

**CLARKE COUNTY PLANNING COMMISSION
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December 3, 2021 Business Meeting**

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Clarke County Planning Commission

AGENDA – Business Meeting

Friday, December 3, 2021 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

- 1. Approval of Agenda**
- 2. Approval of Minutes**
 - A. November 3, 2021 Work Session
 - B. November 5, 2021 Business Meeting

PUBLIC HEARING

- 3. Clarke County Agricultural & Forestal District Six-Year Review**
- 4. Board/Committee Reports**
 - A. Board of Supervisors (Matthew Bass)
 - B. Board of Septic & Well Appeals (George Ohrstrom, II)
 - C. Board of Zoning Appeals (Anne Caldwell)
 - D. Historic Preservation Commission (Jeremy Camp)
 - E. Conservation Easement Authority (George Ohrstrom, II)
 - F. Broadband Implementation Committee (Brandon Stidham)

Other Business

- 5. Appointment of Planning Commission representative to the Historic Preservation Commission (HPC)**

Adjourn

UPCOMING MEETINGS:
January Work Session/Organizational Meeting Tuesday, January 4, 2022 (3:00PM) Main Meeting Room
December Business Meeting Friday, January 7, 2022 (9:00AM) Main Meeting Room



Clarke County Planning Commission

DRAFT MINUTES – Work Session

Tuesday, November 3, 2021 – 3:00PM

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)	X
Anne Caldwell (Millwood)	✓	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	✓	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	✓	Doug Lawrence (BOS alternate)	X

E – Denotes electronic participation

NOTE: George L. Ohrstrom, II participated electronically due to health issues related to the current pandemic.

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Senior Planner/Zoning Administrator), Kristina Maddox (Office Manager/Zoning Officer), Chris Boies (County Administrator)

CALL TO ORDER: By Mr. Stidham at 9:05AM.

Motion to approve the revised agenda. Mr. Stidham

Review of November 5, 2021 Business Meeting Agenda Items

Mr. Stidham began the session by reviewing the proposed short-term residential rental regulations. He said the Commissioners had talked about recommending to the Board of Supervisors that they adopt the regulations with a delayed effective date of six months to create a grace period for the existing operators to come into compliance. He said this language is not automatically included in the text amendment. He included a draft motion to discuss in preparation for Friday’s Business Meeting. He said in the event there are concerned operators and if the Commission wants to defer, they could do so by keeping the public hearing open and deferring to a future meeting or they can close the public hearing and defer. He added that a public hearing notice was placed in the Winchester Star as per state requirements and that a Facebook post was placed in order to spread the word about the public hearing.

Commissioner Caldwell asked about the timeline if the Commission chooses to defer and keep the public hearing open or if they can continue the public hearing ad infinitum and defer it every month until it reaches a good point. Mr. Stidham said he believes that has been done in the past but the public hearing was not re-advertised. He said it was added to each agenda as a continued public hearing. When asked by Commissioner Caldwell, Mr. Stidham confirmed that could be done month to month as needed. Commissioner Lee asked if the deferral would have to be done to a business meeting. Mr. Stidham replied the Commission could potentially defer to a work session but he would only recommend doing so if the Commission wanted to look at it from a concept point of view and change what they were doing.

Mr. Camp presented two minor subdivisions to the Commission, beginning with Jay and Linda Cecca (MS-21-03). He said the proposal is to subdivide a 31-acre parcel into two lots and that it would leave a residual lot consistent with 28 acres and one residential lot of three acres. He said Virginia Department of Transportation (VDOT) had a requirement that the entrance be widened. He said Staff is recommending conditional approval subject to the requirement being addressed, however, the applicant has already addressed the requirement and has resubmitted. He noted some discrepancy in the location of the right of way regarding whether it is fee simple or prescriptive. He said VDOT is claiming that it is fee simple and the surveyor certified that it is not, that it is prescriptive. He said there may or may not be some changes related to this in the future but it would not affect the subdivision and the zoning requirements. Commissioner Kreider questioned some verbiage in the staff report and asked that it be clarified. Mr. Camp confirmed that the line should have read “was reissued.”

The second presentation by Mr. Camp was John Miller and John Miller Jr, III (MS-21-04). He said the parcel is currently 268 acres and the request is to create three lots. He said one of those lots is 100 acres or more so it qualifies as a minor subdivision. He said the other two lots together are approximately three acres. He added that it is Tax Map 24-A-24 located on Lockes Mill Road in the Buckmarsh Election District. He continued that it is zoned as Agricultural-Open Space-Conservation (AOC). He said this is currently being recommended for deferral because they have yet to demonstrate that the reserves drainfield areas meet the 100% reserve capacity requirement. He said the surveyor believes this is the case but he was not sure. He said once we receive the documentation from the surveyor we are ready for approval.

Chair Ohrstrom suggested that the applicant request a deferral so there is no penalty. Mr. Camp responded that he intends to speak to them about that and was hoping the information would have come in on time for the agenda. He said the recommendation would have to be deferral at this time. Chair Ohrstrom confirmed that the client would need to ask for deferral, not for the Commission to defer the decision – ask them to defer the application until they have all the pertinent information. Mr. Camp agreed. Commissioner Caldwell asked about timing on the application to which Mr. Stidham replied that per ordinance requirements, the applicant shall provide any new or revised material no less than three business days prior to the work session in which the approval authority will be discussing the application. He confirmed that it is already passed and must be deferred. When asked what the overall plan is, Mr. Camp replied at some point they may want to do a subdivision although they have not said when. Commissioner Lee asked if there is still a question about the DURs being used for these two lots, depending on the date these houses were built. Mr. Camp replied that they have done previous work on the property in the past and all our records show five DURs existing on the property. Mr. Stidham said if it is a pre-1980 exception, we would not want them to carry the exception and a DUR. Commissioner Lee asked if we knew the dates on the building permits. Mr. Camp replied that one house was done in the 1900s and that there may have been other existing houses there at one time that were torn down and rebuilt.

Mr. Stidham said that Betsy Arnett, Chair of the Historic Preservation Commission (HPC), will present a report on their activities and also to discuss a proposed text amendment.

