



Clarke County Planning Commission

MINUTES– Business Meeting

Friday, June 5, 2020 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
George L. Ohrstrom, II (Chair/Russell)	✓E	Pearce Hunt (Russell)	✓
Randy Buckley (Vice-Chair/White Post)	✓	Scott Kreider (Buckmarsh)	✓
Matthew Bass (Board of Supervisors)	✓	Douglas Kruhm (Buckmarsh)	✓E
Anne Caldwell (Millwood)	✓	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	X	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	✓	Doug Lawrence (BOS alternate) ¹	✓

E -- Denotes electronic participation

¹ – Participated in but did not serve as the Board of Supervisors alternate for this meeting.

Note: George L. Ohrstrom, II and Douglas Kruhm participated electronically due to health issues related to the current pandemic.

STAFF PRESENT: Brandon Stidham (Director of Planning), Ryan Fincham – electronic participant (Senior Planner/Zoning Administrator), Chris Boies (County Administrator)

CALL TO ORDER: By Vice-Chair Buckley at 9:02AM. Chair Ohrstrom and Commissioner Kruhm participated via teleconference.

Vice-Chair Buckley gave the floor to Chair Ohrstrom for comments.

Chair Ohrstrom apologized for not being able to participate in person due to health issues related to the current pandemic. He said that he hopes to be able to attend meetings starting next month. He also introduced the new Commissioners – Buster Dunning, Pearce Hunt, and Matthew Bass.

Mr. Stidham noted for the benefit of those Commissioners participating electronically that all Commissioners are present except for Commissioner Dunning.

1. Resolution to Adopt Electronic Meeting Participation Procedures

Mr. Stidham presented a Staff Report (memorandum dated May 27, 2020) on this agenda item explaining the Code of Virginia requirements for commissioners to participate remotely in meetings via electronic methods. He provided an overview of the proposed procedures that would be incorporated as a new Article 8 to the By-Laws of the Clarke County Planning Commission, and also reviewed a draft resolution to adopt the electronic meeting participation procedures.

Commissioners had no questions on the agenda item. A motion to approve the following resolution was adopted 10-0-1:

**CLARKE COUNTY PLANNING COMMISSION
RESOLUTION TO ADOPT ELECTRONIC MEETING PARTICIPATION PROCEDURES**

WHEREAS, the Clarke County Planning Commission proposes to adopt written procedures, to be incorporated into the By-Laws of the Clarke County Planning Commission, allowing for and governing participation of its members by electronic communication means pursuant to Code of Virginia §2.2-3708.2, and

WHEREAS, the procedures shall include an approval process for such participation, subject to the express limitations of Code of Virginia §2.2-3708.2,

AND WHEREAS, the procedures once adopted shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

NOW THEREFORE, BE IT RESOLVED THAT the Clarke County Planning Commission does hereby adopt the Electronic Meeting Participation procedures included as Attachment A to this resolution, effective this 5th day of June, 2020.

Motion to approve Resolution to Adopt Electronic Meeting Participation Procedures:			
Ohrstrom (Chair)	AYE (moved)	Hunt	AYE
Buckley (Vice-Chair)	AYE	Kreider	AYE
Bass	AYE	Kruhm	AYE
Caldwell	AYE	Lee	AYE
Dunning	ABSENT	Malone	AYE (seconded)
Glover	AYE		

2. Approval of Agenda

A motion to approve the meeting agenda as presented by Staff was approved 10-0-1.

Motion to approve June 5, 2020 Business Meeting Agenda:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice-Chair)	AYE	Kreider	AYE (moved)
Bass	AYE	Kruhm	AYE
Caldwell	AYE	Lee	AYE
Dunning	ABSENT	Malone	AYE (seconded)
Glover	AYE		

3. Welcome and Introduction of New Members

Vice-Chair Buckley stated that this item was addressed by Chair Ohrstrom at the beginning of the meeting.

