

**CLARKE COUNTY PLANNING COMMISSION
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Clarke County Planning Commission

AGENDA – Business Meeting

Friday, May 6, 2022 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

1. **Approval of Agenda**
2. **Approval of Minutes**
 - A. March 29, 2022 Work Session
 - B. April 1, 2022 Business Meeting

Public Hearings

3. **TA-22-01, Unpaid Taxes and Charges.** Proposed text amendment to add a new Subsection E to Section 2.3 (Issuance of Permits and Approvals) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). The purpose is to require payment of all delinquent real estate taxes, nuisance charges, and any other charges that constitute a lien on a subject property prior to acceptance of an application associated with that subject property. New Subsection E would apply to applications for any permit or review process delineated in Zoning Ordinance Section 6 (Permits and Review Processes), land disturbance permits issued in conjunction with Code of Clarke County Chapter 148 (Erosion and Sediment Control Ordinance), and building permits issued in conjunction with Code of Clarke County Chapter 71 (Building Construction).
4. **TA-22-02, Mergers and Dwelling Unit Right (DUR) Accounting.** Proposed text amendment to amend Section 3.8 (Vacation or Merger of Lots in the AOC and FOC Districts) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). The purpose is to clarify that, following reallocation pursuant to Zoning Ordinance Section 3.2 (Allocations), no lot resulting from a merger of lots shall have more dwelling unit rights (DURs) than the total number of dwelling unit rights that were assigned to the lots at the time of merger plat application filing per Section 4.2.3 (Merger) of the Subdivision Ordinance (Code of Clarke County Chapter 200, Article II).

Board and Committee Reports

5. **Board and Committee Reports**
 - Board of Supervisors (Matthew Bass)
 - Board of Septic & Well Appeals (George Ohrstrom, II)
 - Board of Zoning Appeals (Anne Caldwell)
 - Historic Preservation Commission (Bob Glover)
 - Conservation Easement Authority (George Ohrstrom, II)
 - Broadband Implementation Committee (Brandon Stidham)

Other Business

6. **Continued Discussion, 2022 Clarke County Comprehensive Plan (Final Draft)**

Adjourn

| UPCOMING MEETINGS: | |
|--|---|
| Ordinances Committee | Friday, May 6 (immediately following Commission Business Meeting) – Main Meeting Room |
| Comprehensive Plan Committee | Thursday, May 12 (2:30PM) – Main Meeting Room |
| Policy & Transportation Committee | Thursday, May 19 (10:00AM) – Main Meeting Room |
| Commission Work Session | Tuesday, May 31 (3:00PM) -- Main Meeting Room |
| Commission Business Meeting | Friday, June 3 (9:00AM) -- Main Meeting Room |
| Plans Review Committee | No meetings currently planned |



Clarke County Planning Commission

DRAFT MEETING MINUTES – Work Session

Tuesday, March 29, 2022 – 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) | ✓ | Frank Lee (Berryville) | ✓ |
| Anne Caldwell (Millwood) | ✓ | Gwendolyn Malone (Berryville) | ✓ |
| Buster Dunning (White Post) | X | Doug Lawrence (BOS alternate) | X |
| Robert Glover (Millwood) | ✓ | | |

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)

CALL TO ORDER: By Mr. Stidham at 3:02PM.

Approval of Agenda

Commissioners had no additions to the March 29, 2022 agenda.

Review of April 1, 2022 Business Meeting Agenda Items

Mr. Stidham reviewed the April 1, 2022 Business Meeting.

Mr. Camp provided an overview of **MS-22-02**, Ray M. Pennington, III. Chair Ohrstrom asked about the conditional approval in the staff report that the code reference be corrected. Mr. Camp said there was an incorrect code reference that has since been corrected.

Mr. Camp reviewed the details of **MS-22-03**, L. Seven Farm L.C., c/o Thomas Moore Lawson, Manager. Chair Ohrstrom asked if there were any additional dwelling unit rights (DURs) remaining on Lot 2 to which Mr. Camp replied there were zero remaining. Mr. Camp noted that the subdivision meets ordinance requirements and Staff recommends approval. He added that this subdivision was the subject of conversation at the Policy and Transportation Committee meeting. He said this appears to be a phased approach to create a larger subdivision through multiple applications.