Mr. Camp said the County is starting its six-year renewal for the Agricultural and Forestal Districts (AFD). He said the presentation had already been reviewed by the AFD Advisory Committee and as per procedure and law is now being presented to the Planning Commission. He said it is a voluntary program

authorized by the state and local law and its intent is to benefit and promote agricultural property owners and agricultural use. He said Virginia code as well as the County code further explain the regulations. He said the County's first AFD was established in 1980 and there have been several renewals since that time the last being in 2016. He said currently there are approximately 37,000 acres in the AFD. He continued that this is separate from other maps showing 27,000 acres that we have in conservation easement. Chair Ohrstrom asked if it is the County or state regulation to prohibit boundary line adjustments within the AFD. Mr. Camp responded that it was a County-enforced regulation. Mr. Camp added that one can do a boundary line adjustment, but are prohibited from decreasing the land area that is in the AFD if he remembers correctly. He said the benefits are different than the Land Use Assessment Program and that the AFD has its own set of restrictions and benefits. He added that one of the benefits is that AFD properties automatically qualify for the land use program. He said if someone is trying to get into the Land Use Program, they have to show receipts for five years before they can get in. If someone is in an AFD they would automatically qualify. He said the citizens say they would be more interested if they did not have to refile each year. He said it is a requirement for them to demonstrate the continued annual agriculture activity.

Mr. Camp said the program has some protective abilities such as restricting adoption of regulations that unreasonably restrict farm structures and farming even though he does not believe there is intent to do so in Clarke County. He added those types of regulations may be helpful in other locations. Additionally, he said it protects against eminent domain by adding in a separate review process if the properties are in an AFD. He said the restrictions include not being allowed to withdraw from the program for six years unless there is a financial hardship or landowner death otherwise they would need to wait until the renewal process. He said if someone wishes to join the AFD program, they can do so on an annual basis. He said the most restrictive regulation is that someone could only subdivide one lot during the six-year term. He said there are some limitations on the boundary line adjustments subject to certain rules previously discussed. Rezoning the district other than the Agricultural-Open Space-Conservation (AOC) or Forestal-Open Space-Conservation (FOC) is not permitted he explained that special use permits are restricted except for livestock auction markets, small scale processing of specialty fruits and vegetables, veterinary services, animal hospitals, and breeding kennels. He said boarding kennels were removed in the last update.

Mr. Camp said while there were no new applications filed this year, he received a number of calls from people who are interested in filing next year. Additionally, he said four property owners have requested to be withdrawn from the district including JC Hardesty Family, L Seven Farms LC, Knowles Partnership, and Westwood Farm Incorporated. When asked by Chair Ohrstrom if the Hardestys are withdrawing all their land from the AFD or just a portion, Mr. Camp responded that the withdrawal includes parcels 7-A-122 and 7-A-129B.

Mr. Camp said the next steps after the Planning Commission completes their work on it is a required public hearing tentatively scheduled for December followed by a review by the Board of Supervisors, and another public hearing. He added that the term does not expire until March 2022.

Old Business Items

None

New Business Items

Capital Improvement Plan

Mr. Boies reviewed the proposed Capital Improvement Plan (CIP) with the Commission. He said in Clarke, \$1,000 and above is considered capital expenditure. He reviewed the projects that were submitted by the constitutional officers, the department heads, the school system, and the sanitary authority. He noted the broadband project that is currently being worked on and how the CIP shows the County's contribution and what is needed. He continued that Fire and Rescue has the same items as in the past, the Health and Human Services Building continues to be included. Parks and Recreation, he explained, has a number of projects most of which were included in last year's plan. The school system predominantly has projects that keep their existing buildings going and functioning, he said, so they do not have any additions. He said the Sheriff's Department has mainly equipment and vehicles and things of that nature. Regarding transportation, he commented that the Planning Commission had discussed a pedestrian bridge at Route 7 last year. He said we have applied for funds to do a study of that project and he thinks it would help the Commissioners make their decision with the comprehensive plan.

Mr. Stidham noted he had not included an action item on the agenda for Friday but can do so if the Commissioners do not have any questions and feel comfortable making a recommendation. When asked by Commissioner Caldwell to whom has the County applied the money for the study, Mr. Boies responded the Virginia Department of Intermodal Transportation and Transit which focuses on pedestrian transportation. He said the grant is up to \$50,000 with no match requirement and added that he hopes it would review the current pedestrian movements, the existing topography, the landscape, and whether or not people will use it. Mr. Boies said it will first go to the Board of Supervisors as they are the ones requesting it but that it should also be reviewed by the Planning Commission to see if it should be added to the Comprehensive Plan. He said it could potentially begin in January and last approximately four months. Commissioner Lee asked about doing the study in January as there will be less pedestrians than in the Spring. Mr. Boies responded that he has current pedestrian movement data from Virginia Department of Transportation (VDOT). He said VDOT did some traffic and pedestrian movement counts during various weekends in June on Rt. 601 and Rt. 7. Commissioner Bass said it is important to add that, regardless of the results of the study, some sort of pedestrian crossing - whether it is an overpass or not - is recommended by the Board of Supervisors. He added that the Board does not see this as a County problem and we are not necessarily interested in investing our taxpayer dollars but are seeking federal and state resources. Mr. Boies commented that the study will help with the funding application or a special appropriation from Representative Wexton who is on the Appropriations Committee. Mr. Stidham asked the Commissioners if they wanted additional time to consider this or if they felt comfortable adding it to the Business Meeting agenda. The Commissioners did not object to adding this item to the upcoming Business Meeting.

Five-Year Review Resolutions – Waterloo and Double Tollgate Area Plans

With regards to the Waterloo and Double Tollgate Area Plans, Mr. Stidham said the five-year anniversaries of the adoption dates on our component plans need to be considered as they are coming up in December. He said the Comprehensive Plan Committee reviewed the draft resolutions and are recommending that the reviews be conducted after the Comprehensive Plan update is finished. He said they also referenced five objectives in the Comprehensive Plan in doing the updates of the reviews of these component plans. He said objectives 9-13 are as they are currently written in the draft that the Comprehensive Planning Committee is reviewing. He said we have been looking at extending public

water and sewer to the Double Tollgate Area which is a major project so they have incorporated two additional recommendations of looking at the impact. He said current deferred growth status are the main issues to look at. He said the Comprehensive Plan Committee is hoping the Planning Commission takes action on these two resolutions. He said he has it written up for December, however, if the Commission feels comfortable putting them on the November 5, 2021 agenda, he can add those as well. The Commissioners did not object to adding these items to the Business Meeting agenda.

ADJOURN: The November 3 Planning Commission Work Session adjourned by consensus at 3:41PM.

