

Clarke County Planning Commission

Business Meeting Minutes

Friday, September 3, 2021 – 9:00AM

Berryville/Clarke County Government Center – Main Meeting Room

ATTENDANCE:			
George L. Ohrstrom, II (Chair/Russell)	X	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

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

CALL TO ORDER: Vice Chair Buckley called the meeting to order at 9:04AM.

1. Approval of Agenda

The Commission voted 8-0-3 (Glover abstained) to approve the September 3, 2021 amended meeting agenda as presented by Staff.

Motion to approve the September 3, 2021 Business Meeting amended agenda as presented by Staff:			
Ohrstrom (Chair)	ABSENT	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE (Seconded)	Lee	AYE
Dunning	AYE	Malone	AYE (Moved)
Glover	ABSTAINED		

2. Approval of Meeting Minutes

The Commission voted 7-0-4 (Caldwell and Glover abstained) to approve the June 29, 2021 Work Session minutes as presented by Staff.

Motion to approve the June 29, 2021 Work Session Meeting minutes as presented by Staff:			
Ohrstrom (Chair)	ABSENT	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE
Bass	AYE	Kruhm	ABSENT
Caldwell	ABSTAINED	Lee	AYE (Seconded)
Dunning	AYE	Malone	AYE (Moved)
Glover	ABSTAINED		

The Commission voted 7-0-4 (Caldwell and Glover abstained) to approve the July 2, 2021 Special Meeting and Public Hearing minutes as presented by Staff.

Motion to approve the July 2, 2021 Business Meeting minutes as presented by Staff:			
Ohrstrom (Chair)	ABSENT	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE
Bass	AYE	Kruhm	ABSENT
Caldwell	ABSTAINED	Lee	AYE (Moved)
Dunning	AYE	Malone	AYE (Seconded)
Glover	ABSTAINED		

3. SUP-21-01/SP-21-01, Crown Castle

The Commission voted 9-0-2 to set public hearing for Special Use Permit 21-01 for Friday, October 1, 2021 at 9:00AM.

Motion to set public hearing for SUP-21-01 and SP-21-01, Crown Castle, requesting special use permit and site plan approval for property located on Shepherds Mill Road, Tax Map # 16-A-33, for October 1, 2021:			
Ohrstrom (Chair)	ABSENT	Hunt	AYE
Buckley (Vice Chair)	AYE	Kreider	AYE (Moved)
Bass	AYE	Kruhm	ABSENT
Caldwell	AYE	Lee	AYE
Dunning	AYE	Malone	AYE (Seconded)
Glover	AYE		

4. Board/Committee Reports

Board of Supervisors (Matthew Bass)

Commissioner Bass said the Board of Supervisors is moving forward with an application as a regional project involving All Points Broadband to bring fiber internet to 3,300 unserved homes in Clarke County. He said it is a significant financial commitment and the numbers are not finalized at approximately \$5.4 million. He said the cost would be spread out over a number of years and he believes more state and federal funding is to come to help subsidize. Commissioner Caldwell asked if it will entail cables from telephone poles or Wi-Fi. Commissioner Bass said he believes it will be above-ground to a residence and if someone already has cables, they will trace the cables that were previously installed. Mr. Stidham said it will be fiber internet to the home and said the challenging part is the middle mile that is going to be coordinated by the electric providers. He said the last mile from the right-of-way where the utility line is located, down private access easements or long driveways, there will be a dispensation where the provider will pay for a certain distance of that like 500-700 feet. He said if they need to go further than that, the homeowner might need to pay an additional amount. He said some of the rates are competitive with Comcast and other types of fiber providers. He also said the state is hoping to give this grant money to projects that solve the problem indefinitely. He added that this is being done regionally and all over the state and All Points is working in this area and the southern part of the state is Firefly Broadband who is partnering with various co-ops and Dominion. He said it looks as if they are trying to get this done statewide. Commissioner Glover asked if All Points had to go through a bidding process. Mr. Stidham said that information was beyond his knowledge of the project. He said right now they are partnering with localities which is being organized by the Regional Commission to file the applications. Commissioner Bass said they