4. Approval of Minutes – March 6, 2020 Business Meeting

Commissioner Caldwell had the following corrections:

- Page 11 of 78, fourth paragraph, third line – The word “requires” should be “require.” The same sentence does not make sense and may possibly need to be separated into two sentences. Mr. Stidham asked if commissioners would be comfortable with Staff listening to the recording and rewriting the sentence. Members agreed by consensus.
- Page 13 of 78, second paragraph, fifth line – Delete the first “was” in this line.

Chair Ohrstrom recognized Debbie Bean and Mr. Stidham for their work on the minutes as there was a lot of discussion to be recorded.

A motion to approve the meeting minutes with the requested edits was approved 8-0-3.

Motion to approve the March 6, 2020 Business Meeting minutes with requested edits:			
Ohrstrom (Chair)	AYE	Hunt	ABSTAINED
Buckley (Vice-Chair)	AYE	Kreider	AYE
Bass	ABSTAINED	Kruhm	AYE
Caldwell	AYE (moved)	Lee	AYE (seconded)
Dunning	ABSENT	Malone	AYE
Glover	AYE		

Discussion Items

5. Upcoming Commission and Standing Committee meetings; Standing Committee Vacancies

Mr. Stidham presented a Staff Report (memorandum dated May 28, 2020) on this agenda item. He noted that the Governor recently announced a relaxation of the assembly guidelines from a maximum of 10 people to a maximum of 50 people. He added that this has enabled the meeting room seating to be used instead of being roped off as planned by Staff. He also said that the Commission likely would not have to consider video streaming upcoming meetings. To avoid having the full Commission meet twice a month, he recommended cancelling the July 7 work session and instead rely on the Commission’s four-person committees to conduct workshop tasks. He added that the Commission does not have meetings scheduled for August and can decide on adjusting the September schedule later in the summer.

Mr. Stidham noted that there are four Committee vacancies – two on the Comprehensive Plan Committee, one on the Policy & Transportation Committee, and one on the Plans Review Committee. Chair Ohrstrom stated that Commissioner Caldwell has agreed to serve on the Comprehensive Plan Committee. Chair Ohrstrom asked if any commissioners are interested in serving to let him know so that the Committees may be finalized at the July meeting. Mr. Stidham said that he was hoping to have as many vacancies as possible filled today as he plans to schedule some Committee meetings in June. Commissioner Bass volunteered to serve on the Comprehensive Plan Committee. Commissioner Glover volunteered to serve on the Policy & Transportation Committee. He added that he also serves on the Comprehensive Plan Committee, noting that former Commissioner Robina Bouffault brought a lot of experience to that Committee and he is glad that Commissioner Caldwell will also be bringing her

experience as the new Committee member. Commissioner Caldwell said that it is important to have a long-term perspective on that Committee. Commissioner Hunt said to Chair Ohrstrom that he would like to discuss the committee purposes in more detail to figure out where he can best contribute. Mr. Stidham then recapped the new appointments and noted that the Plans Review Committee vacancy will remain open for the time being. He also noted that there is a vacant commissioner seat on the Broadband Implementation Committee that will need to be filled. He added that he plans to schedule Comprehensive Plan Committee and Plans Review Committee meetings for mid to late June and may also schedule an Ordinances Committee meeting to address some minor policy and technical issues. He also said there is no Policy & Transportation Committee meeting currently scheduled but one might be needed depending on today's discussion of short-term residential rentals.

6. Short-Term Residential Rentals Text Amendment – Recommendation from Policy & Transportation Committee

Mr. Stidham presented a Staff Report (memorandum dated May 13, 2020) on this agenda item.

Regarding the occupancy scenarios outlined in the Staff Report, Chair Ohrstrom suggested that owner/operators living on an adjacent or contiguous lot should be considered a bed-and-breakfast and not a country inn. He added that he would like to hear from the Committee members as to why this approach was taken. Mr. Stidham replied that if you allow bed-and-breakfast owners/operators to live on an adjacent lot, you will need to establish a minimum distance requirement from the rental. He added that you may also have a situation in which the rental structure is on the same lot as the owner/operator's dwelling but is farther away than the minimum distance requirement for residences on adjacent lots. He said the question is whether you go with a metric of minimum distance from the owner/operator's dwelling or whether the dwelling and rental structure are on the same lot of record, and the Committee decided to go with the latter approach.

