



# Clarke County Planning Commission

Business Meeting

Friday, July 10, 2020 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

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

**STAFF PRESENT:** Brandon Stidham (Director of Planning), Ryan Fincham (Senior Planner/Zoning Administrator), Debbie Bean (Recording Secretary)

**OTHERS:** Stuart Dunn (Dunn Surveying), John Scully (Agent for Mt. Hebron)

**CALL TO ORDER:** Chair Ohrstrom called the meeting to order at 9:02 AM.

## 1. Approval of Agenda

The Commission voted to approve the meeting agenda as presented by Staff.

| Motion to approve July 10, 2020 Business Meeting Agenda: |     |         |                |
|--|-----|---------|----------------|
| Ohrstrom (Chair)   | AYE | Hunt    | AYE            |
| Buckley (Vice-Chair)                                     | AYE | Kreider | AYE            |
| Bass   | AYE | Kruhm   | ABSENT         |
| Caldwell   | AYE | Lee     | AYE (seconded) |
| Dunning  | AYE | Malone  | AYE (moved)    |
| Glover   | AYE |         |                |

## 2. Approval of Minutes

The Commission voted to approve the revised June 5, 2020 Business Meeting minutes with one change on page 3 in the packet, there was a note left off referring to anyone that had participated electronically.

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

### 3. Set Public Hearing

**SP-20-02/CA-20-02, Sheetz, Inc.** Request approval of a Site Plan Amendment and a Certificate of Appropriateness to add a 1,095.02 square foot addition to an existing convenience store to accommodate more retail space and indoor seating, partial removal of gas canopy, and building exterior changes to the property located in the Highway Commercial (CH) and the Historic Access Corridor Overlay (HC) Districts. The property is located at 12582 Lord Fairfax Highway, reference Tax Maps 20-A-36C & 36A and 28-A-17, in the White Post Election District.

Mr. Fincham stated that Sheetz, Inc. is requesting a Site Plan Amendment and a Certificate of Appropriateness for the property located at 12582 Fairfax Highway. He stated that the Applicant is proposing to add a 1,095.02 square foot addition to an existing convenience store to accommodate more retail space, indoor seating, partial removal of gas canopy, and building exterior changes to the property. He said that Staff will be providing a comment letter to the Applicant requesting that a project narrative of all proposed changes be provided on the title page as well as other Staff required revisions on the site plan. He stated that the comment letter will request that the lots be merged or boundary line adjusted to create conformity. He stated that the Planning Commission Plans Review Committee reviewed the request on June 22, 2020 and made the following comments: provide existing elevation of the store for comparison; provide elevations with larger font size for reading purposes; explain if the entire structure will be re-bricked or only partially; and provide further details regarding the flat projection roof shown on the south side of the building supporting a sign, specifically regarding snow load and safety issues. He said that Staff will include the Committee's comments in the letter to the Applicant.

He stated that the ingress/egress for the facility is existing and is shown on the site plan. He said the VDOT sent a comment letter by email on June 22, 2020 requesting additional information to be provided by the applicant. Staff has not received any additional information since that date. He stated that the property is served by public water and sewer provided by the Clarke County Sanitary Authority. He said that the current convenience store does not have onsite eating facilities, so the store is not currently inspected for food service by the Virginia Department of Health. He said that the property is served by public water and sewer provided by the Clarke County Sanitary Authority. He stated that the site plan has been routed to Clarke County Sanitary Authority but comments have not been received yet. He stated that since the property is located in the Historic Access Corridor Overlay District (HC), a certificate of appropriateness must be reviewed and approved as a condition of approval of the Site Plan Amendment. He said that the Planning Commission is the review authority for all certificates of appropriateness in the HC District. He stated that Maral Kalbian, Architectural Historian, has reviewed the proposed canopy and in a letter from her dated June 15, 2020 it states that the proposed design of the building meets the criteria in the HC District. In her letter, Ms. Kalbian asked the Applicant whether the canopies that extend from the building to the gas pumps shown as being removed will also be replaced. Mr. Fincham said they will not be replaced. He said that he does not know the answer to her question regarding whether the canopies remaining over the gas pumps will remain as is or will they be replaced and altered. He said that there has not been a response from the Applicant yet.

Mr. Fincham said that Staff recommends the Planning Commission set public hearing on the site plan application for the September 4, 2020 meeting and defer action on the certificate of appropriateness application pending further comments. He said a public hearing is not required for a certificate of appropriateness.

The Commission voted to set public hearing for this site plan application for September 4, 2020 and defer action on the certificate of appropriateness until the September 4, 2020 Planning Commission Business meeting.

| <b>Motion to set Public Hearing for this request SP-20-02/CA-20-02, Sheetz, Inc:</b> |                    |         |                       |
|--|--------------------|---------|-----------------------|
| Ohrstrom (Chair)   | <b>AYE</b>         | Hunt    | <b>AYE</b>            |
| Buckley (Vice-Chair)   | <b>AYE</b>         | Kreider | <b>AYE</b>            |
| Bass   | <b>AYE</b>         | Kruhm   | <b>ABSENT</b>         |
| Caldwell   | <b>AYE (moved)</b> | Lee     | <b>AYE (seconded)</b> |
| Dunning  | <b>AYE</b>         | Malone  | <b>AYE</b>            |
| Glover   | <b>AYE</b>         |         |                       |

**4. Minor Subdivision Application**

**MS-20-01, Mt. Hebron, LLC.** Request approval of a Minor Subdivision for the property identified as Tax Map #26-A-6, located at 2000 Springsbury Road in the Millwood Election District zoned Agricultural Open-Space Conservation (AOC).