George L. Ohrstrom, II (Chair)

Kristina Maddox (Clerk)



Clarke County Planning Commission

DRAFT MINUTES – Business Meeting

Friday, November 5, 2021 – 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)	X
Anne Caldwell (Millwood)	✓	Frank Lee (Berryville)	✓
Buster Dunning (White Post)	✓	Gwendolyn Malone (Berryville)	✓
Robert Glover (Millwood)	✓	Doug Lawrence (BOS alternate)	X

E – Denotes electronic participation

NOTE: George L. Ohrstrom, II participated electronically due to health issues related to the current pandemic.

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Senior Planner/Zoning Administrator), Kristina Maddox (Office Manager/Zoning Officer), Chris Boies (County Administrator)

CALL TO ORDER: By Chair Ohrstrom at 9:05AM.

1. Approval of Agenda

Mr. Stidham explained the revised agenda contains action items for the draft Capital Improvement Plan and the two five-year review resolutions for the Waterloo and Double Tollgate Area Plans as requested by the Commission.

The Commission voted 10-0-1 to approve the November 5, 2021 amended meeting agenda as presented by Staff.

Motion to approve the November 5, 2021 Business Meeting amended agenda:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE (Moved)
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

2. Approval of Minutes

Regarding Work Session meeting minutes for September 28, 2021, Commissioner Caldwell remarked that something got left out of the second paragraph on page 4 of 6 where it reads, “Regarding other changes, Mr. Stidham said language was added to clarify that rental uses are not allowed to be conducted in structures other than a single-family dwelling, minor dwelling or tenant house, such as an RV, yurt, tent, tree house or other similar structures.” Mr. Stidham suggested ending the sentence at “tenant house” and

start the next sentence with, “Structures that would not be allowed for rental use would include RV, yurt, tent, treehouse.” Commissioner Caldwell agreed to the changes. She also asked for the word “bug” to be changed to “but” on page 8 of 6 on the second to last paragraph.

The Commission voted 9-1-1 to approve the September 28, 2021 Work Session meeting minutes as corrected.

Motion to approve the September 28, 2021 Work Session Meeting minutes as corrected:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	ABSTAINED
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE (Moved)	Lee	AYE (Seconded)
Dunning	AYE	Malone	AYE
Glover	AYE		

Regarding the October 1, 2021 Business Meeting minutes, Commissioner Caldwell asked that on page 13, the second paragraph from the bottom up to change “Tuesday” to “Friday”. She also had a question on the location for the tower where the address is listed at Shepherds Mill Rd but it seemed to be more on Route 7. Mr. Stidham said we will listen to the audio and if that is what was said, we will leave it as is.

The Commission voted 9-1-1 (Commissioner Kreider abstained) to approve the October 1, 2021 Business Meeting minutes as corrected.

Motion to approve the October 1, 2021 Business Meeting meeting minutes as corrected:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	ABSTAINED
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE (Moved)
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

PUBLIC HEARING

Chair Ohrstrom announced that in the last two-to-three years that the Planning Commission has been working on this, the philosophy has been focused on protecting the County’s groundwater and certainly not to stop people from using their properties as AirB&Bs as he understands it is a source of income for people. He also said that because he is not present in the room, he was going to elect Vice Chair Buckley to run the Public Hearing.

Mr Stidham reviewed a presentation on the following:

3. TA-21-03, Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn.

Mr. Stidham reviewed the text amendment to amend Section 5.2B (Residential Uses) and Section 5.2C (Business Uses) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). He said the purpose is to establish a new short-term residential rental use in the Agricultural-Open Space-Conservation (AOC) and Forestal-Open-Space Conservation (FOC) Districts, and to amend the use regulations for home occupation bed and breakfast uses and country inns for consistency purposes across rental uses.

Mr. Stidham said for the benefit of the audience, he would review the rental uses as they are currently addressed in the Zoning Ordinance. He stated a short-term residential rental is the rental of a portion of a dwelling, which could be one or more rooms, or for rental of the entire dwelling to a single paying customer for a period of less than 30 days. He said they considered a single paying customer is one person or more than one person renting together as a group. He said we have not regulated this in the Zoning Ordinance nor do we have regulations for this use in place and as such there is no zoning approval or requirement for this use. He said when there is a situation where a proprietor wants to rent to more than one single paying customer, they would be considered a home occupation bed and breakfast. This is a home occupation, he continued, where lodging and meals are provided for compensation up to five transient guests with a maximum of three guest rooms. He said this would allow rentals to more than one paying customer up to this maximum occupancy limitation and that owner occupancy during rental periods is required since this is a home occupation and it requires approval of the home occupation zoning permit.

Mr. Stidham reviewed the country inn definition which is a business use that offers for compensation to the public, guestrooms for transitory lodging, or sleeping accommodations for a period not to exceed fourteen consecutive days. He stated it is limited to a maximum of fifteen guestrooms and you can have a meal service and public assembly activities as accessory use is subject to use regulations. He said this is a business use that requires approval of a special use permit and the site development plan by the Board of Supervisors following review by the Planning Commission and required public hearings. He said rental uses in the AOC and FOC districts that exceed the scope of both the short-term residential rental and a home occupation bed and breakfast would then have to be reviewed as a country inn.

Mr. Stidham said this was developed in response to concerns about the absence of the regulations for short-term rentals via websites such as Airbnb and VRBO. He said issues that were identified during this process or addressing any potential adverse impacts of unregulated short-term residential rental activities on the onsite sewage disposal systems that they have, and whether this adversely impacts groundwater quality. Additionally, he stated ensuring compliance with building code requirements, creating regulations that establish a level playing field for all commercial lodging establishments and developing new regulations within the existing ordinance framework. He said the text amendment would create a new short-term residential rental use and added that this would be a defined use with its own set of use regulations in the Zoning Ordinance. He continued that this would be a by right use which means that it would be approved administratively by the Zoning Administrator subject to compliance with the technical regulations that would be adopted into the Zoning Ordinance. He added that the use would only be allowed on lots in the AOC and FOC zoning districts.

Mr. Stidham said that if there are rental activities that are proposed in Rural Residential District, it would be permissible as a home occupation bed and breakfast use. He said there will be a limitation of a maximum occupancy of ten persons per lot for short term residential rental use which will include transient guests and residents of the lot. Rental activities, he said, would be able to be conducted in any approved single-family dwelling, minor dwelling or tenant house on the lot subject to maximum occupancy limitation. He said those accessory structures would have to have been approved as a minor dwelling or tenant house that can be used for residential purposes and there would not be a requirement that the property owner be on site during rental periods.