Commissioner Kreider stated that he prefers the proposed requirement that all non-owner-occupied rentals require a country inn special use permit. He added that if you go out of town and rent your house multiple times in a year, you should be required to get a permit for it. Commissioner Bass said this is kind of the classic AirBNB scenario. Mr. Stidham replied that this is probably how AirBNB began as a way for people to swap homes when they travel. He added that this scenario would require a country inn special use permit under the proposed regulations. Vice-Chair Buckley asked if someone renting a room or rooms in an accessory dwelling would have to get a country inn special use permit. Mr. Stidham replied that it would depend on whether the owner/operator's primary dwelling is located on the same lot. He said if your primary residence is located elsewhere, even if you will be onsite for all rental activities, then it is a commercial activity that requires a country inn special use permit. He added that short-term residential rentals can take place in accessory structures on the same lot provided that the structure is permitted for residential occupancy.

Commissioner Bass asked whether current enforcement is complaint-based. Mr. Stidham replied that the current policy for all zoning enforcement is complaint-based. Commissioner Bass noted that non-owner-occupied rentals could be occurring anywhere in the County and at any time, and that it would be up to neighbors to make complaints unless Staff proactively looks for violations. Mr. Stidham replied that we can talk about proactive enforcement approaches but added that he did not envision Staff patrolling the County to find violations.

Regarding the issue of applying the proposed regulations retroactively, Commissioner Kreider asked if we decide to grandfather existing short-term residential rentals would they still have to comply with septic system requirements. Mr. Stidham replied that existing rentals would be grandfathered from having to obtain a zoning permit but they would not be grandfathered from compliance with the new regulations including septic system requirements.

Chair Ohrstrom said that before the Commission makes a formal recommendation on this text amendment, we should reach out to the Board of Supervisors and ask for their direction on this issue. He said we are a small county with a limited budget, especially with the lost revenue from the COVID-19 epidemic, and the idea of applying the rules retroactively would place a huge burden on the County. Commissioner Bass replied that his first reaction is that we want to minimize the burden to the County with any regulations that are adopted. Chair Ohrstrom said that he thought most of the regulations that we adopt are not applied retroactively and that this results in existing uses becoming nonconforming. Mr. Stidham replied that it is rare that you have an opportunity to apply new regulations retroactively because you will be regulating an activity for the first time.

Commissioner Caldwell said that in our current climate with the pandemic adversely impacting rental activities, some prospective operators may be delaying their plans to operate rentals. She said that this may be an ideal time to implement these regulations. She also said that some existing rental operations may be discontinuing for a period of time which could allow us to apply regulations when they re-start as opposed to applying the regulations to everyone retroactively. Chair Ohrstrom replied that this would only apply to businesses who have obtained a business license because those are the only rental operations of which we are currently aware. Mr. Stidham added that he is aware of a few operators that have come in to get business licenses but most have not. Commissioner Bass asked how many of these are we talking about around the County. Mr. Stidham replied that former Commissioner Bouffault had done extensive research on this issue and had compiled a list of 40 or more rental operations. Mr. Boies asked how many complaints we have received about rental operations. Mr. Stidham replied that he is not aware of any complaints about the rental activity but we have received complaints about activities in conjunction with rentals such as assembly activities. Commissioner Bass asked how often complaints are made and Mr. Stidham replied infrequently. Commissioner Glover said the bigger issue is making an even playing field for the people who are following the rules which is why he does not have a problem with retroactive application of the regulations. Commissioner Kreider said that if we do apply the rules retroactively, he would prefer complaint-basis enforcement. Mr. Stidham said that Staff could develop different enforcement scenarios in the form of flowcharts to help the Commission evaluate the issues.