Mr. Fincham said this is a request for a proposed two lot minor subdivision on the property located at 2000 Springsbury Road. He said the subdivision portion of the property fronts Possum Hollow Road. He stated that the acreage is 130.7888 acres and they are looking to subdivide off two new three acre lots. He said that the result of the subdivision will be three lots consisting of two 3.00 acre lots and one lot over 100 acres in size.

He stated that the existing structures located on Lots 1 and 2 have zoning permits on file as accessory structures issued in 2017. He said that the property owner purchased some industrial trailers from the school system to convert into small dwellings. He said the former owner got a 2019 zoning permit for the structure located on Lot 1 for the use of the structure to be converted into a tenant house dwelling and we issued those zoning permits. He stated that neither structure is properly permitted or approved according to Building Department records. He stated that there have never been any building permit applications submitted or approved to use the structures as single family dwellings on either of the proposed new lots. He said that recently the permit was renewed for the accessory structure permit on Lot 1. He said that the structure on Lot 2 had an accessory structure permit but it had expired and was not renewed. He stated that we are not able to approve an accessory structure on a vacant lot larger than 150 square feet and these structures are about 900 square feet. He stated that the letter that he provided to the Commission is a letter from the property owner Dan Millner who is also the Manager for Mt Hebron, LLC. Mr. Fincham said that he had a phone conversation with him yesterday. He said that he has taken the leadership role on this project about a week ago. He has talked to the Building Department and they are issuing him a building permit for the dwelling on Lot 1 and they are going to finish up the accessory structure permit on Lot 2 and then immediately put in a change of use permit for a new dwelling on Lot 2. He said that Mr. Millner understands this process and he is comfortable working through this process. He said that Mr. Millner has requested that since there is no meeting in August and Covid-19 has made the ability to resolve the outstanding issues a little harder for all of us, he would like the Commission to condition the approval so he can complete the paperwork with the Planning Department and the Building Department. Mr. Fincham said that Mr. Millner knows this is unusual to grant such approvals but he is hopeful based on the conversation with Staff that this can be accomplished. Mr. Fincham stated the other form he provided to the Commission was a copy of the plat showing the actual driveways for Lots 1 and 2 which are highlighted in pink. He said

that the Virginia Department of Transportation (VDOT) has already approved the subdivision plat but there were no actual access points on the plat. He said that the GIS Department asked that these access points be on the plat. He stated that Bobby Boyce with VDOT met the surveyor on site and he knew where they were so he was comfortable with it. He said that there are the sites that we looked at and we do have an approval from VDOT as of yesterday by email on the two driveways. He stated that the Health Department has no concerns. He said that all of the karst reviews were done prior for the approved drainfields in association with this subdivision and all of them have primary and reserves. He said that Staff recommendation is to defer but in light of these current documents he is comfortable with the conditional approval but he said he will leave that to the Commission.

Chair Ohrstrom asked the Commission if they have any questions. Commissioner Lee said that it states in the Staff report that the septic systems have not been given a final approval. Mr. Fincham stated that the process for the septic systems involve either have approved certification letters on file or for septic to be installed. He stated that for the case of Lots 1 and 2 the septic systems are actually permitted, installed and inspected. He said that he knows that they do not have final approval. He said that is not granted until the Health Department has done a water sample test from the structures. He stated that they do not have water samples because they are not dwellings yet. He said that all of this will be worked through the process. He stated that if a conditional approval were to be granted there would be no signatures on the plat from the Chairman or the Zoning Administrator until a certificate of occupancy is issued for the dwellings. He said that at a minimum a certificate of occupancy for the dwelling on Lot 1 is currently being occupied and an active building permit on Lot 2 pushing towards the certificate of occupancy. Commissioner Bass asked if any concerns were raised by the adjacent property owners. Mr. Fincham said he did not speak to the neighbors but Mr. Staples has spoken with other Staff members regarding this strip on the plat on page 2 of 2 which is on page 33 of 56 in the packet if you follow from north to south down Possum Hollow Road there is a cul-de-sac and then there is a continuing right of way that stretches Lot 2 and next to the Leblanc and Green property and reaches back into the Staples property. He said that there is some discussion between Mr. Staples and Mt. Hebron as to the ownership of that strip and Staff informed them that is an issue that they can work out privately and provided that it does not affect the subdivision. He stated that it could have some affect in the future because VDOT has been very clear that the remaining three dwelling unit rights on the residual they would prefer to come off of Possum Hollow Road because Springsbury Road has some issues. He said that this legality of ownership and the fact that the right of way is coming through all of those properties they would probably do the grading and sight distance requirements as necessary on Springsbury Road to feed the other three lots unless it gets put into conservation easement and then the dwelling unit rights would go away.