are working with other counties and he believes Augusta and Rockingham had already started on this particular project but he is not certain of the other counties. Mr. Stidham replied that our region includes Frederick, Warren, and Page counties and he thinks Shenandoah may be filing a separate application. Commissioner Caldwell asked how the 3,300 unserved households number was determined and if there is a map. Commissioner Bass replied there is a map and that All Points went out and pinpointed each location and commented they did a nice presentation. Commissioner Caldwell asked if 'unserved' meant they exclude people who already have some kind of Wi-Fi or cable. Mr. Stidham responded that according to the maps, it excludes the Comcast served areas but not the Wi-Fi areas and said that does not necessarily mean they will not go there, however, the grant money is only eligible for the unserved areas. He said as they go around these areas, they might decide to go in and add their own infrastructure without the grant funding. He said it would behoove them to do so as it would allow them potential customer base. Commissioner Bass explained the entire cost of the project is \$23 million but the County's share is approximately \$5 million. He said the timeframe in which this project would be completed is roughly two or so years from the time the application is submitted if the grant is awarded. Commissioner Caldwell asked how many households compared to the 3,300 are in the County. Commissioner Bass replied it is double that amount although he is unsure of the exact count. He said that it also includes the Town of Berryville. Mr. Stidham said the town is served by Comcast and this new project would add to their competition. Commissioner Glover asked about the amount of downloadable data allowed per month. He said his current amount is capped at 200 gigabytes and slows down dramatically. He said the best thing about fiber is that even though he and others have internet, it is not the complete answer. He asked if the 2-3 years begins at installation. Commissioner Bass replied that there are various easements, groundwork, running the cables, and while some of that infrastructure is already in place, others will take time and effort. He said it is going to take a significant amount of time but that it should take care of many of the problems mentioned. Commissioner Glover commented that his speeds are good enough now with Winchester Wireless but he is still capped. Commissioner Kreider said he would love to see them go to other areas for competition. Commissioner Bass said it is a big project and said the Board of Supervisors as a whole will want to see the exact financial numbers rather than the current ballpark numbers. He said it will be hard to say no to but as long as everything goes smoothly, this could be a once in a lifetime opportunity given the federal and state funding that is currently available and may not be so in the future. Commissioner Glover asked to see the map to which Commissioner Bass replied he will ask to share it with the Commissioners. Commissioner Caldwell commented that if we have cable all over the County, we may become a target for the developers.

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

Mr. Stidham said there are no new applications and therefore nothing to report.

Board of Zoning Appeals (Anne Caldwell)

Commissioner Caldwell said there was nothing to report. She asked for an update on the court case regarding the garage in White Post. Mr. Stidham said that Mr. Mitchell has filed the appropriate court documents to obtain a court order to have the situation remedied. He said it is his understanding that Mr. Legge has retained his own legal counsel and they have provided an argument based on him obtaining vested rights on the location of his own building at the point in time that the Building Department approved the footing for the garage. He said some of the case laws they provided support similar situations. He said the difference in those cases is that zoning was involved with reviewing and approving setbacks during construction at various points like the footing. He said the Building Department has nothing to do with zoning. He continued that if the Building Department sees

something that catches their eye, they will contact us as a courtesy but they are not part of the zoning review process. He said the bigger issue is that Mr. Legge lost his right to be able to make these arguments when he did not appeal the Board of Zoning Appeal's denial of his appeal. He said Mr. Legge had thirty days to appeal in which case he would be able to make that and any other arguments but at this point it is essentially a thing decided. He said hopefully Mr. Mitchell will be able to get this claim dismissed so we can move forward.

Historic Preservation Commission (Jeremy Camp)

Mr. Camp said there is nothing new to report. He said their next meeting is scheduled this month to continue discussion about reviewing historic land markers in the County and to see if they want to make any recommendations. Vice Chair Buckley asked if it was the gray Virginia Department of Transportation (VDOT) cast iron markers seen on the side of the road. Mr. Camp confirmed.

Conservation Easement Authority (George L. Ohrstrom, II)

Vice Chair Buckley said there is nothing to report other than they are moving their meeting date to the second Friday of each month at 10:00AM.