Commissioner Kruhm said that he is in favor of retroactive application and that there should be some grace period established to allow operators time to comply voluntarily. He gave an example of a property on the river where the owners did extensive renovations to a home and started an AirBNB. He said the operators are gone for the entire winter and the home was rented extensively throughout that time. He also noted that the property does not have any record of a septic system and it is located directly on the river bank. He said we need to be consistent with our desire for a clean environment and proper sewage disposal. Commissioner Glover said he likes the idea of a grace period. Mr. Stidham noted that VDH will only initiate an enforcement action when there is evidence of a failed septic system. Commissioner Caldwell noted that VDH will investigate pipes into the river and Commissioner Lee replied only if there is a complaint. Commissioner Kruhm said that with the proposed regulations, the example of the AirBNB that he gave would require the septic issues to be addressed. Commissioner

Glover said that you should not be able to have an AirBNB without a compliant septic system. Mr. Stidham said that the proposed VDH review process would address this issue and would also be a complete barrier to some rental operations. Commissioner Lee asked if you have an existing rental operation, would they have to demonstrate that they comply with the sewage handling regulations. Mr. Stidham replied yes and that if VDH cannot verify compliance, then Staff will not issue a zoning permit and will direct the applicant to work it out with VDH or lower their occupancy to a compliant level. He added that this will likely mean the applicant will have to hire a soil scientist to modify the system. Chair Ohrstrom noted that it could also be an engineer and that VDH would not be involved in designing modifications or inspecting the system. Commissioner Lee asked if we do not apply the regulations retroactively, how can we ensure that existing rentals comply with septic regulations. Mr. Stidham replied that if we apply the regulations retroactively without proactive enforcement, then we will need to wait until a complaint is received. He said if we do not apply the rules retroactively, we would be missing out on regulating all of the existing rental operations and only applying the rules to the new applicants. He also said that it might be a challenge to interpret whether an operator is grandfathered if they rent their property infrequently. He added that Staff usually references the operator's business license status to determine nonconforming status but most operators do not get business licenses. Vice-Chair Buckley said that operators using VRBO or AirBNB typically have to sign a yearly contract to operate and asked if we can determine their contract status. Mr. Stidham replied that he did not think we can get this information from the companies. He noted that if an operator were issued a notice of violation for noncompliance, they may provide this information on their own as evidence that they are grandfathered.

Commissioner Caldwell asked if country inn special use permit applicants would also be required to obtain a business license. Mr. Stidham replied that the Commissioner of the Revenue determines whether a business license is required. He added that Planning Staff partners with them to enable zoning reviews to be done in conjunction with the business license application process. He also said that we are trying to move away from business license requirements in the revised Zoning Ordinance because business licenses are not a zoning instrument.

Commissioner Lee said that the only way we will be able to regulate these activities, especially with existing septic system usage, is to apply the rules retroactively. Commissioner Bass asked if any other specific properties of concern have been identified in addition to the property cited by Commissioner Kruhm. Mr. Stidham replied generally we would be concerned with rental activities in older homes in which the operator is advertising large occupancy numbers. Vice-Chair Buckley said that this is the scenario that started discussion of this issue as there are some older homes that are known to have four-bedroom drainfields and are advertising capacity for 16 or more. Chair Ohrstrom agreed and said that he doubted there are many properties in the County that have a five-bedroom perc that would be needed to sleep 10 people. Commissioner Lee replied that this is correct. Commissioner Glover added that former Commissioner Bouffault's spreadsheet included ownership information and you could definitely tell which property owners were operating for commercial purposes and resided elsewhere. Chair Ohrstrom noted that there are some confidentiality issues with that spreadsheet that should be reviewed first before releasing it to the general public. Commissioner Kruhm said there was a business in the County that was required to bring their rental operation into compliance with code requirements and the owner complained that other rentals were being operated under the table and not having to meet the same requirements. He asked how to set up regulations so we are being fair to all rental operators in the County.

Supervisor Lawrence asked if we are collecting transient occupancy tax from AirBNBs and Mr. Boies replied yes. He then said that if we are collecting taxes then we are recognizing the rental activities that are being operated under the radar, and that this can imply that the County has determined that they are being operated safely and according to code. He also said that by accepting the tax dollars, the County has an obligation to establish rules like the ones the Commission are currently discussing. Vice-Chair Buckley asked if the County Attorney provided a legal opinion on this issue. Mr. Stidham replied that Staff asked the County Attorney early on if collecting taxes from short-term residential rentals opens the County up to additional liabilities and he said that it does not. Commissioner Lee asked if we really are collecting transient occupancy taxes from these rental operators. Commissioner Malone replied only for those that we are aware of and not ones that are under the radar, and we know that there are several that are operating under the radar. Commissioner Glover replied that we should be collecting taxes from them as well and Commissioner Malone agreed. Commissioner Glover added that former Commissioner Bouffault's list included rental operations from a number of sources and that she did a lot of research on it. Mr. Stidham noted that Craigslist is not a rental website but a site for selling goods and services generally, and there is no way to get address information unless the operator posts it to the site.