Chair Ohrstrom asked the Commission if anyone else has questions. He said that to some extent he agrees with the applicant and that since we do not have an August meeting and because of Covid-19 no one knows what is going to happen in September. He said that Mr. Fincham and Mr. Royston are working on this request and we would be withholding signatures until everything is complete, he does not have a problem with this but he would be interested in hearing from the rest of the Commission. Commissioner Bass asked if we have encountered in the past any other precedent setting. Chair Ohrstrom stated that we generally do not like conditional approvals, we have tried to stay away from them but we have done them in the past occasionally. He said that we do not like to do them because it does set a precedent but he thinks with the circumstances that we are in now he thinks if someone came in and say we did for someone else we can say we were in the middle of Covid-19 which is a very different situation. Mr. Stidham said the more unique the fact pattern is for a particular case the less likelihood a precedent would be established. Commissioner Kreider stated that he is not comfortable with the amount of outstanding issues. He said that neither of the

structures are completed and they are going to break this off and he presumes that the lots will be sold with complete houses on them. He said he does not think this request should be approved until all the issues are settled. Commissioner Caldwell stated that she also has a problem with the precedent issue. She said that we very rarely issue conditional approvals and she agrees with Commissioner Kreider with the number of outstanding issues and with some of the issues about Covid19 which she thinks we are coping well with that. She said she does not see the urgency in getting this approved today and she is very uncomfortable with the conditional approval. Commissioner Glover asked how long will it take on calendar time to work through all these issues. Mr. Fincham stated that is totally dependent on the Building Department and their work load which is substantial. He said he would think if they could get the certificate of occupancy on Lot 1 and an active building permit on Lot 2 it would probably take 2 to 3 weeks and that is just a guess.

Commissioner Bass said to Commissioner Kreider’s point what do we know about the eventual plans for this property. Mr. Fincham said that he thinks the plan would be to sell the lots with the small 900 square foot dwellings. He said that John Scully (Realtor for Mt. Hebron) and Stuart Dunn (Dunn Surveying for Mt. Hebron) are present and can answer questions. Mr. Scully said the plan is to sell the property and the main tract which will be 125 acres and there is a contract on that portion that is set to close in September and that sort of prompts some of the timing of all of this. He said if we miss an August meeting we will run up against a deadline. He said that he thinks the long term plan for these two lots has been to keep them and give or provide housing for long term employees. He said that could change and they could sell them. He said what they want is to create a separate lot that they can sell. He said that Dan Millner and the family recognizes that the cart got ahead of the horse in this situation. He stated that we are trying to get the horse and cart back to where they belong and we are doing the best we can and we think we are very close for the final building inspection on Lot 1 that has been done we just do not have the paper work yet. He said that Lot 2 is still an accessory structure that we have to get a permit for. He stated that then we will get it approved for a residential use and it is as it got derailed because the owner died and the son lives in Texas and doing the best he can. He said that he is great to work with and he knows this is unusual and he is hoping the Commission will work with him. Chair Ohrstrom asked if there were any more comments and there being none he called for a motion.

The Commission voted 8-2-1 to defer the request for one month to the September 4 meeting.

| <b>Motion to defer the request for one month to the September 4 meeting:</b> |                       |         |                    |
|--|-----------------------|---------|--------------------|
| Ohrstrom (Chair)   | <b>NAY</b>            | Hunt    | <b>AYE</b>         |
| Buckley (Vice-Chair)   | <b>AYE</b>            | Kreider | <b>AYE (Moved)</b> |
| Bass   | <b>AYE</b>            | Kruhm   | <b>ABSENT</b>      |
| Caldwell   | <b>AYE (Seconded)</b> | Lee     | <b>NAY</b>         |
| Dunning  | <b>AYE</b>            | Malone  | <b>AYE</b>         |
| Glover   | <b>AYE</b>            |         |                    |

**5. Discussion Items**  
**Short-Term Residential Rentals Text Amendment –**  
**Recommendation from Policy & Transportation Committee**

Mr. Stidham said that we are picking up where we left off at the June 5, 2020 Planning Commission Business meeting with our discussion on short term residential rentals text amendment. He said that this report starts on page 37 of 56. He said that Staff assembled a report outlining potential approaches to enforcing these regulations if they were adopted in various forms. He stated that it refers to two policy

issues the first one is given the number of existing short-term residential rentals operating in the County should new regulations be applied retroactively to existing rentals or only to new rentals proposed after the regulations are adopted. He stated that the second one is if the rules are applied retroactively, should Staff be directed to enforce the new rules proactively and if so, how would a proactive enforcement program be designed. He stated that at the June 5th meeting we discussed a non-owner occupied rental that would require a special use permit approval for a country inn. He said that as a point of clarification any "home swap" that is not being done for compensation would not be considered a short-term residential rental and would not be subject to the proposed regulations. He stated that Staff is looking for direction from the Commission regarding the next steps with the proposed short-term residential rentals text amendment. He spoke about the complaint-basis enforcement in which the Zoning Administrator will investigate a potential zoning violation only if it is a formal complaint and that is even if it is a violation that is publicly discernible. Chair Ohrstrom asked what does that mean. Mr. Stidham said if you were driving down the road and see a zoning violation we will not take action against that violation unless it is a complaint. Chair Ohrstrom asked if the person making this complaint would have to identify themselves and if so does the applicant know who is making the complaint. Mr. Stidham said that the state code allows zoning complaints to be anonymous. He said that it is up to the complainant to make the decision if they do or do not want to remain anonymous. Commissioner Bass asked what would happen if hypothetically speaking he was to receive an email list of 40 or more dwellings and Airbnbs and he has complaints with all of these properties. Mr. Stidham said that the second component of this would be what evidence is being provided. He stated that with a different type of zoning violation like illegal construction or someone has posted an illegal sign in their front yard. He said that we can drive by and see that and just giving us a list of Airbnb complaints and even given us listings on the Airbnb website is not enough for us to initiate a notice of zoning violation. He stated if they do give us a list of something that is being advertised on the website, Mr. Fincham can attempt to contact those people if he is able to discern where those properties are but as it is most often on the website they do not post the physical location. He said that we would have to get more evidence to prove that there is a violation occurring. He stated that Mr. Fincham has encountered situations where the property owner has put the ad up but there are no rentals and therefore we have no proof that a violation has occurred. He asked Commissioner Bass if that answered his question and Commissioner Bass said that it did. Mr. Stidham said that the Planning Department does not currently use proactive enforcement. He said while this approach has the potential to identify and address more zoning violations, it is very costly to operate in terms of Staff time and resources. He stated that this approach is also susceptible to criticisms of not being a neutral process especially in targeted enforcement situations.