Mr. Stidham noted that a zoning permit issued by the Zoning Administrator would be required for approval of short-term residential rental, and prerequisites to the zoning permit approval would include confirmation from the Virginia Department of Health (VDH) that the existing onsite sewage disposal system will support maximum occupancy that is proposed including both residents and transient guests. He said confirmation from the Building Department that the use will comply with the building code and issuance of a business license by the County's Commissioner of the Revenue is also required.

Mr. Stidham reviewed the overall process as it would be established starting with the applicant coming into the office to file a zoning permit application with the Zoning Administrator. He said the application itself would state the proposed maximum occupancy during rental periods including both residents and guests of the lot and any information that is available on the onsite sewage disposal system. He continued that the Zoning Administrator would review this application for compliance with the short-term residential rental regulations and would forward the application to VDH. He said VDH would then review the proposed maximum occupancy against what they have on file for the onsite sewage disposal system for that property. As we learned through this review process, he said, VDH may have significant amount of records on the systems depending when that onsite sewage disposal system was constructed. For example, he explained, systems that were installed twenty to thirty years ago may have information that may not comply with current regulations and older houses may not have information on file. He said depending on what information is available in VDH's records, VDH staff will confirm whether they are able to determine conformance of the approved maximum capacity. He said if information is not available, or if the information shows that the proposed maximum occupancy will not conform to the approved system capacity, the Zoning Administrator will not be able to approve the zoning permit. He said in this case, the applicant will have to work directly with VDH to identify system capacity, which may mean that the system would have to be upgraded to increase its capacity, or the applicant will have to reduce the proposed maximum occupancy level to a level that can be confirmed by the VDH. He continued that the Zoning Administrator will also send the application to the Building Department for building code compliance review. He confirmed that confirmation from both departments is required in order for the Zoning Administrator to approve the permit in addition to a County business license for the life of the rental use. Once approved, he said, the applicant must maintain the onsite sewage disposal system in accordance with VDH regulations, maintain their business license and be in good standing, and notify the Zoning Administrator if there are any future changes to the rental use, maximum occupancy, or any approved accessory activities.

Mr. Stidham reviewed a list of prohibited activities with the text amendment to include provision of meals to transient renters. He said if an operator wants to offer meal service they need to be a home occupation bed and breakfast. He said commercial public assembly activities such as special events, live music, weddings, meetings, conferences and reunions are prohibited but they might be approved or approvable with a special use permit and a site plan for a minor commercial public assembly use. He said in the case

of an agritourism activity, a zoning permit could be issued for that or a special event permit through County Administration and the Board of Supervisors. He reiterated that in order to do these activities, the zoning permit for short-term rental would not permit these uses automatically and that an operator would need to apply for zoning approval.

Mr. Stidham said other gatherings on a lot of persons that are not transient renters, or residents of the single-family dwelling, minor dwelling, or tenant house on the lot. He explained this rule is necessary so we can ensure there is compliance with the maximum occupancy limits during rental periods.

Mr. Stidham reviewed changes to the home occupation bed and breakfast use to standardize regulations across all uses. He said for home occupation bed and breakfasts, the maximum occupancy would increase from three guest rooms and five transient guests to five bedrooms and ten occupants including transient guests and residents on the lot. He stated that we would also add the requirement of the review of the onsite sewage disposal system and review by the Building Department and issuance of business license all as prerequisites to approval in the home occupation bed and breakfast zoning permit that would standardize it with the proposed short-term rental regulations. He said maximum occupancy may be further limited by the sewage disposal system capacity or building code requirements. He reiterated that language will be added that says rentals can be permitted in a single-family dwelling or one of the two accessory dwelling options.

Regarding changes to the country inn use, Mr. Stidham said, we would increase the maximum occupancy period from fourteen consecutive days to less than thirty consecutive days that would standardize it across all three uses. He added there would be no change to the maximum of fifteen rooms but we would have language that could further limit this based on the approval of the onsite sewage disposal permit and the maximum occupancy that is allowed by the building.

As for application and enforcement of these rules, he said, if the rules are adopted by the Board of Supervisors, proposed short-term residential regulations could be applied to existing operators who do not have written zoning approval from the County or who have an approved business license application that notes language such as no zoning approval required, or similar language that was written by the Planning Department Staff at the time of the review. He said the proposed regulations, if adopted, would be applied to existing operators subject to the department's complaint-basis enforcement process which means we would not implement proactive enforcement against existing operators. He said we would like to encourage voluntary compliance with the new rules and as such we are recommending to the Commission that they consider including in their recommendation to the Board of Supervisors that regulations be adopted with a delayed effective date of six months. He continued that this delay would also allow Staff time to work with existing operators without having to consider them to be in a state of non-compliance at the initial onset of the regulations being adopted. He said Staff does not have any outstanding concerns with the adoption of the text amendment.

Vice Chair Buckley opened the Public Hearing and asked speakers to state their name and address at the podium.

Jean Hess (393 Evergreen Lane): Ms. Hess said she has lived in the Shenandoah Retreat for 49 years. Her concerns, she commented, are regarding the rural residential use of vacation rentals by owners. She said there are one or two that are currently in operation. She stated the Retreat does not have a homeowners association as they cannot establish one without 80% of the property owner's approval which she said

would be impossible. Instead, she noted, they are operating under a Board of Directors of the Shenandoah Retreat Land Corporation. She continued that there are twenty-two units that were former motel units which have been redesigned and one in particular is now a two-bedroom cabin. She said it is operating well and they have had no issues, however, as people change hands she believes it will create a problem. She said she lives in the middle of twelve of the units and is worried about who plans to monitor their compliance. She said she does not want the Planning Commission to depend on the residents to complain as it may create issues within the community. She said she would like the Commission to consider the retreat and the rural residential residents. She said Shenandoah Retreat is the largest subdivision in Clarke County with over 250 homes and 17 miles of roads and it is her hope that they are paid attention to.

Terry Dunphy (18777 Blue Ridge Mountain Road): Ms. Dunphy said she owns a 50-acre historic B&B property on Rt. 601. She said she moved there 12 years ago and raised her children there. She said she loves renovating historic structures to rent them out and owns and renovates historic buildings in Berryville and rents them out on a long-term basis. She said Airbnbs are good for Clarke County because they do not leave a footprint, they use existing homes, and it brings tourism to Clarke County to enjoy the beauty, visit restaurants, visit Berryville, and walk the Appalachian Trail. She added that Airbnbs have been great during the COVID pandemic and have allowed continued tourism in Clarke County as people can gather with their families, children, and pets yet not interact with others staying on the same property.