Broadband Implementation Committee (Brandon Stidham)

Mr. Stidham said they have a meeting scheduled on October 13, 2021 at 2:00PM.

5. Short-term Residential Rentals

Mr. Stidham directed the Commissioners to page 7 of 110 to resume the discussion of short-term residential rentals. He said the Commission want a zoning regulation cap maximum of ten occupants per lot. He gave the example that if there is a main house plus a tenant house or accessory dwelling, there can only be a maximum of ten people on the property including any residents at any point in time. He said the Commissioners stated at the Work Session that they were good with not requiring owner occupancy with this particular use not to be confused with someone who wants to do a home occupation bed and breakfast. He said serving meals to people onsite would require a home occupation permit and owner occupancy as it is a home occupation. He also said that while the Commissioners discussed item number 4, he did not have a clear consensus in his notes as to whether short-term residential rentals should be prohibited in the Rural Residential (RR) district. He said he noted the home occupation bed and breakfast use would still be available and that it would only be the short-term residential rentals that would be excluded. The Commissioners agreed that short-term residential rentals should be prohibited in the RR District.

Mr. Stidham asked if the proposed list of prohibited activities should be included. He said this is the list of bottom of page 4 of 110. He said it would include use regulations that says one cannot serve meals to transient renters. He said it would clearly state that one could not have commercial public assembly activities such as special events, live music, weddings, meetings, conferences, and reunions. He also said it would clarify that gatherings of non-renters or permanent residents of a short-term rental would not be allowed to exceed a maximum of ten occupants at one time. He said this would ensure the maximum capacity for the onsite septic system is honored throughout the rental periods and the maximum of ten people on a lot that the Commission wants to establish as an additional zoned regulation. He asked the Commissioners if they are comfortable with the list of proposed prohibited activities. The Commissioners agreed. Mr. Stidham said that this list might better clarify and put into perspective Commissioner Glover's recreational questions. Mr. Stidham explained that if someone

had a lot with river access and promoted the use as a canoe rental facility with an overnight Airbnb rental then the rental activity would be an accessory activity to the recreational activity which would require a special use permit. Another accessory activity example given by Mr. Stidham was if someone advertised their Airbnb as a four wheeler experience with an ATV track, this would also require a special use permit. He said it is different if someone has an Airbnb that happens to have four wheelers on the property for guest use.

Commissioner Glover said the only concern he has is regarding people who are non-transient renters. He said he personally uses Airbnb homes for this very reason due to the home having a kitchen and room to invite family and guests and said it seems very limited. Mr. Stidham said it is the point for a by-right use. Commissioner Glover clarified that non-transient renters means no guests at all on the property. Mr. Stidham confirmed. Commissioner Glover asked if the number of guests could increase. Mr. Stidham replied that there is a limit on the number of people. He said that an afternoon barbeque gathering could potentially lead to a late night party where there are an additional ten people staying the night at the property. Commissioner Kreider said that if twenty additional people came to visit, it would crash that septic system. Commissioner Glover said that if no one else on the Commission agrees, he would let it go. He said that he would not be able to have one person, such as his mother-in-law, over given this regulation. As an example, he said if his family of four rented a home that allowed four renters, he would not be permitted to invite his mother-in-law over. Mr. Stidham said he, as a renter, could include the guest during the rental process. Commissioner Glover said when someone books a rental property, they are asked for the number of overnight stays versus how many people will be renting. Mr. Stidham said it would be harder to prove who is a renter and who is not a renter if the occupancy is not being exceeded than it is to have a photograph from a next-door neighbor with more than ten people on the property. Commissioner Glover said he understands but still believes that this is strict. Commissioner Bass said it is a good point and from a practical enforcement perspective, it will be hard to police. Mr. Stidham agreed that it will be hard to police the maximum number and that we would have to have a property owner or some evidence that showed there were more people than allowed on the property. Commissioner Glover said if someone complains about it at a public hearing, we will go from there. Commissioner Bass asked if it can it be changed to say overnight guests. Mr. Stidham said the renter would still not be able to have an exceeded number during the day. Commissioner Caldwell said that in reality neighbors will not complain when there are one or two guests over during the day but it will become an enforcement issue the moment there are large family or friends gatherings. She said while it is a strict regulation, it will self-regulate. Commissioner Glover commented that it might be intimidating to anyone trying to start an Airbnb in Clarke County. He said if he came across such a rule in a rental agreement, he would not rent it. Commissioner Lee said that it will be abused and commented that when people rent these properties they will want to have guests. He said the problem is when they greatly over exceed and have parties. He reiterated that one or two additional guests on the property during the day is not going to effect the septic but a large party will. He said this puts them on notice that large parties are not permitted. Commissioner Lee said there will not be many neighbor complaints with five or so extra people during the day. Vice Chair Buckley said people will not complain if there are even fifteen additional people on the property. He said people rent Airbnbs for the purpose of family reunions and said there will not be an issue unless there is amplified music at night. He said this provides us with a recourse if that happens. Commissioner Glover said he wanted to bring it up as an issue but he is fine with moving forward. Vice Chair Buckley asked if the Commissioners had anything further to add. There was no response from the Commissioners indicating there were no further questions or concerns.