Mr. Stidham said that if the proposed short-term residential rental regulations are adopted and a standard application is the chosen policy the new regulations would apply only to new short-term residential rental operators who begin rentals after the adoption date of the regulations. He stated that the existing short-term rental operators with a County business license containing either a zoning approval or marked "zoning approval not required" by the Planning Department would be deemed nonconforming. He said that compliance with the new regulations would not be required unless the rental operation is continued for two or more years and loses its nonconforming status. He said that short-term residential rental operators without a County business or any zoning approval by the Planning Department would not be deemed nonconforming and would have to comply with the new regulations. Commissioner Caldwell asked Mr. Stidham if would address these two scenarios with specific concern regarding septic issues with some of these businesses. She said that in particular the standard application where somebody has an Airbnb and a business license and they have never come in to get a zoning approval because we have never required it. She stated that they are advertising for 12 people to stay in an old house and there is no

records in the Health Department about the septic system. Mr. Stidham said on that example the most important thing that she said was that they have a business license. He said that means they would have had to come through our office for review and we would have either written approved or zoning approval not required. He said that they would be grandfathered to comply from the regulations considered nonconforming because they were legally approved for business prior to initiation of the new regulations. He stated that this is where we are applying regulations moving forward from adopting them. He said that if they did not get a business license and do not have any other written approval from our office specifically Mr. Fincham, then they would not have any sort of zoning approval and without a business license there would be no evidence that they were legal with the County from a zoning prospective so they would have to comply with the new regulations. Commissioner Caldwell asked if anybody aside from Robina Bouffault documented how many business licenses for Airbnbs or any short term rentals are actually existing. Mr. Stidham said other than the Commissioner of the Revenue's office we have not had any outside citizens or Staff do that. He said that he has talked with the Commissioner of the Revenue and they are supposed to be tracking who is paying transient and occupancy tax. He confirmed with her that if you are making any money whatsoever on short-term rentals you are required to have a business license. He said that there is no minimum threshold so all money making short-term rentals require a business license. Commissioner Caldwell asked if we have a list from the Commissioner of the Revenue of those properties. Mr. Stidham said that the Commissioner of the Revenue could probably generate a list. Commissioner Caldwell said so we do not know how many licenses are out there and where they are. Mr. Stidham said depending on what we do with these regulations and which approach we choose will determine whether what level Staff needs to go to build a data base and that would be one of the resources we would start with. Commissioner Lee said to reference back for the work that Ms. Bouffault did on March 11, 2020 we had a total of nine licensed and a total of 41 unlicensed in the County. Chair Ohrstrom asked Mr. Stidham if he has any idea what it would cost to hire one person for the Planning Department to work on this. He said that we used to have a Code Enforcement Officer here but obviously from revenue speaking that is problematic for the County. He said he was curious as to how much it would cost to hire someone. Mr. Stidham said that if we did a proactive enforcement program we would have to have a dedicated person to do that if you want it done right and get as many of them as possible. He said that the work load would be consistent unless the number of operators dropped off or we got the vast majority of them to come into compliance.

Mr. Stidham presented possible enforcement approaches that could be used. He said that the Planning Staff must receive a formal complaint in person, via telephone, or via email in order to investigate any noncomplaint rental operation. He said that sufficient evidence that a violation is occurring or has occurred must be provided by the complaint and/or identified through the investigation in order for Staff to issue a Notice of Violation (NOV). He stated that if sufficient evidence exists, an NOV would be issued and the operator would have 30 days to comply with the requirements noted in the NOV (or provide us with a good timeline for compliance) or file an appeal of the Zoning Administrator's decision to the Board of Zoning Appeals (BZA). He said that failure to do either would result in the complaint being forwarded to the Commonwealth's Attorney for legal action.

Mr. Stidham discussed the full Proactive Enforcement approach. He said that proactive enforcement would attempt to track compliance levels of all short-term residential rental activities on a regular basis using all available means and with the goal of ensuring uniform permitting and compliance county-wide. He said that the Planning Department staff time and resources would be dedicated to developing and maintaining a database of all approved short-term residential rentals and their permitted occupancy level. He stated that on a regular basis they would be comparing the database to online listings to identify.

