider	Frank Lee	Pearce Hunt
Comprehensive Plan	Bob Glover	Douglas Kruhm	Anne Caldwell	Matthew Bass
Ordinances	Randy Buckley	Anne Caldwell	Frank Lee	Gwendolyn Malone

Special Subcommittees and Appointments – 2020 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	Matthew Bass
Board of Supervisors (BOS) – Alternate	Doug Lawrence
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	Douglas Kruhm Buster Dunning

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

2021 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 Berryville-Clarke County Government Center, 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 Berryville-Clarke County 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 2	Friday, February 5
Tuesday, March 2	Friday, March 5
Tuesday, March 30	Friday, April 2
Tuesday, May 4	Friday, May 7
Tuesday, June 1	Friday, June 4
Tuesday, June 29	Friday, July 2
No meeting in August	No meeting in August
Tuesday, August 31	Friday, September 3
Tuesday, September 28	Friday, October 1
Wednesday, November 3*	Friday, November 5
Tuesday, November 30	Friday, December 3
Tuesday, January 4, 2021	Friday, January 7, 2021

* **Schedule deviation to avoid Election Day 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. Dates, times, and locations 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
(Draft for Consideration – January 5, 2021 Organizational Meeting)**

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.

Article 8 – Electronic Meeting Participation

1. Pursuant to Code of Virginia §2.2-3708.2, the following procedures are established for members of the Clarke County Planning Commission (the “Commission”) to participate electronically in Commission meetings, and in meetings of the Commission’s standing and special committees, from remote locations for reasons specified as follows:
 - A. Such member is unable to attend the meeting due to a temporary or permanent disability or other medical condition that prevents the member’s physical attendance.
 - B. Such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. Participation by a member pursuant to this subsection is limited each calendar year to two meetings.
2. Procedures for authorizing electronic participation in a meeting.
 - A. Electronic participation in a meeting shall only be permitted if a quorum of the Commission, or a quorum of the standing or special committee, is physically assembled at the designated meeting location.
 - B. Commission meetings. Any member requesting to participate electronically in a Commission meeting shall notify the Chair of the Commission of the reason for electronic participation as specified in Subsection 1 above, on or before the day of the meeting. The Chair of the Commission shall determine whether the request for electronic participation complies with the provisions of Subsection 1 above and shall either approve or disapprove the request.
 - C. Standing or special committee meetings. Any member requesting to participate electronically in a standing or special committee meeting shall notify the committee chair of the reason for electronic participation as specified in Subsection 1 above, on or before the day of the meeting. The committee chair shall determine whether the request for electronic participation complies with the provisions of Subsection 1 above and shall either approve or disapprove the request. In the event that the standing or special committee does not have a chair, the Chair of the Commission shall be notified of the request and shall determine whether to approve or disapprove the request.
 - D. If electronic participation is approved, the Clerk of the Commission shall record in the meeting minutes the remote location from which the member participated. The meeting minutes shall also indicate the reason for the member’s electronic participation as described in Subsection 1 above.
 - E. If electronic participation is disapproved, the reason for such disapproval shall be recorded in the minutes with specificity.

- F. For any electronic participation, arrangements shall be made to ensure that the voice of the member participating electronically may be heard by all persons in the designated meeting location.

Article 9 – Operating Policies

1. Conditional Approval Policy

The Planning Commission may, at its sole discretion, grant or recommend conditional approval of an application due to unresolved administrative issues provided that the following items are met:

- A. The issue has been informally resolved and only requires final written submission by the applicant and confirmation by Planning Staff and/or the applicable review agency.***
- B. The issue is reasonably expected to be resolved fully within the next 21 days or finalizing of the Planning Commission's next meeting agenda, whichever is sooner.***
- C. The issue is not one that, in the Commission's opinion, warrants continuance of a public hearing (if applicable).***

An administrative issue is one that requires verification of compliance with a technical requirement or requirements and involves no subjective interpretation by Planning Staff or the review agency.

2020 PROJECT PRIORITIES – PLANNING COMMISSION
(adopted January 10, 2020)

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., special use permit applications, 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 – remaining items to complete include:

- Conduct initial review of draft Subdivision Ordinance (following completion of legal review) and provide direction to Staff on additional edits.
- Provide direction to Staff on additional edits to draft Zoning Ordinance and Definitions Article.
- Agree on final drafts of Zoning Ordinance, Subdivision Ordinance, and Definitions Article.
- Schedule and conduct formal public hearing and outreach initiatives, provide formal recommendation on draft Ordinances and Definitions Article to Board of Supervisors.

2. Five-Year Review and Update of Comprehensive Plan

INCOMPLETE – Resolution was adopted by the Planning Commission on January 4, 2019 to initiate review of the Plan. Staff to develop work plan with work to begin in 2020 pending completion of the initial draft Zoning and Subdivision Ordinances.

3. Five-Year Review and Update of Transportation Plan

INCOMPLETE – Resolution was adopted by the Planning Commission on January 4, 2019 to initiate review of the Plan. Staff to develop work plan with work to begin in 2020 pending completion of the revised Comprehensive Plan.

4. Five-Year Review of Economic Development Strategic Plan

INCOMPLETE – Resolution was adopted by the Planning Commission on October 4, 2019 to initiate review of the Plan. Staff to develop work plan with work to begin pending completion of the revised Comprehensive Plan.

5. Five-Year Review of Recreation Component Plan

INCOMPLETE – Need to adopt a five-year review resolution by August 18, 2020. Assign task to Comprehensive Plan Committee in Spring 2020.

Updated November 17, 2020

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

* Planning Commission held Public Hearing and took formal action to recommend adoption of revised Recreation Component Plan on November 6, 2020