Ms. Dunphy said the revenue that she can make doing short-term rentals allows her to maintain her property on the mountain and that she would not otherwise be able to do that. She said she spends approximately \$30,000 a year in mowing, paying taxes, fixing stone walls, hiring people to help her, and maintaining equipment. She said it costs a lot to maintain a historic property. She stated that she would have to sell it if she could not generate revenue and she does not wish to do that. She said she has three DURs and a lot of open space and she does not want to sell or develop them. She said she wants to preserve the open space and continue to maintain the historic structure by bringing in this revenue.

Ms. Dunphy said she sees the enforcement mechanism against unruly visitors or renters to be the same as they would be for any long-term rental. She said if neighbors call in a complaint, she assumes that she would get a citation as the owner and then have to pay the citation. She said she tells her tenants they cannot make noise outside after 10:00PM, they are not allowed to have parties, or have events.

Ms. Dunphy said she thinks the new regulations are great. She wanted to know what she would consider her rental property and asked VDH to come look at the property who told her that her septic was over capacity. She said she has room for twelve people but only rents to eight. She said she welcomes a new regulation that is more transparent with a roadmap that tells her exactly what she needs to do. She said she thinks short-term rentals are consistent with Clarke County's goals in that they are allowed to maintain open-space, they are allowed to preserve historic structures, and they bring tourism dollars without making an impact. She said she thinks that is what Clarke County is all about and she hopes the new regulation is approved.

Bill Waite (88 Forest Ridge Lane): Mr. Waite said regarding short-term rentals, there are economic advantages to the community as well as to the individual sustaining historic properties and that is an important feature for Clarke County. He said he supports the amendments. He said he thinks each Airbnb owner that he is aware of is dedicated to making sure they are in compliance to septic as they want to maintain their building. He said they have contracts with Airbnb that are against parties. He said it allows people to sustain historic houses that would be torn down or fall apart and then turned into subdivision by

using the available DURs but it is all tied into how they manage the property and pay for it. He said he does not want the houses damaged so septic is important as are building codes. He said they have cameras so they know how many people are outside coming in to make sure that he does have the right number of tenants. He said he hopes the Planning Commission and Board of Supervisors will endorse the regulations.

Carla Giacomangeli (105 Bishop Meade Road): Ms. Giacomangeli said she has a property in Millwood and that she wishes to reiterate what the other B&B owners have already said. She said the income is important as it takes a lot to maintain a 100-year-old historic home on top of thirty-six acres. She said she wants to keep the open space and keep the septic maintained and healthy. She said she supports what the Planning Commission doing as it benefits the County.

Tressa Reuling (494 Llewellyn Lane): Ms. Reuling runs an Airbnb out of the main house on her 350 acres. She said her concerns are not about running the Airbnb but more so what the Planning Commission is doing as there may be some unintended consequences. She said they have nine DURs and could build nine homes but they do not wish to do so. She said she believes there are downsides, however, to overregulating as it would be interfering with people's ability to maintain older properties and bigger farms. She said anyone who buys their farm in the near future is probably going to have to build more homes or to sustain the farm standards as they have done. She said her big concern is that we do not want to damage one of the few income producing opportunities that the residents of the county have as they have plenty of space, a lot of acreage, and they can have ten people without impacting the septic or water supply. She said she thinks it should be treaded on very carefully. She said not everyone can afford to maintain a normal kind of house let alone some of the bigger homes that we have and that again, people need to tread carefully.

Mark Taylor (Calmes Neck Estates): Mr. Taylor said there is a difference between a freestanding home without covenants and without shared property such a common areas and associations like Calmes Neck where you have a road that is owned by the association. He said there is a recreation area at the back of the property for a swimming pool. He said Calmes Neck Estates have a property owners association that prohibits short-term transient visitors from its pool and recreation area due to past problems. He said the problems are parties and more people renting than the home will accommodate. He said he is across the river from Spout Run Falls in Millwood where there are homeowners on the other side that do not want trespassing but inevitably there are people coming across from Calmes Neck Property Association side to the other. He said he wants to support the regulation because he thinks the regulation will help define and limit the uses in a subdivision because many of the homes ordinarily would not fit this criteria. He asked the Commission to take into consideration two types of Airbnb. He stated it becomes problematic when you put an Airbnb into a subdivision with covenants and mature property. Additionally, he stated that outside the state purview is Americans with Disability Act (ADA). He asked if it triggers ADA if you have paying clients of a resident coming to an association pool. He said, if so, do 59 owners have to share the cost of bringing that pool up to the ADA standards when they would not otherwise be covered. He added there are tax implications as the association will file an 1120-H tax return which provides that assessment income is not revenue for purposes of the Internal Revenue Code. He said that only applies there are no more than 15% of the units in that association serve as an Airbnb. He said once those points are triggered, you lose the tax status and it change the entire taxation situation for an association. He said there are multiple layers to consider.

Chair Ohstrom thanked the speakers for bringing their thoughts to the Commission and remarked that they were all interesting points to consider. When asked by Chair Ohstrom, there were no questions from the

Commissioners. Commissioner Lee confirmed that he was comfortable with passing this along to the Board of Supervisors when asked by Chair Ohrstrom. Chair Ohrstrom reiterated the purpose and focus is to protect the groundwater and safety of people that are coming to enjoy Clarke County. He then asked the Commission to make a motion.

The Commissioners voted 10-0-1 to recommend adoption for text amendment TA-21-03 Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn to the Board of Supervisors. Commissioner Kreider added that this motion includes the recommendation to the Board to consider delaying the effective date of this text amendment to six months in order to grant a grace period for existing operators to come into compliance with the proposed regulations.

Move to recommend adoption for TA-21-03 Short-Term Residential Rental, Home Occupation Bed and Breakfast, and Country Inn to the Board of Supervisors and to also include the recommendation to the Board to consider delaying the effective date to six months to grant a grace period for existing operators to be able to come into compliance with the proposed regulations:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE (Moved)
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE (Seconded)
Dunning	AYE	Malone	AYE
Glover	AYE		

MINOR SUBDIVISION REVIEW

4. MS-21-03, Jay D. & Linda Lee Cecca.

Mr. Camp presented the request of approval for a two-lot minor subdivision for the property identified as Tax Map #30-A-30B, located on the south side of Millwood Road (Rt. 723) between Bishop Meade Road (Rt. 255) and Thornton Road (Rt. 625), White Post Election District, zoned Agricultural-Open Space-Conservation (AOC). He noted there was a discrepancy between the surveyor and Virginia Department of Transportation (VDOT) as to the nature of the existing of the state road and whether it is prescriptive or fee simple. He said that as it would not impact the zoning requirements, Staff recommends approval of the application.