Mr. Stidham discussed the "Soft Start" Proactive Enforcement approach. He said this involves a two-prong approach beginning with an outreach program. He stated that a fixed period would be established for rental operators to educate themselves on the new regulations and to contact Planning Department Staff to come into compliance voluntarily. He said that Planning Staff would work with economic development staff and the public information officer to publicize the new regulations in hard copy brochures and electronic formats on the County website and social media. He stated that the rental operators must come into compliance during the grace period or provide a plan of action to achieve compliance within a set time frame to avoid enforcement action. He said that the plan of action may be allowed in situations where upgrades to the operator's onsite sewage disposal system is necessary. He stated that at the end of the grace period, the full proactive enforcement program as described above would commence. Chair Ohrstrom asked Mr. Stidham if this would be a rolling soft start. He said if you started it in 2021 for all of the existing items that came in and then someone came in 2022 would they still have a year to get themselves together under the regulations or since they came in after the soft start. Mr. Stidham said he thinks the soft start is to benefit the existing rental operators. He said that if someone comes in 2022 and the new regulations have already been on the books for a year or more that person should know what the rules are. Chair Ohrstrom said that he does not disagree with the answer, he was just curious.

Mr. Stidham discussed the "Business License" approach. Mr. Stidham said that this method would apply standard application of the proposed regulations and complaint-basis enforcement, but would rely on the rental operator's business license status to determine whether they are "grandfathered" from having to comply with the new regulations. He said that the Commissioner of the Revenue's office requires a business license if you are making money from a short-term residential rental operation. He said that 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. He stated that the regulations and business license requirement would be publicized to notify operators. He said that 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 on conforming 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. He stated that rental operators would register their name and business location in the process of getting a business license. He said that would enable Planning Staff to maintain a list of all nonconforming rental operations and track their status. He stated that 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. He stated that rental operators can also be asked to provide maximum occupancy and this information can be forwarded to the Building Department or Virginia Department of Health (VDH) for their information and potential enforcement action. He said if any rental operator who chooses not to get a business license within the specified time frame would lose the opportunity to have a nonconforming status. He stated that Staff would not proactively initiate an enforcement action but could act if a formal complaint is filed. He said that Planning Staff would include any existing rental operations with a business license in the list and track them along with operators who obtain business licenses during the grace period.

Mr. Stidham stated that at the last meeting of the Commission on June 5<sup>th</sup>, Commissioner Caldwell brought up the potential for creating an exemption for hostels and calling this something different than a short-term residential rental operation. He said that you could have a situation along the Appalachian Trail where you have a rental cabin of some type that is operated either by the Park Service or a nonprofit that is an amenity to people hiking on the trail. He said that it would not necessarily be a



commercial operation nor would it be a home occupation it would be a trail amenity. He stated as we are working on these regulations it might be one of the issues we would be willing to look at as these rentals may be in conjunction with the Appalachian Trail or some other passive use element. Commissioner Lee asked if they are a nonprofit then they would not have to get a business license is that correct. Mr. Stidham said that is correct and we would need to be very careful about an exemption or a different set of rules or otherwise you would have individuals wanting to set up nonprofits so they could run their short-term residential rentals. Commissioner Bass said that they are not going to be making a whole lot of money if that happens. Vice Chair Buckley stated from a general stand point is it accurate to say Clarke County wants to be known as a destination. Commissioner Hunt said if we are assuming that is true we do not want to be known as the County that goes wild after Airbnbs or places that would allow folks to come and access these resources. Mr. Stidham said that in particular if you are going after one sector with a proactive enforcement approach you do run the risk of sending the wrong message. Chair Ohrstrom said that it strikes him that what we are really worried about is the Airbnb that Commissioner Caldwell was referring to is in an old house like his that was built in 1750, the septic system was permitted back in the 1970s. He said he could advertise it as a 1750 cabin and rent it out. He stated that we would want to make sure if he did that the building conformed to whatever safety features would be needed for people coming to stay and that the septic would be able to handle it. He asked Commissioner Caldwell if is this what she is talking about and what we are trying to address.

Commissioner Caldwell said that Commissioner Kruhm came up with another issue at the last meeting for the house by the river and she is wondering if Mr. Stidham could take those two examples and walk the Commission through how these examples would be dealt with in each of your scenarios of proactive, retroactive enforcement, soft start approach versus full on approach to enforcement. She said that she finds this whole topic incredibly difficult and there does not seem to be an easy obvious answer especially with all the pros and cons for all of the approaches. She said if we could look at these examples and see how they work with each of the approaches it might be helpful. Mr. Stidham said it is kind of interesting that our main concern is with the septic system capacity and whether the building is safe for occupancy. He said that the first one is regulated by the Health Department and the second one is regulated by the Building Department. He is not necessarily hearing any concerns that are purely related to zoning so it sounds like what we are attempting to do is use zoning as a gateway to enforce the Health Department and Building Department requirements. He said that we might feel differently if the Health Department was able to enforce it in a different way. Chair Ohrstrom said he thinks the word "willing" should replace the word "able" because they are not interested in going out and certifying septic systems. Commissioner Lee said no they are not in the business for doing that, they work on a complaint basis only. He stated that in talking with them they are not inclined to do any regulations on this because they only work on complaint basis. Commissioner Glover stated that his concern is that leveling the playing field with the B&Bs with the other businesses that have been established with business licenses. Mr. Stidham stated if we are looking at an actual zoning justification for creating the rules he thinks you have to look at the character and intensity of the use itself and decide whether it is an acceptable and compatible use for where these things are located. He said that he sensed when he was going through some of the different scenarios at last month's meeting he said the scenario if someone just wants to rent when they are on vacation and they would have to get a special use permit for a country inn may be a burden. He stated that this would be the type of thing that the Commission would have to decide with these regulations and to be comfortable if this is a compatible use in most areas. He said would the Commission want to go through a Staff approval process or do you want a more intensive oversight process for that. Commissioner Lee said it seems to him from the looks of it we are not collecting a lot of revenue from the people that have not gotten a business license. He said he does not know if that would amount to a lot of money or not but it