Mr. Stidham said that it sounds like the Commission wants to have a continued discussion of this issue emphasizing proactive versus complaint-based enforcement and whether to apply the regulations retroactively to existing operations. He proposed adding this to the July 10 Business Meeting agenda and said that Staff will prepare a report showing how enforcement would work under different application scenarios. Chair Ohrstrom suggested that Commissioner Bass and Supervisor Lawrence talk with the other Board members about this issue and determine whether the Commission is going in a totally different direction than the Board is interested in going. Commissioner Caldwell said that she feels strongly that this needs to be a text amendment to our current Ordinance and not be folded into the Ordinance Update Project. Commissioners agreed with her comments.

Mr. Boies said that it sounds like the Commission's main concern is with septic system regulation compliance. He asked whether there is any consideration of whether some scenarios could be handled administratively with a zoning permit and not necessarily require special use permit review since septic issues can be addressed with a zoning permit review. Vice-Chair Buckley said that he has concerns with requiring special use review in some situations but we also need a mechanism to stop a rental operation that is not complying with the regulations. Commissioner Bass asked Mr. Stidham if the enforcement scenarios he will be assembling will address this question. Mr. Stidham replied no and said that Mr. Boies was asking whether the scenarios requiring special use permits actually warrant that level of review. He added that the scenario comparison chart in the memo is designed to help Commissioners work through this question. He also said that the Committee is emphasizing the issue of whether a rental operation is owner-occupied or non-owner-occupied, and the nature of a home occupation does not allow that use to be approved if the permit holder is not physically present when the home occupation activities are being conducted. He added that the "home swap" scenario is a good one for Commissioners to think about. Mr. Boies noted that the process of revoking a special use permit can sometimes be more difficult than revoking an administrative approval. Commissioner Kreider said he likes the special use permit review because a site development plan is also required.

Chair Ohrstrom recognized the Policy & Transportation Committee members for their hard work on this issue.

7. Project Updates

Zoning & Subdivision Ordinance Update Project

Mr. Stidham presented a Staff Report (memorandum dated May 28, 2020) on this agenda item along with a Revised Work Plan for Project Completion (dated May 28, 2020).

Chair Ohrstrom asked for clarification regarding whether the County Attorney still needs to do a cover-to-cover review of the draft Zoning Ordinance as he thought that had already been completed. Mr. Stidham replied that the County Attorney only reviewed major policy issues highlighted by Staff but did not do a cover-to-cover review including cross-checking against State code requirements and ensuring that we have everything written correctly. He added that this is what the County Attorney is doing right now with the Subdivision Ordinance. Chair Ohrstrom said that he would think the County Attorney should do this review but it would certainly hold things up. Mr. Stidham said that in the County Attorney's defense, until you actually do an ordinance update project like this one you do not truly understand the scope of work and complexity that it entails. He added that Staff stands by the accuracy of the tracking system to ensure that no provisions have been left out and also noted that the County Attorney has reviewed the entire sliding-scale zoning section.

Mr. Stidham reviewed the revised Work Plan and said that if the Commission is comfortable with it, he will consider it approved by consensus. Commissioners had no additional questions or concerns.

Plan Updates and Reviews -- Comprehensive Plan, Transportation Plan, and Economic Development Strategic Plan Reviews; Recreation Plan 5-Year Review Resolution

Mr. Stidham presented a Staff Report (memorandum dated May 28, 2020) on this agenda item. Commissioners had no questions or comments on this item.