The Commission voted 10-0-1 to approve MS-21-03 (Tax Map 30-A-30B).

Motion to approve MS-21-03 (Tax Map 30-A-30B):			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE (Seconded)	Kreider	AYE (Moved)
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE
Dunning	AYE	Malone	AYE
Glover	AYE		

5. MS-21-04, John U. Miller, Jr. and John U. Miller, III.

Mr. Camp presented the request for approval of a two-lot minor subdivision with a residual lot of 100 acres or more for the property identified as Tax Map #24-A-24, located on the north side of Lockes Mill Road (Rt. 621) between Chilly Hollow Road (Rt. 621) and Parshall Road (Rt. 608), Buckmarsh Election District, zoned Agricultural-Open Space-Conservation (AOC). He said we received correspondence from the applicant and surveyor that they wanted to defer the application. He said the surveyor believes the 100% reserve area requirement for the two residential lots is met but he does not have the documentation verification nor has it noted on the plat. He said Staff is recommending deferral of the application. Commissioner Lee said it seems the only item lacking on this is the delineation of the 100% reserve and asked if we could give this conditional approval at this point. Mr. Camp replied that as long as a surveyor could give us the guarantee that it is verified that there is 100% reserve that it would be consistent with our number one policy on conditional approval. Commissioner Lee said in speaking with a surveyor there is a 100% reserve area on both lots that it was not delineated and in checking with VDH there is 100% reserve. He said he would move to give a conditional approval with regard to having the surveyor submit a plat and the delineation of the final percent reserve showing. Chair Ohrstrom confirmed with Staff that it did meet the requirements with conditional approval that was put into place last year. Staff confirmed.

The Commission voted 10-0-1 to approve the request conditioned on the surveyor submitting a plat showing the delineation of the 100% percent reserve areas.

Move to approve the request conditioned on the surveyor submitting a plat showing the delineation of the 100% percent reserve areas:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE (Seconded)
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE (Moved)
Dunning	AYE	Malone	AYE
Glover	AYE		

APPEARANCE

6. Presentation of Historic Preservation Commission (HPC) Report, Betsy Arnett (Chair)

Betsy Arnett (HPC Chair) gave a presentation on the HPC’s recent activities and said she hopes to continue doing so on an annual basis going forward. She said the mission of the HPC is to act and serve as the architectural review board for properties in the two local historic districts. She said they are also charged with developing design guidelines for those districts as well as issuing certificates of appropriateness. She said when property owners want to make proposed changes, they advise the Planning Commission on proposed developments within local historic districts at the Commission’s request. She said the bulk of the work done by the HPC is public information and educational activities and making sure the residents are aware of the historic resources in the County and hopefully to encourage the preservation of the properties. She said there are nine state and national historic districts and twenty individually listed properties on the National Register of Historic Places. She said to clarify what this is, it is an honorary designation and has no regulatory restrictions on property owners for what they can and cannot do with their property. She said, however, it does provide a few important benefits including protection to property

owners from adverse actions that would adversely impact their historic properties. She said another benefit is they are eligible for federal and state historic rehabilitation tax credits.

Additionally, she said Clarke County has two national historic landmarks includes Greenway Court, which is the home of Thomas Lord Fairfax the sixth Earl of Cameron. The second, she stated, is Saratoga which is Daniel Morgan's home outside of Boyce and Millwood. She said Clarke County also has three local historic districts, two of which are overseen by the HPC – the White Post Historic District and the Millwood Commercial District. She said the HPC reviews applications by property owners who want to make alterations to properties located in the two County Historic Districts to include renovations, alterations, as well as new construction and demolitions. She said they have established design criteria for each district and approval is based on those criteria. She said their goal is to get them to approval and to work with them to figure out how they can reach a resolution where everyone is content. She said in order to be considered a certified local government (CLG) we have to have key elements of a sound historic preservation program in place such as having an HPC or Architectural Review Board. She said once designated, they are eligible for matching grant monies. She said since 1992 when the HPC was formed, we have received twenty-one grants totaling over \$200,000 that require matching funds. The grant funded projects have included preparing nominations for seven of our nine National Register historic districts, logical assessments, and historic property surveys. She said the grant project that they are working on now is an architectural survey book of the County that we are hoping to get published next year. Other grants include money from the General Assembly for emergency repairs on Greenway Court, Hurricane Sandy recovery grant from the DOI, African American civil rights grants for the restoration of the Josephine school, and the American Battlefields protection program. She said they have also received over \$100,000 in non CLG grants. She stated the HPC has held an annual Preservation Award luncheon since 2000 and has handed out over 100 certificates and lifetime achievement awards to citizens who have made efforts to preserve historic homes or buildings.

She said as a result of their demolition by neglect study, they are reaching out to property owners who the HPC has identified as historic resources and are informing them of how they can preserve their properties and how the HPC can be used as a resource. She said they have also been working on some proposed Zoning Ordinance amendments criteria for approving demolitions and historic buildings.

Lastly, she said, they worked on historic highway markers for all of the rural historic districts except for Bears Den and the Chapel District which they hope to explore the possibility of installing in the future.

Commissioner Bass asked if their demolition by neglect project includes any of the properties on Josephine Street that the town is considering exercising their light nuisance. Ms. Arnett confirmed that yes, there are approximately seventy properties at risk total and that six are located on Josephine Street. She said they recognize that by the time these buildings make it to the list, they are usually past saving but they are hopeful that by identifying them that some can be restored. Commissioner Bass said he would like to involve Ms. Arnett in a meeting with stakeholders and residents to talk about ideas to try and preserve the homes. When asked by Commissioner Malone, Ms. Arnett said the HPC meets every other month. Commissioner Glover asked Ms. Arnett how long she had been on the HPC to which she replied ten years, six or seven of which she has been Chair.

