



Clarke County Planning Commission

MINUTES – Policy & Transportation Committee Meeting

Friday, March 4, 2022 – 9:30AM or immediately following Planning Commission Business Meeting

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
Buster Dunning (White Post)	✓	Gwendolyn Malone (Berryville)	✓
Bob Glover (Millwood)	✓	George L. Ohrstrom, II (Ex Officio)	X
Scott Kreider (Buckmarsh)	✓		

STAFF PRESENT: Brandon Stidham (Director of Planning), Jeremy Camp (Temporary Planner/Zoning Official)

OTHERS PRESENT: Pearce Hunt (Russell)

CALL TO ORDER: By Mr. Stidham at 9:43AM.

1. Approval of Agenda

A motion to approve the meeting agenda as presented by Staff was approved unanimously.

Motion to approve meeting agenda as presented by Staff:			
Dunning	AYE	Kreider	AYE (seconded)
Glover	AYE	Malone	AYE (moved)

2. Approval of Minutes – November 4, 2020 Meeting

A motion to approve the November 4, 2020 meeting minutes as presented by Staff was approved unanimously.

Motion to approve November 4, 2020 meeting minutes as presented by Staff:			
Dunning	AYE	Kreider	AYE (moved)
Glover	AYE	Malone	AYE (seconded)

3. Discussion, Mergers and Dwelling Unit Right (DUR) Accounting

Mr. Stidham reviewed the staff memo for this discussion item. He began by explaining the differences between a merger and a plat vacation. He continued by explaining that Section 3.8 of the Zoning Ordinance states that when lots are merged or vacated, the dwelling unit right (DUR) accounting for the resultant lot must be based on the DUR allocation table found in Section 3.2 and not on the total net DURs on the lots that were merged or vacated. He noted that this can result in the loss or gain of DURs and explained the policy that loss of DURs are recognized but gain of DURs are not. He outlined the reasons for these policies and noted that Section 3.8 should be amended to specify whether DURs should be gained or lost. He concluded by stating that he is looking for policy direction from the Committee on this issue.

Commissioner Dunning stated that making it difficult to gain DURs is a good thing. Commissioner Kreider agreed and said that he is not worried about the loss of DURs in these situations. Mr. Stidham asked members if they are comfortable with blocking the gain of DURs and allowing DURs to be lost through compliance with the DUR allocation table. Commissioner Glover asked why people merge their properties and how often does it happen. He added that if people do not want to lose DURs, then they won't merge their properties. Mr. Stidham replied that when Staff receives a merger application, we ask the applicant why they are merging and offer specially if the lots are in a nonconforming configuration that would be permanently lost through merger. He also noted that Staff reviews several merger applications each year. Commissioner Dunning suggested that merged lots could be valued higher. Mr. Stidham added that lots that do not have a viable onsite sewage disposal system location or an ideal building site are often merged. He also said that in some situations, a boundary line adjustment may be a better alternative to merger. He concluded by noting that no applicants to date have questioned the loss of DURs through merger. Commissioner Glover said he is particularly confused as to why people would want to merge lots that have been in a particular configuration for many years.

Mr. Stidham gave an example from many years ago where an owner of a large lot purchased a number of adjacent lots that were less than one acre each and merged them with the large lot, the ultimate purpose being to use the additional DURs to create a residential subdivision. He noted that the property owner used originally allocated DURs for the subdivision and did not gain any DURs through the merger, but was able to have more lots in the subdivision than were possible without the merger. He said that this is another policy issue to consider – allowing DURs to be re-arranged through merger to maximize lots in a residential subdivision. Commissioner Dunning noted that this example sounds terrible but Mr. Stidham noted that he did not think that there are places in the County where this example could be repeated again except perhaps on a smaller scale. Commissioner Dunning asked if you can gain DURs through a boundary line adjustment. Mr. Stidham replied no and also noted that there are limits on the number of DURs that you can transfer between lots through boundary line adjustment. Commissioner Dunning asked if prohibiting mergers and allowing boundary line adjustments is a solution, and Mr. Stidham replied that you can just codify the current policy of requiring compliance with the DUR allocation table. Commissioner Kreider said there definitely needs to be something added to prevent the gain of DURs and noted a past example on Senseny Road where a similar transaction occurred. Commissioner Hunt asked if DURs were gained in that example and Mr. Stidham replied no.