Commissioner Caldwell asked Mr. Camp to recap the application timeline of this property. In summary, Mr. Camp said there are several different minor subdivisions and boundary line adjustments that have been reviewed in the past. He said the original minor subdivision received a lot size exception for a 19-acre lot, keeping it residential. He continued that the applicant created a 3-acre parcel which was somewhere in the center of the property. He said with that exception, they were able to then come back later and do a boundary line adjustment between the two residential lots and adjusted them making the 3-acre lot bigger. He explained they took the extra land for the 19 acres and moved it into the 3 acres. Additionally, he said, they came back and did another boundary adjustment after that and incorporated

a large triangular parcel and reshaped it into Lot 3 which is the residue parcel (Tax Map 27-A-6) and created the easement off Featherbed Rd. He said they were not creating any new lots but they have these other parcels adjacent to it that they are adding in and reshaping the boundary lines. He explained that the end result is a subdivision where the lots are large 20-acre parcels. The Policy Committee, he noted, is discussing the intent of the maximum lot size requirements in the ordinance to require the 3-acre parcels for new building sites. He said he is not certain what the applicant's future plans are, however, it seems they can continue this property to the south, which has several DURs remaining. He said the Committee is considering the regulation dynamics between the boundary line adjustments between residential and residential and also between agriculture and agricultural lots which allow for this situation to occur. He said the Committee is trying to define exactly what the problem is, if it is a problem, and how it should be addressed.

Commissioner Caldwell commented that this situation is very similar to Rock Heaven Farm.

Mr. Stidham said we have created the regulations unique to Clarke County with set parameters in mind. He said we adopt regulations not only to create the results we want but also to provide relief for people to do different things like maximum lot size exceptions. He added if they are able to find other ways to use rules that we have created to produce an end result we do not like, it is up to the Commission to figure out if it is acceptable or not. He said this situation is currently being reviewed by the Policy Committee and they are working on potential solutions. He said in the next few months, the full Commission will receive language from the Policy Committee to review.

Commissioner Bass asked what the worst-case scenario would be in regards to DURs. Mr. Camp responded it would be the same number of DURs but the end result is that there is a subdivision of lots with large parcels versus several 3-acre parcels with one bigger residue tract. Commissioner Bass asked how many parcels that would be to which Mr. Camp responded potentially a dozen by the end of the process. Commissioner Caldwell commented Rock Heaven Farm was one big parcel divvied up into 20-acre parcels through boundary line adjustments.

Mr. Stidham said for Subdivision Ordinance purposes a 20-acre lot is considered to be an agricultural lot but the Commission does not seem to think a 20-acre lot is agricultural lot which is something to reconsider.

Commissioner Kreider said, and Commissioner Caldwell agreed, that there is not much to be said or done regarding this minor subdivision. Commissioner Lee agreed that it meets all of the current criteria.

Commissioner Glover asked about two other parcels divided like this. Mr. Stidham replied there are unique characteristics such as multiple parcels with a pre-existing 6.5-acre lot that can be maneuvered with another large parcel with multiple DURs. He said that one would have to have the same mix all on common ownership in order to do this. Mr. Camp said it is only the second situation we have experienced like this. Commissioner Bass said it would be good to know from a policy perspective. Commissioner Glover asked what the owner is going to do with the lots. Mr. Camp said he claims it is for his family like a family subdivision.

Mr. Stidham concluded the review of the April 1, 2022 Business Meeting by providing an overview of **TA-22-01**, Unpaid Taxes and Charges. Commissioners had no questions or comments.

Old Business Items

Update, Revised Comprehensive Plan Review Schedule

Mr. Stidham said the Comprehensive Plan Committee is in the process of assembling a complete draft of the Comprehensive Plan. He said it is to be distributed on Friday for a review the following Thursday by the Committee. He announced that if the Committee is ready to move forward, the Commission will have the final draft for first review in the May work session meeting packet.