seems unfair to the people that have gotten a business license and they are trying to compete with a person that has not gotten a business license. Mr. Stidham said to keep in mind that the business license is the Commissioner of the Revenue's instrument and they are responsible for enforcing against people that do not get a business license. Chair Ohrstrom stated he does not think the business licenses generate a lot of money and it would not pay for an enforcement person. Vice Chair Buckley said that they are not collecting the tax if they do not have a business license. He said that he wanted to thank Planning Commissioner Glover for bringing up the fact about leveling out the playing field. He stated that we received an email from L'Auberge Provencale Bed & Breakfast about leveling the playing field because they had to jump through all the hoops for their operation. He said that we are talking about drainfields and that is sort of a big concern. He stated that it is not so much the drainfield but if you have a 900 foot square house that is advertising sleeping fourteen and that is impossible. He said there is a house that he is familiar with that I happen to know for a fact is a four bedroom occupancy and it advertises that it sleeps sixteen and that is double their permitted occupancy. He stated that what that means is they are putting people in rooms in the basement which may or may not have egress. He said that is a huge problem and as far as zoning goes if I move into a subdivision that has pretty nice four bedroom houses why should I have to put up with a house right next door that has twenty-six people in it every weekend. Chair Ohrstrom said he agrees but we live in a very small county that does not have the revenue to have a full time enforcement officer.

Vice Chair Buckley said that he actually does not want that. He said that his wish would be complaint driven so if there is a problem we can put some teeth into it. He said he does not expect Staff to go out and look for every problem there is. He said if the people are doing it right then that is fine and he is all for them doing it and doing it right. Mr. Fincham stated that we have talked about the Health Department and the Building Department and I wanted to be clear that both of those departments have clearly stated that they are not in the Airbnb game and I do not have the ordinance in front of me but as I recall the draft ordinance would bring the Health Department in at all levels whether it is a B&B, Airbnb, Country Inn or whatever. He said that to be clear the Building Department will not be involved in the safety issues unless it is a special use permit. He said there is no trigger and they are not involved in Home Occupations just to be clear the Building Department would not have any oversight of these Airbnb's unless it went to the special use permit for a Country Inn. Chair Ohrstrom asked what would happen if under Vice Chair Buckley's scenario where there was a complaint on someplace where there was a bunch of people sleeping in the basement and they did not have an egress and did not have a smoke alarm, etc., but since there was not a special use permit the Building Department would not be able to go back and say you need to do all of this.

Mr. Stidham said that he does not have any control over the Building Department or how they go about enforcing their Building Codes so he cannot speak for them. He said if we are issuing Zoning Permits we are going to have an occupancy on them. He stated that right now as the regulations are currently written there is going to be a maximum occupancy of ten which keeps it under the Building Code threshold for requiring a use change. Chair Ohrstrom stated that at the same time as I have mentioned before there are not that many drainfields in the county that are certified for five bedrooms which would be ten people. He said that we are already creating a problem. Commissioner Caldwell said to decrease it to eight. Mr. Stidham asked Commissioner Lee if you could install an expensive alternative system to get that occupancy. Commissioner Lee said that yes you could but it would be very expensive and a lot of times with older systems they are not going to meet the current regulations. Commissioner Glover said that he understands that we are emphasizing on zoning but he does not see anything wrong with making aggressive changes to this and if the County choses to get a person to do this then I say great

but it is better to have it in a written document. Chair Ohrstrom stated that it is not up to us to implement this as we will forward it to the Board of Supervisors. Chair Ohrstrom asked if we have some business licenses. Commissioner Lee said we had nine business licenses and we had forty-one without a business license. Mr. Stidham said with taxes being remitted by Airbnb's that does not necessarily mean everyone remitting those taxes have business licenses. Commissioner Bass said what he is grappling with and he does not have an answer to is he thinks that consensus is probably complaint based right now as opposed to proactive because that is not a viable path forward. He said that retroactivity seems to be the consensus and he does not see in these workups the adjoining of those two. He said his question for Staff is how do we go about doing that. Mr. Stidham said he thinks the best model to use would be the business license approach and modify that to be applied retroactively and we would understand it is complaint basis. Chair Ohrstrom said as long as a person can file an anonymous complaint he does not see it as a big deal. Mr. Stidham said he would be remiss in expressing that in the past not necessarily on short term residential rentals if a potential violation has been brought to our attention by a Board member or Planning Commission member or some other County official and we have asked what the status is and we have not received a complaint it is not unusual for that individual to be the anonymous complainer. He asked is this the sort of business that we want to do. Commissioner Caldwell asked if she could change the subject for a little bit. She said that last month we wanted the Supervisors to get some idea about what they think about this whole system and we have two of the Supervisors sitting here right now. Chair Ohrstrom said that he knows they are having a work session about this on Monday.