SET PUBLIC HEARING

7. Clarke County Agricultural & Forestal District Six-Year Review

Mr. Camp said the Agricultural and Forestal District (AFD) is a voluntary program authorized by state local codes and is intended to benefit agricultural activities. He said it was last updated in March of 2016 and every six years our ordinance requires it to be updated. He said it can be terminated, modified, or renewed for another six year term. He continued that since 1980, this has been done several times. He said that there is about 37,000 acres in the Agricultural and Forestal District (AFD). Chair Ohrstrom confirmed that a lot of the acreage within that 37,000 is also in Conservation Easement. Mr. Camp stated there are benefits and also restrictions associated with the program. He said if one joins the program, they are in the program for six years unless there is a financial hardship or death. He said the benefit is primarily that you gain automatic qualifications in the land use program. He said if someone is trying to quickly establish an agricultural use in the County, it can lower their taxes. He said there are also protections against eminent domain and as well as any local regulations that restrict agricultural uses. He said restrictions include that someone can only subdivide one lot within that six year period. He said there are also some limitations on boundary line adjustments. He said while they can be done, they are limited if someone is trying to reduce the area within the AFD. He added that one cannot turn the property into something that is not consistent with agriculture nor establish commercial type of special use permits or to other restrictions. He said applications are received on an annual basis but that no new applications have been received for this renewal process. He stated that while many citizens are interested in the program, they are not ready to apply. He also said there are some general qualification requirements to be in the AFD including a certain minimum acreage as well as you have to score a certain number of points on the scoring system they have in place. He added there have been a few requests from citizens to be removed from the program. He reiterated the purpose is to recommend to set the public hearing for December and then offer any recommendations to the Board of Supervisors. Commissioner Bass asked why people would want out of the program. Mr. Camp replied that they possibly have intent to subdivide the property.

The Commission voted 10-0-1 to approve adoption of the Agricultural & Forestal District Six-Year Review as presented to the Board of Supervisors.

Motion to approve adoption of the Agricultural & Forestal District Six-Year Review as presented:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE (Seconded)	Kreider	AYE
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE (Moved)	Lee	AYE
Dunning	AYE	Malone	AYE
Glover	AYE		

8. Clarke County Agricultural & Forestal District Six-Year Review

Board of Supervisors (Matthew Bass)

Commissioner Bass said the Board took action to repeal dance halls. He said they set public hearing on the cell tower. He added they approved the study of the possible pedestrian crossing at the mountain said the

Board recognizes that it is a problem affecting our County but we are not interested in investing our tax dollars into solving that problem as we feel that it is more appropriately solved by a combination of federal and state funds.

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

Nothing to report

Board of Zoning Appeals (Anne Caldwell)

Nothing to report

Historic Preservation Commission (Jeremy Camp)

Chair Ohrstrom thanked Ms. Arnett for her HPC presentation.

Conservation Easement Authority (George L. Ohrstrom, II)

Chair Ohrstrom said he did not think Smithfield would close this year unfortunately but they continue to work on it.

Broadband Implementation Committee (Brandon Stidham)

Mr. Stidham said there are no meetings scheduled until after the end of the year on Wednesday, January 12th.

Other Business

9. Draft Capital Improvement Plan for Clarke County (2022-2027)

Mr. Stidham said there were draft motions in the packets to be considered. He said the Capital Improvement Plan (CIP) was reviewed at the Work Session and that the Commissioners indicated that they were interested in taking action today. He said there was a motion to recommend adoption which also includes Staff’s recommendation regarding the pedestrian bridge project over Route 7. He said he also has a motion to defer if the Commissioners have any other issues.

The Commission voted 10-0-1 to recommend adoption of the draft Capital Improvement Plan for Clarke County 2022-2027 to the Board of Supervisors subject to Staff’s recommendation regarding the proposed project to construct a pedestrian bridge over Route 7 as noted in the October 27, 2021 staff memo.

Motion to recommend adoption of the draft Capital Improvement Plan for Clarke County 2022-2027 to the Board of Supervisors subject to Staff’s recommendation regarding the proposed project to construct a pedestrian bridge over Route 7, as noted in the October 27, 2021 staff memo.			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE (Seconded)
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE (Moved)	Lee	AYE
Dunning	AYE	Malone	AYE
Glover	AYE		

10. Five-Year Review Resolution, Waterloo Area Plan

Mr. Stidham said there is a revised copy of the resolution in yellow. He said the only change made to this particular one is the changed adoption date from December to today’s agenda for consideration. When asked by Commissioner Caldwell if the entire motion needed to be read aloud, Mr Stidham replied no.

The Commission voted 10-0-1 to initiate the review of the 2016 Waterloo Area Plan.

Motion to resolve to initiate the review of the 2016 Waterloo Area Plan			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE (Moved)	Kreider	AYE
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE (Seconded)	Lee	AYE
Dunning	AYE	Malone	AYE
Glover	AYE		

11. Five-Year Review Resolution, Double Tollgate Area Plan

The Commission voted 10-0-1 to initiate the review of the 2016 Double Tollgate Area Plan.

Motion to resolve to initiate the review of the 2016 Double Tollgate Area Plan:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE (Moved)	Kreider	AYE
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

Adjourn

The Commission voted 10-0-1 to adjourn the November 5, 2021 Planning Commission Business Meeting at 10:33AM.

Motion to adjourn the November 5, 2021 Planning Commission Business Meeting at 10:33AM:			
Ohrstrom (Chair)	AYE	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE (Seconded)
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE (Moved)
Dunning	AYE	Malone	AYE
Glover	AYE		

George L. Ohrstrom, II (Chair)

Kristina Maddox (Clerk)



Clarke County Planning Department
101 Chalmers Court, Suite B
Berryville, Virginia 22611
(540) 955-5132

TO: Planning Commission

FROM: Jeremy F. Camp, Senior Planner / Zoning Administrator

SUBJECT: PUBLIC HEARING
Agricultural & Forestal District (AFD) 6-Year Review

DATE: November 22, 2021

The Clarke County Agricultural & Forestal District (AFD) is a voluntary program authorized by state and local law that promotes agriculture. Property owners that apply and qualify for membership to the program receive certain benefits and restrictions during the district term. The district term in Clarke County is 6 years. Additional information about the AFD is provided in the attached information flyer.

In accordance with certain procedural requirements, the AFD can be continued for an additional 6 years if authorized by the Board of Supervisors prior to the expiration of the district. As part of the renewal process, the district is reviewed by the Agricultural & Forestal District Advisory Committee and the Planning Commission. During this renewal process, property owners may elect to withdraw from the district, or may apply to be added to the district.

On October 27, 2021, the Clarke County Agricultural & Forestal District Advisory Committee approved a motion to recommend renewal of Clarke County Agricultural and Forestal District for a period of 6 years with no changes except for the removal of the parcels referenced below. These parcels were requested by the property owners for removal.