Mr. Stidham said the Comprehensive Plan Committee is going to start work on the Double Area Tollgate Area Plan which requires some significant changes to account for the efforts to extend water and sewer from Frederick County.

Chair Ohrstrom asked if there will be an alternate public hearing other than the July 1st Business Meeting at 9:00am in the event people are unable to attend the morning session. Mr. Stidham responded that we do not have to have a public hearing at the Commission's Business Meeting and can schedule it for another date and time. Commissioner Glover suggested having the public hearing prior to the work session so we can work on it afterward. Mr. Stidham said he would look at the advertisement dates first.

New Business Items

Discussion of Proposed Text Amendment, TA-22-01, Mergers and Dwelling Unit Right (DUR) Accounting

Mr. Stidham provided an explanation of mergers versus plat vacations. He said mergers happen when two or more existing lots are combined to create one single lot. Plat vacations, he explained, are rare but allow one to vacate a plat that is on record allowing it to return to an earlier configuration or old plat layout. Section 3.8, he said, covers Mergers and Vacations and what to do with rights once those maneuvers occur. He said instead of totaling the DURs after the merger or plat vacation, section 3.8 requires one to use the allocation table to determine how many DURs remain. He said not only can one potentially lose DURs through mergers but depending on the configuration of the lots, one could potentially gain DURs by following the allocation table.

The Policy Committee has been reviewing this and their recommendation is to add language to the ordinance to prevent the gain of DURs and continue to allow the loss of DURs. He said the text amendment is to say no lots resulting from a merger of lots shall have more dwelling units than the total number of dwelling unit price assigned to the lots prior to the merger. Chair Ohrstrom and Commissioner Caldwell agreed to add this to Friday's agenda to set Public Hearing.

Commissioner Bass asked if there was any way one could manipulate the system as it exists to go back and forth to continue generating DURs. Mr. Stidham provided an example of a subdivision off Lewisville Road where it has more lots than the original tract. He said it is highly unlikely there are other places in the County where that scenario could be replicated but that it could be done on a smaller scale. He said he would add this text amendment to the agenda for Friday's meeting to set Public Hearing.

Other Business

Distribution of 2021 Planning Department Annual Report

Mr. Stidham said a copy of the 2021 Planning Department Annual Report is in the packet for the Commission's review.

ADJOURN: The March 29, 2022 Planning Commission Work Session adjourned by consensus at 3:40PM.

Randy Buckley (Vice Chair)

Kristina Maddox (Clerk)



Clarke County Planning Commission

DRAFT MEETING MINUTES – Business Meeting

Friday, April 1, 2022 – 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) | ✓ | Frank Lee (Berryville) | ✓ |
| Anne Caldwell (Millwood) | ✓ | Gwendolyn Malone (Berryville) | ✓ |
| Buster Dunning (White Post) | ✓ | Doug Lawrence (BOS alternate) | X |
| Robert Glover (Millwood) | ✓ | | |

E – Denotes electronic participation

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

OTHER PRESENT: None.

CALL TO ORDER: By Chair Ohrstrom at 9:02AM.

1. Approval of Agenda (Revised)

The Commission voted 10-0-0 to approve the revised agenda for April 1, 2022.

| Motion to approve the revised April 1, 2022 Planning Commission Business Meeting agenda as presented by Staff: | | | |
|---|--------------------|---------|-----------------------|
| Ohrstrom (Chair) | AYE | Glover | AYE |
| Buckley (Vice Chair) | AYE (Moved) | Hunt | AYE |
| Bass | AYE | Kreider | AYE |
| Caldwell | AYE | Lee | AYE (Seconded) |
| Dunning | AYE | Malone | AYE |

2. Approval of Minutes – March 4, 2022

The Commission voted 10-0-0 to approve the March 4, 2022 Business meeting minutes as presented by Staff.