Mr. Stidham said that this issue involves people using their DURs, how we feel about the way that they are being used, and whether it is producing outcomes that we do not like. He added that another question is whether our ordinances specify these outcomes or is Staff having to interpret the ordinances to confirm these outcomes. He noted that Staff's recommended language to prevent the gain of DURs is clear and defensible. He said that Staff will draft the text amendment only to address the gain of DURs and asked members if they wanted to see the text amendment before forwarding it to the full Commission. Members were comfortable with the text amendment going to the Commission without additional committee review.

4. Discussion, Boundary Line Adjustments

Mr. Camp reviewed the staff memo for this discussion item. He described a recent boundary line adjustment application that appears to produce an end result that is contrary to the intent of a minor subdivision and maximum lot size exception that was previously approved by the Commission. He explained different steps that were taken to produce a layout of three 20+ acre lots which may be contrary to the Subdivision Ordinance regulations. He noted that boundary line adjustment and merger regulations are more flexible than subdivision regulations and can be used to create lot configurations that cannot be produced by subdivision alone. He said boundary line adjustments are commonly used to exchange property between neighbors or to rectify encroachments, so you do not want to restrict the use of boundary line adjustments. He added that in this case, the boundary line adjustment transaction is used to create a lot design that the subdivision regulations do not support. He said that this was presented to the Plans Review Committee and they suggested having this reviewed as a policy issue by the Policy and Transportation Committee. He noted that some issues for the Committee to consider include property rights, continuing to allow flexibility for lot lines to be moved, and the current lines of distinction in the Subdivision Ordinance for residential and agricultural lots.

Mr. Camp identified specific problem provisions for the Committee to discuss. He said one concern is Section 4.4.1-A-1 which allows land to be adjusted from an agricultural to a residential lot so that the residential lot becomes an agricultural lot with a size of 20 acres or more. He said another concern is Section 4.4.1A-3 which allows adjustments between agricultural lots provided that no resulting lot is less than 20 acres. He also noted Section 4.4.1A-4 which allows adjustments between residential lots where the total acreage in the subject lots is not increased.

Commissioner Kreider asked if language could be included to say that you cannot use a boundary line adjustment to create lots of more than three acres in size or to rearrange lot lines to create 20-acre lots. Mr. Stidham replied that the Commission seems to have an issue with 20-acre lots but the Subdivision Ordinance states that 20 acres is the minimum size for an agricultural lot. He added that if lot sizes in a range of around 20 acres is something that we do not want, then we need to create regulations that prevent lots from being configured in that range. He said he did not know what that range would be but noted that the Subdivision Ordinance contains a threshold requirement of 40 acres as the minimum lot size that does not require drainfields to be shown on a subdivision plat. He also said that several years ago when the Commission dealt with a similar situation on Senseny Road, Staff suggested clarifying the minimum lot size requirements but the Commission did not want to do this. He noted that lots over three acres up to 99.99 acres would appear to be nonconforming but the maximum lot size exception process can allow lots to be created that exceed three acres. He concluded by saying that if the Commission wants to tighten up the regulations, we also need to state the range of lot sizes we do not want to see in order to be more legally defensible because that lot size range currently is not stated anywhere. He also briefly described the situation that occurred on Senseny Road and how it is similar to the current issue.

Commissioner Dunning asked if there is a limit on the number of boundary line adjustments that you can do. Mr. Stidham replied no and added that every boundary line adjustment transaction

has to comply with the regulations. He also noted that there is a clear rule that you cannot use time-based limitations on Subdivision Ordinance regulations. Commissioner Dunning asked how large the tract is in the current example. Mr. Camp replied that it is over 100 acres but there are other properties involved that were not part of the original subdivision. Commissioner Kreider said that we do not want mansions on 20 acre lots where there should be farmland. Mr. Camp said there are two issues – how you feel about 20 acre lots and whether the configuration of a subdivision can be changed after it is approved. Commissioner Kreider asked if you can add a regulation to prevent subdivision lots from being changed after approval. Mr. Stidham replied that in most counties it is not a problem to increase the size of a residential lot but in Clarke, there is a perspective that a 20-acre lot cannot be farmed. Commissioner Kreider added that there is not much you can do to farm a 20-acre lot besides put horses on it. Mr. Stidham replied that the inconsistency is that the Subdivision Ordinance calls a 20-acre lot an “agricultural lot.” Commissioner Dunning asked if you could make the minimum lot size of an agricultural lot larger. Mr. Stidham replied that the Commission would need to establish an acreage range between three acres and the smallest area that the Commission feels could be viably farmed. He added that he did not know how you could create a metric to justify that acreage. Commissioner Dunning said you can base it on different acreages for livestock types. Mr. Stidham noted that there is a difference between the minimum lot size to create a lot for agricultural purposes and the lot size for lots where agriculture can be conducted. As an example he added that if you set the minimum area at 40 acres, does this mean I cannot have horses or chickens on a lot less than 40 acres. He said this is not currently the case because you can have horses and chickens on a three acre AOC-zoned lot. Commissioner Kreider said that this is a zoning regulation. Mr. Stidham replied that you cannot have inconsistencies between your zoning and subdivision ordinances. Commissioner Kreider asked if you can create a zoning regulation to prohibit building on an agricultural lot and Mr. Stidham replied that you cannot take away DURs. Mr. Stidham said that he cannot think of a way to prevent someone from increasing the size of a three acre lot that would be defensible.