Mr. Stidham said that he is doing a presentation at the Board of Supervisors July work session on Monday and he will be handing out this material but he wanted to make sure the Commission saw it first. Commissioner Bass said we hope to have a better feel for this the next time. Vice Chair Buckley said going back to what Mr. Stidham said it seems like we should have a written complaint in the file and he thought the name could simply be redacted. Mr. Stidham said that it does not necessarily need to be in writing to be anonymous, it would be in writing in terms of Mr. Fincham writing down the information he has been told without including the person's name or phone number. Vice Chair Buckley said that he thought there should be a paper trail about the complaint. Mr. Stidham said there will be a paper trail but we have the tracking of the complaint just not the name of the anonymous person.

Mr. Fincham stated on the septic issue with the ten maximum occupancy he believes one of the options was ten maximum but if it was less than ten someone was advertising or applying for a short term for a four person occupancy then you have to have the septic to. He said that he does not think it was ten across the board because if you have a six person occupancy then that is what the ordinance says you have. He stated concerning L'Auberge Provencale Bed & Breakfast they had to spend a lot of money and their biggest issue was with the Building Department and with the Fire Marshall and the reason they were involved is because it was a site plan amendment for the special use permit. Chair Ohrstrom said perhaps what we should do and this is just a suggestion is table this excellent discussion until September and Commissioner Bass can report back on what the Board of Supervisors want to do. He thinks that could be quite helpful but he does not know what everyone else wants to do. Commissioner Caldwell suggested that perhaps maybe Mr. Stidham or Mr. Fincham could work on modifying some of these options such as combining some of the best features of several of them to a combined approach and she thinks the general consensus here is that the hard proactive enforcement is probably not going to fly. She said that the

business license approach seems the best to her out of all these options but maybe we could sink some teeth into that. Chair Ohrstrom said that we could combine the business license approach with what Commissioner Bass said. Mr. Stidham said this is the first time you have had a chance to look at this and

think through it. Mr. Stidham said he thinks that the next time we meet we will have had more time to look at this and we will have had direction from the Board of Supervisors. Commissioner Bass said he has one point of clarification he would like to address. He said with respect to the making of the complaint itself you do not necessarily need evidence of violation you need that to proceed forward against them but someone could make a complaint for example an Airbnb listing is that accurate. Mr. Stidham said that someone could call in and they are complaining about an Airbnb and here is the address and then they hang up without any further information. Mr. Fincham will work with Bernie Thompson, Code Enforcement Inspector and do as much as we can as far as investigation to figure out what is going on and if we have an opportunity to contact that property owner that is probably the best way to get information. Commissioner Bass stated that he wanted to make sure that is the case with the understanding that in order to issue the notice of violation we would still need some evidence. Mr. Fincham said just for clarification the largest percentage of calls that come in are from people that are concerned with something and then I ask if they would like to lodge a complaint and the large percentage say no but those same issues come back later and say this has been going on forever and why is something not been done. Chair Ohrstrom called for a motion.

The Commission voted to continue discussion until the next Planning commission meeting on September 4, 2020.

| <b>Motion to defer discussion of Short-Term Residential Rentals for one month:</b> |                    |         |                       |
|--|--------------------|---------|-----------------------|
| Ohrstrom (Chair)   | <b>AYE</b>         | Hunt    | <b>AYE</b>            |
| Buckley (Vice-Chair)   | <b>AYE</b>         | Kreider | <b>AYE (Seconded)</b> |
| Bass   | <b>AYE</b>         | Kruhm   | <b>ABSENT</b>         |
| Caldwell   | <b>AYE (Moved)</b> | Lee     | <b>AYE</b>            |
| Dunning  | <b>AYE</b>         | Malone  | <b>AYE</b>            |
| Glover   | <b>AYE</b>         |         |                       |

**6. Resolution to Initiate Review of the 2015 Clarke County Recreation Component Plan**

Ms. Teetor said that the Recreation Component Plan and Comprehensive Plan is up for its five year review. She said that she asked Jon Turkel, who was one of the committee members and the Planning Commission liaison at the time of adoption to help with the Staff review. She asked him how he felt in terms of needed changes or any updates to the plan. She said that he did not see anything and she did not see anything but subsequent to that a couple of weeks ago we had a sub-committee meeting. She said that the committee members had some really good suggestions mainly evolving around certain components like we had some changes with the parking areas and questioning whether or not the family campgrounds should be included and some updates to the map. She said we had some really good suggestions in terms of making it more current. She stated that it really does not change policy, goals or objectives of the plan. She said that the recommendation would be to have the sub-committee meet and update the plan with those changes and adopt it. She said that what we are going for right now is the resolution. Mr. Stidham said that a Resolution to Initiate Review of the Recreation Component Plan is on page 47 of 56 of the packet. He said that the Commission has seen these resolutions in the past and this would help us meet our milestone for compliance with the State Code requirement. He said that we can move forward with this and not necessarily have to do the Comprehensive Plan update since we are just updating factual information and not the goals and objective strategies. Chair Ohrstrom called for a motion.