| Motion to approve the March 4, 2022 Planning Commission Business Meeting minutes as presented by Staff: | | | |
|--|--------------------|---------|-----------------------|
| Ohrstrom (Chair) | AYE | Glover | AYE |
| Buckley (Vice-Chair) | AYE | Hunt | AYE |
| Bass | AYE | Kreider | AYE |
| Caldwell | AYE (Moved) | Lee | AYE |
| Dunning | AYE | Malone | AYE (Seconded) |

3. MS-22-02, Ray M. Pennington, III

Mr. Camp presented a brief summary of the proposed minor subdivision, MS-22-02, (Pennington, III) located off Crums Church Road as Tax Map 7-A-85F in the Agricultural-Open Space-Conservation (AOC) District. The application request is to subdivide a 96-acre parcel into two lots including a 3-acre lot and a 93-acre lot. He noted VDOT and Virginia Department of Health approved the application.

The Commission voted 10-0-0 to approve the minor subdivision MS-22-02, Ray M. Pennington, III.

| Motion to approve minor subdivision <u>MS-22-02</u>, Ray M. Pennington, III: | | | |
|---|------------|---------|-----------------------|
| Ohrstrom (Chair) | AYE | Glover | AYE |
| Buckley (Vice-Chair) | AYE | Hunt | AYE |
| Bass | AYE | Kreider | AYE (Moved) |
| Caldwell | AYE | Lee | AYE |
| Dunning | AYE | Malone | AYE (Seconded) |

4. MS-22-03, L Seven Farm L.C., c/o Thomas Moore Lawson, Manager

Mr. Camp presented an overview of minor subdivision MS-22-03, L Seven Farm L.C., (Lawson) in the AOC District located near the intersection of Featherbed Road and Lord Fairfax Highway. He said Tax Map 27-A-6 is a 22-acre parcel that recently underwent some boundary line adjustments and a couple of years ago created a minor subdivision. He continued that the new proposed lots would leave a 19-acre parcel and a 3-acre parcel. Mr. Camp noted VDOT and the Virginia Department of Health approved the application. The Commissioners had no questions on the proposed minor subdivision.

The Commission voted 9-0-1 to recommend approval of MS-22-03, L Seven Farm L.C., c/o Thomas Moore Lawson, Manager as presented by Staff.

| Moved to recommend approval of minor subdivision <u>MS-22-03</u>, L Seven Farm, L.C., Thomas Moore Lawson, Manager: | | | |
|--|--------------------|---------|-----------------------|
| Ohrstrom (Chair) | AYE | Glover | AYE |
| Buckley (Vice-Chair) | ABSTAINED | Hunt | AYE |
| Bass | AYE | Kreider | AYE (Seconded) |
| Caldwell | AYE (Moved) | Lee | AYE |
| Dunning | AYE | Malone | AYE |

5. TA-22-01, Unpaid Taxes and Charges

Mr. Stidham reviewed the proposed text amendment TA-22-01, Unpaid Taxes and Charges to the Commission in order to set Public Hearing for the May Planning Commission Business Meeting. He said the purpose is to add enabling language to the Zoning Ordinance so that the County is able to refuse to accept applications in situations where the applicant owes unpaid taxes or other charges that would constitute a lien on a property. He said it also has to be in reference to the property for which the application is being filed. He said the Code of Virginia, Section 15.2-2286 (B) is the source of the authority that would be used to adopt this amendment. Chair Ohrstrom noted if an owner has two parcels and one has unpaid taxes, it only affects the one parcel and not both.