- 27-A-18 Knowles Partnership LC
- 27-A-6 L Seven Farm, LC
- 27-A-7 “
- 27-A-8 “
- 27-A-8B “
- 27-A-8C “
- 13-A-70 Westwood Farm, Incorporated
- 13-A-58 “
- 13-3-1 “
- 13-3-3 “
- 7-A-122 JC Hardesty Family, LLC
- 7-A-129B “

During the advisory committee’s review there were three meetings held. Notices were sent to property owners within the AFD, as well as property owners that were in the land use tax program.

Pursuant to Chapter 48 of the Code of Clarke County, and Chapter 43 of the Code of Virginia, and in addition to the advisory committee, the Planning Commission has the responsibility of reviewing the Agricultural & Forestal District (AFD) during the 6-year review process. Staff will provide a presentation of the AFD during the November Planning Commission meeting to begin the review process. Concluding the Planning Commission's review of the AFD, a recommendation for termination, modification or continuation can be provided to the Board of Supervisors.

A public hearing is scheduled for the December 3, 2021 Planning Commission Business Meeting.

After consideration of all public comments during the scheduled public hearing, Staff advises that the Planning Commission provide the Board of Supervisors with a recommendation to review the Clarke County Agricultural & Forestal District for a new 6-year period. No changes are proposed to the district with the exception of the removal of the properties requested by property owners, as listed above.

Attachment: Information Flyer on the Clarke County Agricultural & Forestal District

CLARKE COUNTY

Agricultural and Forestal District (AFD) Program Information Flyer



WHAT IS THE AFD?

The Agricultural and Forestal District (AFD) is a voluntary program that places benefits and restrictions on land. The intent of the AFD is to protect the rural character of the community by preserving agricultural, forestal, and open space land and by providing safeguards against the adoption of local ordinances that unreasonably restrict farm structures, farming, or forestry practices unless the restrictions are directly related to health, safety, and welfare. The District was established in 1980 for a six-year term that has been renewed several times, most recently in 2016. The County is currently undergoing a renewal review of the District and is inviting landowners to apply to add new land to the District. County landowners to date have enrolled approximately 37,051 acres in the AFD program.

The AFD program provides certain benefits to landowners including automatic qualification for the Land Use Assessment Program. For landowners already in Land Use, participation in the AFD program ensures that land use valuation will continue for the District term even if the Land Use Assessment Program is discontinued. District membership also offers special protections against eminent domain actions. Acquisition of land for power lines, roadways, and other infrastructure within a District is subject to a special public review process. Also, the expenditure of public funds for non-farm related purposes in a District is subject to a special review process.

FREQUENTLY ASKED QUESTIONS

Who can join the Agricultural and Forestal District? Any landowner in the Agricultural Open Space Conservation (AOC) Zoning District (most properties west of the Shenandoah River) who has either 5 acres of unimproved land or 6 acres of land that contains a dwelling and any landowner in the Forestal Open Space Conservation (FOC) Zoning District (most properties east of the Shenandoah River) who has either 20 acres of unimproved land or 21 acres of land that contains a dwelling.

How do you apply for inclusion into the District? Contact the Clarke County Planning Department and ask to be included. There is a simple application form to fill out and the County will do the rest. Property owners wishing to include their land in the District may do so at the time of renewing the District or annually. Although the State allows localities to charge an application fee, Clarke County has chosen not to charge a fee.

Do you have to include all of my properties? No, however it is important to provide detailed property information on the application form to ensure that the properties desired to be included are accurately noted.

Is acceptance into the District automatic? No. Each application must be reviewed by County Staff, the AFD Advisory Committee, Planning Commission, and Board of Supervisors for compliance with program requirements. Both the Planning Commission and Board of Supervisors are required by State law to hold public hearings on all new applications. This process can take approximately 4-5 months to complete.

CLARKE COUNTY

Agricultural and Forestal District (AFD) Program

Information Flyer



What do I have to do if I want my property to remain in the District? Those who are already in the District and wish to remain in the District are not required to take any action.

Suppose I want to withdraw my property from the District? During the District review process, current District landowners may withdraw their properties at their discretion by providing written notice to the County. However, during the District term there are limited options for requesting land to be withdrawn. This includes death of the property owner or financial hardship approaching confiscation.

Are there restrictions placed on land in an Agricultural and Forestal District? Yes. Although a property owner can continue to use the land as they always have and can sell it at any time during their inclusion in the district, the property owner agrees not to do more than a one lot subdivision or to reduce the area of their property by boundary line adjustment during the District term. There are also limitations on certain special uses that may be applied for that would conflict with the character and purpose of the District. It is recommended that potential applicants discuss these restrictions with County Staff to determine whether they may conflict with the applicant's future plans for the properties.

Do I have to be in an AFD in order to farm my land, have livestock, etc? No. The Zoning Ordinance governs the uses of your property. Enrollment in an Agricultural and Forestal District provides some additional right-to-farm protections beyond what the Zoning may allow.

If I sell my property do I need to inform the new owner about the AFD? Yes. Agricultural and Forestal Districts run with the land. Selling or transferring ownership does not remove this encumbrance. It is very important that the new owner understand they are bound to the same restrictions and will receive the same benefits of all property in the District. Many new buyers think they can create a subdivision and then learn they cannot due to restrictions imposed by inclusion in the District. They may incur expensive subdivision costs with no chance of completing the division until the District term expires.

Does being in the District automatically reduce my taxes? No. Clarke County has a Land Use Assessment Program (LUAP) that provides for the deferral of real estate taxes on properties that qualify for agricultural, horticultural, forestry, or open space uses. Any status change to a parcel enrolled in the LUAP is subject to rollback taxes, penalties, and interest. Contact Commissioner of the Revenue's office at 540-955-5108 for further information on the Land Use Program.

Am I required to be in an AFD to qualify for the Land Use Assessment Program? No. The Land Use Assessment Program is a separate program from the Agricultural and Forestal District Program. A landowner must apply for the Land Use Assessment Program and must meet certain qualifying criteria that can be explained by the Office of the Commissioner of Revenue at 540-955-5108.

For more information contact:

Jeremy Camp, Senior Planner/Zoning Administrator / 540-955-5132 / jcamp@clarkecounty.gov
Clarke County Department of Planning - 101 Chalmers Court, Suite B, Berryville, VA 22611

DRAFT MOTIONS

Agricultural & Forestal District (AFD) 6-Year Review

Motion to recommend renewal:

Move to recommend renewal of the Clarke County Agricultural & Forestal District for a 6-year term with no changes except removal of the properties listed in Staff's memorandum, as requested by the property owners.

Motion to defer:

Move to defer action on the review of the Agricultural & Forestal District until the Planning Commission's [specify month/year] Business Meeting.