The Commission voted to approve the Resolution to Initiate Review of the 2015 Clarke Recreation Component Plan.

| <b>Motion to approve Resolution to Initiate Review of the 2015 Clarke County Recreation Component Plan:</b> |            |         |                       |
|---|------------|---------|-----------------------|
| Ohrstrom (Chair)  | <b>AYE</b> | Hunt    | <b>AYE</b>            |
| Buckley (Vice-Chair)  | <b>AYE</b> | Kreider | <b>AYE</b>            |
| Bass  | <b>AYE</b> | Kruhm   | <b>ABSENT</b>         |
| Caldwell  | <b>AYE</b> | Lee     | <b>AYE (Moved)</b>    |
| Dunning   | <b>AYE</b> | Malone  | <b>AYE (Seconded)</b> |
| Glover  | <b>AYE</b> |         |                       |

**7. Board/Committee Reports**

**Board of Supervisors (Matthew Bass)**

Commissioner Bass stated that the last Board meeting was on June 16, 2020 and we received the school update from Dr. Chuck Bishop and we also had a lot of discussion and questioning on how the schools will move forward in the fall. He said that the short answer is that it is still up in the air. He said that the School Board has a work session meeting coming up on Monday and hopefully there will be more clarification on this. He said that this is a large concern for a good number of our county residents. He said that we received updates from VDOT and information on what is going on with Route 9 and that has not hit peak yet because of the COVID situation. He said that we will have to wait and see how that develops. He said that Sheriff Roper and his officers are doing a great job. He stated that we had updates on COVID and the general consensus is that we are doing okay so far and hope that everyone continues to do so. He said that we also allocated funding for a school resource officers for Boyce and D.G. Cooley.

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

Mr. Fincham said that we still have Locke’s Mill application pending. He said that the applicant reached out last week and they would like to push forward but they are going to revise their request to take off the proposed well. He said that Staff is waiting for the paper work to be submitted and then we can schedule a date for the public hearing.

**Board of Zoning Appeals (Anne Caldwell)**

Nothing to report.

**Historic Preservation Commission (Doug Kruhm)**

Chair Ohrstrom stated that Commissioner Kruhm is not hear today to report.

**Conservation Easement Authority (George Ohrstrom, II)**

Chair Ohrstrom said that we are still soliciting easements and have a few good ones in the pipelines.

**Broadband Implementation Committee (Doug Lawrence)**

Supervisor Lawrence said that the biggest change is that we put Dr. Houck, a citizen, on the committee. He said that Staff will be the new Director of Economic Development and Tourism. He said that there will be a meeting scheduled in the next couple of weeks.

Chair Ohrstrom said that he can tell us something on the side about all of this that can effect broadband. He stated that he sent an email out to everyone on his contact list on Thursday about Rappahannock Electric Cooperative. He said that they are going to have their Board of Director elections and there is a

man running that he knows, he is a former Justice Department lawyer and his name is Seth Heald. He said that one of his goals is to promote transparency on the REC Board because electronic cooperatives are actually owned by the members of the cooperative. He said that a lot of times the Board has been on the Board for thirty some years and they have very odd ways of counting votes and it is actually non-transparent and they have been getting away with this for years. He said that Mr. Heald wants to get on the Board through the election process to change that and he also wants to press the REC in to going the last mile and being a broadband carrier. He said when you get your ballot you may want to vote for him because the most efficient way to get broadband for everyone to run it through your electric wire.

Supervisor Lawrence said that one component that the Commission did not discuss on the county level was Airbnbs and the new Director of Tourism and Economic Development that we hired. He said that he thinks it was 2% transient occupancy tax and he would like to it go up to 5% to help pay for her salary and then part of her job could be for making contact with all of these people at the different tourism destinations. He said that could be a big job getting people to comply that have not been. He said that along the same lines he knows that legally the County is not responsible for making sure the place is safe just because we are taking 2% from someone coming in here. He said that if someone from Fairfax plans to spend the weekend and they are paying the County, he thinks the County has an obligation to make sure what we are offering is safe. Chair Ohrstrom stated that is one of the questions that we asked Bob Mitchell, the County Attorney a few months ago when this committee first got going and as I remember he said that although the county was collecting taxes from the Airbnb's that did not mean they assumed liability as it should fall on the home owner. Chair Ohrstrom said it was a good idea but he does not know what to do about it.

**8. Amend the meeting schedule.**

Mr. Stidham stated that on page 48 of 56 in the packet there is a motion regarding moving the November Work Session meeting from Tuesday, November 3 to Wednesday, November 4 in order to avoid conflict with the Election Day holiday.


The Commission voted to approve this motion to change the November 3, 2020 Work Session Meeting to November 4, 2020 in order to avoid conflict with the Election Day holiday.

| <b>Motion to Amend Meeting Schedule to move the November 3, 2020 Work Session to November 4, 2020:</b> |                    |         |                       |
|--|--------------------|---------|-----------------------|
| Ohrstrom (Chair)   | <b>AYE</b>         | Hunt    | <b>AYE</b>            |
| Buckley (Vice-Chair)   | <b>AYE</b>         | Kreider | <b>AYE</b>            |
| Bass   | <b>AYE</b>         | Kruhm   | <b>ABSENT</b>         |
| Caldwell   | <b>AYE</b>         | Lee     | <b>AYE (Seconded)</b> |
| Dunning  | <b>AYE</b>         | Malone  | <b>AYE</b>            |
| Glover   | <b>AYE (Moved)</b> |         |                       |

Commissioner Malone said that Ms. Bouffault left the Commission and she was wondering if we are going to do a resolution or send a letter or have we already done that. Chair Ohrstrom said that he has not done that yet. He said that we also need to do a resolution or letter for Mary Daniel and Pete Maynard which he will work on getting this done.

**ADJOURN:** Motion to adjourn meeting at 10:39 AM was adopted.

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

  
 George L. Ohrstrom, II (Chair)

  
 Debbie Bean (Administrative Assistant)