The Commission voted 10-0-0 to set Public Hearing on **TA-22-01**, Unpaid Taxes and Charges for the next Planning Commission Business Meeting in May.

| Moved to set Public Hearing on TA-22-01 for the May Planning Commission Business Meeting: | | | |
|--|--------------------|---------|-----------------------|
| Ohrstrom (Chair) | AYE | Glover | AYE |
| Buckley (Vice-Chair) | AYE | Hunt | AYE |
| Bass | AYE | Kreider | AYE |
| Caldwell | AYE (Moved) | Lee | AYE |
| Dunning | AYE | Malone | AYE (Seconded) |

6. TA-22-02, Mergers and Dwelling Unit Right (DUR) Accounting

Mr. Stidham reviewed the proposed text amendment **TA-22-02**, Mergers and Dwelling Unit Right (DUR) Accounting with the Commission in order to set Public Hearing for the next Planning Commission meeting in May. He explained this is in the context of merger applications where applicants can lose or gain DURs. He said applicants are currently required to use the allocation chart for DURs based on the total acreage of the merged parcel instead of using the total number of DURs that are on the two merged lots. He said the purpose of this amendment only affects the gain of DURs and that going forward, it would be the total number of DURs that are assigned to the lots at the time of the merger plat application filing per Subdivision Ordinance Section 4.2.3.

The Commission voted 10-0-0 to set Public Hearing on **TA-22-02**, Mergers and Dwelling Unit Right Accounting for the next Planning Commission Business Meeting.

| Moved to set Public Hearing on TA-22-02 for the May Planning Commission Business Meeting: | | | |
|--|------------|---------|-----------------------|
| Ohrstrom (Chair) | AYE | Glover | AYE |
| Buckley (Vice-Chair) | AYE | Hunt | AYE |
| Bass | AYE | Kreider | AYE (Moved) |
| Caldwell | AYE | Lee | AYE (Seconded) |
| Dunning | AYE | Malone | AYE |

7. Board and Committee Reports

Board of Supervisors (Matthew Bass)

Commissioner Bass provided a budget update overview. He noted a phased-in increase to the transient occupancy tax, meals and cigarettes tax allowable by the General Assembly to offset inflation and rising costs of goods. He said there is also a 15% assessment on vehicle personal property taxes.

Commissioner Bass stated the monument jury trial is scheduled for next Friday, April 9th regarding adverse possession. Commissioner Glover asked how many days it might take to which Commissioner Bass responded potentially one day. Commissioner Caldwell asked who the attorney representing the defendant is. Commissioner Bass replied the guardian ad litem is a defendant out of Winchester named Matthew Kreitzer. Chair Ohrstrom asked if the monument would go to Daughters of the Confederacy. Commissioner Bass responded that was a separate issue as other groups have filed pleadings seeking the statue. He said if the jury decides that the County has met the elements of adverse possession it would moot the Turner Ashby Camp's claims.

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

Nothing to report

Board of Zoning Appeals (Anne Caldwell)

Nothing to report

Historic Preservation Commission – HPC (Bob Glover)

Commissioner Glover said the HPC met in March to talk about demolition issues on Josephine Street and that they discussed applying for other grants. He said they also discussed the Bears Den monument which now has to go to the State for approval. Mr. Camp clarified the State has been overwhelmed with historic marker applications and has limited them to approximately five per year.

Commissioner Glover said the HPC Preservation Awards will be held in May.

Commissioner Bass asked about the discussion surrounding Josephine Street. Commissioner Glover responded the discussion was mostly regarding how or if the HPC could help. He said the HPC decided to write a letter to express support for finding solutions to maintain the structures.

Conservation Easement Authority – CEA (George L. Ohrstrom, II)

Chair Ohrstrom said the CEA went out to view an application for easement purchase on Longmarsh Rd. He said the owner is an equine trainer wanting to use the parcel for a robust horse training program. He said the application looks promising and will keep everyone posted. Commissioner Caldwell asked how many acres the parcel is to which Chair Ohrstrom answered that it is approximately 150 acres.

Broadband Implementation Committee (Brandon Stidham)

Mr. Stidham provided a progress report on the broadband implementation. He explained that the Northern Shenandoah Valley Regional Commission (NSVRC) serves as the fiscal agent and project coordinator and that the Department of Housing and Community Development (DHCD) oversees the grant program and establishes the contractual relationships. He said he was on a conference call a few weeks ago and learned DHCD is still waiting for review from the State’s Attorney office. He said his understanding is once everything is signed and the project is initiated that it will take 36 months from that point. Additionally, he remarked that All Points might not construct in a linear order but rather choose routes that are most logical to accomplish the project.