Mr. Stidham asked if the Commissioners were comfortable with increasing the occupancy for the home occupation bed and breakfast to five bedrooms and ten occupants mitigated by the properties septic system capacity. Vice Chair Buckley asked what it is currently. Mr. Stidham replied that it is three-bedroom and five occupants. The Commissioners agreed across the board.

Mr. Stidham asked the Commissioners if they were still comfortable with applying these regulations retroactively to anyone who does not have zoning approval. Commissioner Caldwell agreed but with the compromise of the six-month window for people to come into compliance. Commissioner Bass asked if January 1 would be an accurate timeframe. Mr. Stidham said that would be the timeframe when the Board of Supervisors set their public hearing and that he needed to speak with Mr. Mitchell on a few details such as putting it into place effective immediately but not enforcing until July 1 or making it effective July 1. He asked the Commissioners if there were other issues to discuss. The Commissioners indicated there were no further issues.

Mr. Stidham said he will put this into the text amendment format and on the agenda in October to set a public hearing.

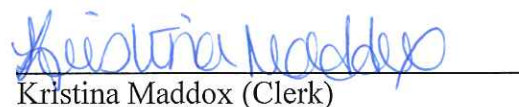
OTHER BUSINESS

Mr. Stidham said Mr. Boies was hoping to talk about the broadband project in addition to the Citizen's Academy. He said the Citizen's Academy details can be found on the website and that it is a multi-week course that citizens can participate in to better understand the aspects of local government. He said they will hear from the Planning and Zoning Department, from Mr. Boies regarding general government, the financial aspects of local government, and they will get the opportunity to tour places like the wastewater plant. He said the Commissioners can direct any interested persons to the County website to register. Commissioner Glover asked the idea behind the Citizen's Academy and asked if it will encourage people to join committees and commission roles. Mr. Stidham said that is the ultimate point and to get people interested in and learn more about local government and for educational purposes. In the end, he said the participants become potential candidates for boards and committees if they are interested.

Mr. Stidham announced upcoming meetings. He said the Comprehensive Plan Committee is meeting on Tuesday, September 7 at 2:00PM to review the finalized draft of Chapter 2 of the revised Comprehensive Plan. He said they are going to start working on Chapter 3 that covers the component plans. He said the Commission will receive a five-year review resolution for both Waterloo and Double Tollgate area plans by the end of the year. He said Betsy Arnett of the Historic Preservation Commission (HPC) will be presenting at the September 28 Work Session. She will review the HPC's recent activities and talk about a text amendment they are working on regarding demolitions. He announced there is a Planning Commission Business Meeting on Friday, October 1 at 9:00AM to set public hearing on the rentals text amendment and the public hearing on the Crown Castle special use permit application.

ADJOURN: The Business Meeting adjourned by consensus at 9:35AM.


Randy Buckley (Vice Chair)


Kristina Maddox (Clerk)