Mr. Stidham noted that much like the situation that occurred on Senseny Road, you have to have a property owner with the right mix of lots and DURs to repeat this situation elsewhere in the County. He added that given the limited chances of this taking place in the future, is it worth changing the regulations to address. Commissioner Dunning asked if there is a way to identify these places. Mr. Stidham replied that it would not be as easy as the Senseny Road example as Staff was able to query all lots over 300 acres with multiple DURs. Commissioner Dunning asked if Staff knew where this could occur. Mr. Stidham replied that Staff could in the Senseny Road example but not with the current situation as it is dependent on ownership of multiple lots. He added that changes in ownership would make this difficult to determine. He added that the problem is not an inconsistency with the ordinances but rather an inconsistency with how the Commission perceives the issue and probably the Board of Supervisors as well. Commissioner Kreider said that it is a problem when you have a subdivision of three acre lots and it is reconfigured into a subdivision of 20-acre lots. Commissioner Dunning asked if you could regulate the residual lot differently to address the issue. Mr. Stidham replied that we currently do this in the FOC District by limiting how the residual open space lot can be reduced in size. He said he did not think that adding this rule to the AOC District would solve the problem. He added that he could consult the County Attorney on ways to lock down minor and major subdivisions. Commissioner Glover asked to confirm that you cannot limit boundary line

adjustments to one every ten years. Mr. Stidham replied no because boundary line adjustment regulations are in the Subdivision Ordinance. Commissioner Kreider said that there should be a way to prevent the Commission's approval of a subdivision from being circumvented. Mr. Camp said that you could address it by placing conditions on the subdivision approval and by adding exceptions to the Subdivision Ordinance. Commissioner Dunning asked for confirmation that this is a unique situation and does not happen very often. Mr. Stidham replied yes and that it takes the right mix of properties in common ownership. Commissioner Hunt added that there is a limited number of places in the County where this could happen in the future. Mr. Stidham noted in the example that the property owner had a 6.78 acre lot that cannot be created under current regulations. He also noted that the parent parcel had one additional DUR over the original allocation. Commissioner Kreider asked what would prevent the owner from doing the same thing on the 82 acre residual lot that has 4 DURs and Mr. Camp replied that they likely can do this.

Commissioner Kreider repeated his concern that we could have groups of 20-acre lots with large homes instead of farms and that it is difficult to farm a 20-acre lot. He said that this could totally change the feel of Clarke County as an agricultural-based county and make it more like western Loudoun County. Mr. Stidham noted that you cannot get to 20 acres directly like you can in Loudoun. He added that the best way to address these concerns is to get our arms around the lot size issue so this does not come up again in the future. He noted that with the Senseny Road issue, ultimately the only regulation that was changed was to move approval authority from Staff to the Commission. He also noted that authority was changed back to Staff with the ordinance update project because the change did not accomplish anything and the scenario did not occur again.