Other Business

Mr. Stidham noted a Solar Development in Virginia handout in the packet. He said Supervisor McKay attended a Virginia Farm Bureau presentation where a Sussex County Board of Supervisor provided a legal summary of changes. He said one of the biggest takeaways from the handout is the efforts the General Assembly has done to increase the revenue generating options available to counties. He continued that the County’s most lucrative tool is the requirement that a siting agreement be considered between the solar companies and the governing body of each locality. He explained that it is written broadly so that a county can almost accept cash proffers without the limitations on negotiating cash proffers. He added the caveat is that if a payment deal with the solar company along with a signing agreement is accepted, it essentially deems the solar project to be in accord with that county’s comprehensive plan. He said that it could almost prejudice the application before it goes to through the land use process. Lastly, he said we will probably run it concurrently with the Special Use Permit application.

Chair Ohrstrom asked the Commission if there were additional thoughts or comments on this matter. The Commissioners had no comments or questions on this topic.

Adjournment:

The Commission voted 10-0-0 to adjourn the April 1, 2022 Planning Commission Business Meeting at 9:33AM.

| Move to adjourn the April 1, 2022 Planning Commission Business Meeting: | | | |
|--|------------|---------|-----------------------|
| Ohrstrom (Chair) | AYE | Glover | AYE |
| Buckley (Vice-Chair) | AYE | Hunt | AYE |
| Bass | AYE | Kreider | AYE (Moved) |
| Caldwell | AYE | Lee | AYE |
| Dunning | AYE | Malone | AYE (Seconded) |

Randy Buckley (Vice-Chair)

Kristina Maddox (Clerk)

ZONING ORDINANCE TEXT AMENDMENT (TA-22-01)

Unpaid Taxes and Charges

May 6, 2022 Planning Commission Meeting – PUBLIC HEARING

STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to add a new Subsection E to Section 2.3 (Issuance of Permits and Approvals) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). The purpose is to require payment of all delinquent real estate taxes, nuisance charges, and any other charges that constitute a lien on a subject property prior to acceptance of an application associated with that subject property. New Subsection E would apply to applications for any permit or review process delineated in Zoning Ordinance Section 6 (Permits and Review Processes), land disturbance permits issued in conjunction with Code of Clarke County Chapter 148 (Erosion and Sediment Control Ordinance), and building permits issued in conjunction with Code of Clarke County Chapter 71 (Building Construction).

Requested Action:

Conduct the advertised Public Hearing and take formal action on the proposed text amendment.

Background:

There is currently no mechanism in the Zoning Ordinance or in the Code of Clarke County to authorize County staff to refuse to accept and process land development applications for a subject property from an applicant who has unpaid debts owed to the County and related to that subject property. Denying a property owner access to a County service such as regulatory permitting can be an effective tool for collection of unpaid debts.

Code of Virginia §15.2-2286(B) allows zoning ordinances to contain a requirement that applicants must produce satisfactory evidence that there are no unpaid debts owed to the locality that would constitute a lien on the subject property as a prerequisite for filing certain applications or for issuance of a final approval of such applications:

- B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, that are owed to the locality and have been properly assessed against the subject property, have been paid, unless otherwise authorized by the treasurer.*

The enabling language in this section applies to zoning applications as well as applications for land disturbance permits and building permits. The latter two permit types are not regulated by the Zoning Ordinance but by separate sections of the Code of Clarke County – Chapters 148 (Erosion and Sediment Control Ordinance) and 71 (Building Construction).