Board/Committee Reports

Board of Supervisors

Commissioner Bass said that he recently attended his first meeting. He said the Board discussed the Route 9 improvement project noting that the traffic situation could be a lot worse under normal traffic conditions. He added that Sheriff Roper emphasized the need for continued enforcement on Route 7 and Shepherds Mill Road. He said that Brian Lichty provided an update on COVID activities and that the general sense is that the County is doing pretty well especially in comparison to neighboring counties. He noted one point was made that testing centers will become more accessible in the near future. He said there was a discussion on broadband availability and service complaints in the Cather Road area. He also said the Board discussed Parks & Recreation and being able to reopen in today's climate. Board members also gave reports on the Committee meetings they attended. Economic development and the hiring of a full-time permanent director was also discussed.

Board of Septic & Well Appeals

Chair Ohrstrom reported that the Board met recently to review and approve a blasting plan for the HandyMart diesel pump project. He noted that Staff worked with the applicant to produce a much less impactful plan.

Board of Zoning Appeals

Commissioner Caldwell said that the Board has not met recently. She also commented that if any Commissioners are looking for statewide information on COVID, the Virginia Department of Health has excellent information on their website. Commissioner Bass said that the numbers being reported are cumulative including people that have had COVID and recovered.

Historic Preservation Commission (HPC)

Commissioner Kruhm said the HPC had a teleconference meeting recently, noting that the Historic Preservation award winners were announced. He said the award luncheon has been postponed to a later date. He also said the HPC dealt with a certificate of appropriateness issue in White Post and asked Mr. Fincham to provide an update. Mr. Fincham stated that the HPC approved a certificate of appropriateness to construct a garage and a complaint was made that there were numerous errors made in the construction that were inconsistent with the HPC's approval. He said Alison Teetor and Maral Kalbian are working with the property owner to apply for a new certificate of appropriateness to correct the error. There is also a potential setback violation and Mr. Fincham is requiring the owner to provide an as-built survey to confirm.

Conservation Easement Authority

Chair Ohrstrom said the Authority has not met in a very long time but will be scheduling a meeting in the near future. He said not much has been happening since March. Vice-Chair Buckley said that Ms. Teetor has been working on the Smithfield Farm easement.

Broadband Implementation Committee

Mr. Stidham said that the Broadband Implementation Committee has not met recently and reminded Commissioners that there is one available seat on the Committee for a Commissioner to fill.

Other Business

Distribution of 2019 Planning Department Annual Report

Mr. Stidham noted that a copy of this report has been provided in the meeting packet.

Mr. Stidham also distributed a revised contact list containing only the information that Commissioners indicated that could be publicly released. He asked Commissioners to review the list and let him know if any further changes need to be made.

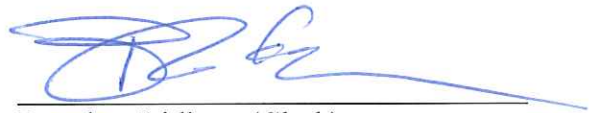
Commissioner Caldwell thanked Staff for the annual report and the improved contact list.

Commissioner Kruhm said that two Commissioners have recently departed and we should send some form of recognition for them. Chair Ohrstrom suggested going back to doing resolutions of appreciation. Mr. Stidham suggested that the Commission send a personalized letter signed by all of the Commissioners. Chair Ohrstrom said that would be fine but he likes the resolution approach as well. Commissioner Glover said that it might be more appropriate to send a letter to Commissioner Maynard's family given the situation. Chair Ohrstrom said that he prefers a resolution because it becomes a part of the record. Mr. Stidham said that a letter of appreciation can be an agenda item that is captured into the meeting record as well, noting that it does not have to be a formal resolution to be in the record.

ADJOURN: Motion to adjourn meeting at 10:48AM was adopted 10-0-1.

Motion to adjourn meeting:			
Ohrstrom (Chair)	AYE (moved)	Hunt	AYE
Buckley (Vice-Chair)	AYE	Kreider	AYE
Bass	AYE	Kruhm	AYE
Caldwell	AYE	Lee	AYE
Dunning	ABSENT	Malone	AYE (seconded)
Glover	AYE		


George L. Ohrstrom, II (Chair)


Brandon Stidham (Clerk)