Commissioner Dunning asked if there are requirements for entrances to public roads for these lots, such as requiring each lot to have its own entrance. Mr. Stidham replied that if the lots do not have frontage on a state-maintained road, a private road would have to be constructed. He added that construction plans are required for private roads serving more than two lots. Commissioner Dunning asked if there is a limit on the number of entrances that can be constructed on a public road. Mr. Stidham replied no but added that the Virginia Department of Transportation (VDOT) will sometimes recommend that two lots have a shared entrance. Commissioner Dunning said that shared entrances are not as appealing and suggested finding ways to limit the number of individual driveway accesses. Mr. Camp said that you could apply the FOC rules to the AOC District by removing the maximum lot size requirement but also limiting how much the residual lot can be reduced in size. Mr. Stidham said that the residual lot requirement could be a solution but he is not sure how much of a solution it would be. He then explained how the FOC residual lot requirements and the percentage that must be retained based on the area of the lot. Mr. Camp noted that this problem does not occur in the FOC District because the regulations keep the residual lot from being reduced. In the current situation, Mr. Stidham noted that a requirement that the residual lot cannot be reduced by more than 10% would have prevented the 123.37 acre residual lot from being reduced to 82.05 acres. He said Staff can look at the impact of adding just the 10% reduction requirement to the residual lot in AOC District subdivisions.

Commissioner Dunning asked if you have to prove that you are using an agricultural lot for agricultural purposes and Mr. Stidham replied no. Mr. Stidham added that the “agricultural lot” designation is primarily used as a measuring stick to establish the threshold under which you cannot reduce the size of a lot that is 20 acres or larger. Commissioner Kreider reiterated that once you have a subdivision approved by the Commission, you should not be allowed to change the lot configuration.

Mr. Stidham said that Staff will do two things. He said first they will brainstorm different scenarios if the 10% limitation on reducing the residual lot size by boundary line adjustment were added to the AOC District. He said Staff will also talk with the County Attorney to determine ways to lock down a residential lot created through minor or major subdivision. He noted that Staff will bring this to the Committee at a meeting in the near future.

5. Other Business

Commissioner Malone asked if there are any transportation projects going on in the County right now. Mr. Stidham replied that VDOT is currently studying the intersection of Route 7 and Route 601 and he provided an update on this project for the Committee. He also described VDOT’s proposed RCUT intersection designs which would force left turn movements coming out of Route 601 to go right, then make a U-turn coming down the mountain to go in the opposite direction. Commissioner Glover noted that U-turns on Route 7 would be unsafe with traffic traveling at 70MPH. Commissioner Dunning asked if this would have to be constructed on private property and Mr. Stidham replied that there probably would need to be some right-of-way acquisition. Commissioner Hunt said that this seems to be a design better suited for a slower traffic situation and could see this intersection used in the center of a town. Commissioner Dunning asked of Bear Chase Brewery is responsible for their own traffic. Mr. Stidham replied that they are a farm brewery and Loudoun County allowed them to be approved through a by-right process that did not require a public review process. He also noted that Staff has serious concerns with any improvement project that would require U-turns on the mountain. Commissioner Glover said that traffic is horrible and school buses would have to make these U-turns as well. He added that VDOT does not always do a good job of factoring in real life driving conditions. Commissioner Dunning asked who owns the gravel lot at the top of the mountain and Mr. Stidham replied that VDOT owns it. Mr. Stidham also explained the pedestrian crossing study and potential aesthetic concerns with any improvements that are added there. He said that any overpass constructed would need to be massive to allow trucks to pass under and Commissioner Kreider said you would have to do significant excavation on the mountainsides for the landings. Mr. Stidham said he also asked VDOT to look at the impact of any pedestrian and parking improvements actually increasing the number of visitors to this location. Commissioner Dunning asked if people are parking illegally now. Mr. Stidham replied yes and noted that the Sheriff’s Office is writing tickets on the weekends. Commissioner Glover noted that there is a problem with the entire corridor and added that there should be a traffic light at the intersection of Shepherds Mill Road and Route 7. Mr. Stidham noted that you can often see a larger number of accidents and more serious accidents after a traffic light is installed, even on a straightaway. Commissioner Glover said that a traffic light can help create gaps in traffic so people on side streets can get out. Mr. Stidham said that he is more of a proponent of closing crossovers in these situations. Commissioner Glover said that you cannot close crossovers on

top of the mountain or at River Road. Mr. Stidham agreed but said he would close the crossover at Shepherds Mill Road to make it a less desirable commuter route.

Commissioner Kreider asked for a progress report on the AT&T tower at Quarry Road. Mr. Camp replied that construction has not started on that project.

Mr. Stidham noted that at future meetings, he will provide updates on any County transportation projects.

ADJOURN: Meeting was adjourned by consensus at 10:54AM.

A handwritten signature in black ink, appearing to read "Brandon Stidham", written over a horizontal line.

Brandon Stidham, Clerk