Proposed Text Amendment:

The proposed text amendment follows the enabling language in Code of Virginia §15.2-2286(B) in establishing a new Subsection E to Zoning Ordinance Section 2.3 (Issuance of Permits and Approvals). New Section 2.3E would apply to the following application types at the application filing stage as opposed to the final approval stage as allowed by §15.2-2286(B):

- All administrative, legislative, and quasi-judicial permit and review processes listed in Zoning Ordinance Section 6 (Permits and Review Processes)
- Land disturbance permits issued in conjunction with County Code Chapter 148
- Building permits issued in conjunction with County Code Chapter 71

Payment of unpaid taxes and charges associated with the subject property and owed to Clarke County would include:

- Delinquent real estate taxes
- Nuisance charges
- Any other charges that constitute a lien on the subject property and have been properly assessed by the County, unless otherwise authorized by the Treasurer of Clarke County

If adopted, County staff would refuse to accept any of the listed application types until all unpaid taxes and charges associated with the subject property are paid. Staff would also modify application forms to require certification from the applicant that there are no unpaid taxes or charges.

The proposed Ordinance amendment text is included at the end of this Staff Report.

Staff Recommendation:

Staff recommends that the Planning Commission conduct the advertised Public Hearing and take formal action on the proposed text amendment. Staff has no outstanding concerns with the adoption of this text amendment.

History:

April 1, 2022.

Planning Commission voted unanimously to schedule Public Hearing for the May 6, 2022 Business Meeting.

May 6, 2022.

Placed on the Commission’s Business Meeting agenda and advertised for Public Hearing.

Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

2.3 Issuance of Permits and Approvals

E. Unpaid taxes and charges. Payment of all unpaid taxes and charges associated with a subject property and owed to Clarke County is required prior to acceptance of an application associated with that subject property. Applications subject to this requirement include:

- Any permit or review process delineated in Zoning Ordinance Section 6 (Permits and Review Processes)***
- Land disturbing permits issued in conjunction with Code of Clarke County Chapter 148 (Erosion and Sediment Control Ordinance)***
- Building permits issued in conjunction with Code of Clarke County Chapter 71 (Building Construction)***

Payment of unpaid taxes and charges shall include all delinquent real estate taxes, nuisance charges, and any other charges that constitute a lien on the subject property, that are owed to Clarke County and have been properly assessed against the subject property, unless otherwise authorized by the Treasurer of Clarke County.

ZONING ORDINANCE TEXT AMENDMENT (TA-22-02)
Mergers and Dwelling Unit Right (DUR) Accounting
May 6, 2022 Planning Commission Meeting – PUBLIC HEARING
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to amend Section 3.8 (Vacation or Merger of Lots in the AOC and FOC Districts) of the Zoning Ordinance (Code of Clarke County Chapter 200, Article I). The purpose is to clarify that, following reallocation pursuant to Zoning Ordinance Section 3.2 (Allocations), no lot resulting from a merger of lots shall have more dwelling unit rights (DURs) than the total number of dwelling unit rights that were assigned to the lots at the time of merger plat application filing per Section 4.2.3 (Merger) of the Subdivision Ordinance (Code of Clarke County Chapter 200, Article II).

Requested Action:

Conduct the advertised Public Hearing and take formal action on the proposed text amendment.

Background:

Section 3.8 of the Zoning Ordinance states that when lots are merged or vacated, the dwelling unit accounting for the merged lot shall be based on the dwelling unit right allocation table in Section 3.2 – not the total number of existing dwelling unit rights (DURs) on the lots that are merged:

When dwelling unit rights have been allocated to any lot of record as of October 17, 1980, and such lot is subsequently vacated pursuant to [Title 15.2, Chapter 22, Article 6, Sections 2271 and 2272 of the Code of Virginia](#) or merged, the number of dwelling unit rights shall be reallocated, pursuant to [Section 3.2](#), to the lot(s) resulting from such vacation or merger as though the resulting lot(s) had been the tract(s) of record that existed on the [Clarke County Real Property Identification Maps](#) on October 17, 1980.

Because of this requirement, a merger of lots can result in the **loss or gain** of DURs as compared to the total number of DURs on the individual lots that are merged. Below is a discussion of the different scenarios in which post-merger DUR accounting can produce a net loss or gain and how Staff interprets these situations.

Loss of DURs

As an example, a property owner wants to merge the following two lots:

- Lot A – 100 acres, 4 DURs
- Lot B – 100 acres, 4 DURs

The resultant merged lot would be 200 acres in size and would appear to have a total of 8 DURs. However, per Section 3.8, the DURs for the merged lot must be reallocated according to the DUR allocation table in Section 3.2 which states that a 200 acre lot is allocated 6 DURs. In this scenario, the property owner would **lose** 2 DURs if these two lots are merged. With the exception of the merger of lots under 15 acres in size, the merger of two lots containing all of their originally-allocated DURs (consistent with the allocation chart) would result in the **loss** of one or more DURs in all cases. The Subdivision Ordinance was amended in 2012 to require plat review and approval for all mergers in order to inform property owners of the potential loss of DURs through merger and to advise of potential alternatives.

Gain of DURs

While DURs may be lost through merger, there are also situations in which compliance with Section 3.8 can result in the net **gain** of DURs. Here is an example:

- Lot A – 100 acres, 4 DURs
- Lot B – 100 acres, 1 DUR (3 originally allocated DURs were previously used to subdivide new lots)

The resultant merged lot would be 200 acres in size and would appear to have a total of 5 DURs. However, when DUR allocation is applied per the table in Section 3.2, the reallocation results in 6 DURs with a **gain** of 1 DUR.

Recognizing the gain of DURs through merger is problematic. The original 1980 allocation of DURs theoretically created a fixed amount of DURs for all AOC and FOC tracts in existence and there is no mechanism to create new DURs. In the aforementioned example, 3 of the 4 DURs originally allocated to Lot B were used to subdivide new lots. If an additional DUR were recognized in this situation, that DUR would be considered newly created and in excess of the original 1980 allocation.

The Commission's Policy & Transportation Committee reviewed this issue on March 4 and recommended that Section 3.8 be amended to clarify that DURs cannot be gained in a merger transaction as a result of compliance with the allocation table in Section 3.2. The Committee recommended no changes regarding the loss of DURs through merger or vacation in complying with Section 3.2.

Proposed Text Amendment:

To address the issue of gaining DURs through merger and required compliance with Section 3.2, new language would be added to the end of Section 3.8:

No lot resulting from a merger of lots shall have more dwelling unit rights than the total number of dwelling unit rights that are assigned to the lots at the time of merger plat application filing per Subdivision Ordinance Section 4.2.3 (Merger).

This new language would make it clear that no new DURs can result from the mathematical outcome of complying with the allocation chart. The new language would also state that the accounting of DURs occurs at the point in time that the merger plat application is filed for

review and not at any earlier point in time that could result in the gain of DURs through merger. The proposed Ordinance amendment text is included at the end of this Staff Report.

Staff Recommendation:

Staff recommends that the Planning Commission conduct the advertised Public Hearing and take formal action on the proposed text amendment. Staff has no outstanding concerns with the adoption of this text amendment.

History:

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|-----------------------|---|
| April 1, 2022. | Planning Commission voted unanimously to schedule Public Hearing for the May 6, 2022 Business Meeting. |
| May 6, 2022. | Placed on the Commission’s Business Meeting agenda and advertised for Public Hearing. |

Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

3.8 VACATION OR MERGER OF LOTS IN THE AOC AND FOC DISTRICTS

When dwelling unit rights have been allocated to any lot of record as of October 17, 1980, and such lot is subsequently vacated pursuant to [Title 15.2, Chapter 22, Article 6, Sections 2271 and 2272 of the Code of Virginia](#) or merged, the number of dwelling unit rights shall be reallocated, pursuant to [Section 3.2](#), to the lot(s) resulting from such vacation or merger as though the resulting lot(s) had been the tract(s) of record that existed on the [Clarke County Real Property Identification Maps](#) on October 17, 1980. *No lot resulting from a merger of lots shall have more dwelling unit rights than the total number of dwelling unit rights that are assigned to the lots at the time of merger plat application filing per Subdivision Ordinance Section 4.2.3 (Merger).*