



**PLANNING COMMISSION  
REGULAR MEETING AGENDA**

April 6, 2017

7:00 p.m.

- 1) **Call to Order** – Chairman Theresa Stein
- 2) **Pledge of Allegiance**
- 3) **Agenda Amendments** (Planning Commission and Staff)
- 4) **Commissioner Disclosures**
- 5) **Public Hearings**
  - a) None Scheduled
- 6) **Presentations**
  - a) None Scheduled
- 7) **Discussion Items**
  - a) Repeal and Replacement of the Stream and Creek Buffer (OA16-01)
  - b) Civil Penalties Text Amendment (OA16-06)
- 8) **Action Items**
  - a) None Scheduled  
*Note: Any Discussion Item may be added as an Action Item during the meeting by motion of the Planning Commission.*
- 9) **Information Items**
  - a) Status of Priority Work Items
- 10) **Citizen Comments** – All citizens who wish to speak about an item or issue that is not listed for a public hearing will be given an opportunity to speak (3 minute limit per speaker).
- 11) **Council Representative’s Report**
- 12) **Chairman’s Comments**
  - a) Meeting of Loudoun/Town Planning Commission Chairmen
- 13) **Planning Commissioners’ Comments**
- 14) **Approval of Minutes**
  - a) March 16, 2017 Regular Meeting
- 15) **Adjournment**

If you require any type of reasonable accommodation as a result of physical, sensory or mental disability in order to participate in this meeting OR if you would like an expanded copy of this agenda, please contact the Department of Community Development at (540) 338-2304 at least three days in advance of the meeting. Expanded copies of the agenda may not be available the night of the meeting, please request a copy in advance.

USE OF ELECTRONIC DEVICES DURING MEETINGS For the comfort and consideration of others, all cellular phones must be turned off and cannot be used in the Council Chambers. Pagers must be set on silent or vibrate mode. This is requested because of potential interference with our recording devices and the transmittal of our hearing impaired broadcast.



**STAFF REPORT**  
**DISCUSSION ITEM**

Item # 7a

**SUBJECT:** Repeal and Replacement of the Stream and Creek Buffer

**DATE OF MEETING:** April 6, 2017

**STAFF CONTACTS:** Sally Hankins, Town Attorney  
Dan Galindo, Senior Planner

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**SUMMARY and RECOMMENDATIONS:**

The Planning Commission recommended to Town Council, and Town Council thereafter initiated, an amendment to the Town's Zoning Ordinance for the purpose of strengthening protection of streams and creeks.

Pursuant to the direction from Planning Commission and Town Council, Staff has prepared a draft ordinance (**Attachment #1**) for consideration by the Planning Commission that will repeal and replace Zoning Ordinance Article 14, Stream and Creek Buffer.

The existing Stream and Creek Buffer Ordinance, currently contains certain tree planting requirements. Such tree planting and removal regulations warrant additional research, since ecologists and other environmental scientists recommend adherence to specific guidelines concerning the management of vegetation in riparian areas. Further, any regulations governing vegetation in a riparian buffer must be adopted with definitive guidelines for administration, which are currently lacking in the ordinance. For these reasons, Staff recommends adopting the proposed ordinance with only a setback at this time, and then commencing a second phase during which standards for riparian plantings will be established. Later phases may also address the protection of wetlands.

Alternatively, the Planning Commission can direct staff to include standards for plantings in riparian buffers at this time, so that the ordinance is adopted with such standards in place.

**BACKGROUND:**

Town Council adopted Resolution 16-10-02 initiating an amendment to Zoning Ordinance Article 14, *Stream and Creek Buffer*.

**ISSUES FOR PLANNING COMMISSION DISCUSSION:**

1. Encroachments.

As written, the ordinance contains a required Setback from all waterbodies, with no provision for encroachment. The Planning Commission should consider whether any encroachments should be allowed. The Chesapeake Bay Preservation Act allows the following encroachments:

- a. water-dependent uses
  - b. redevelopment of existing uses
  - c. certain roads and driveways
  - d. flood control or stormwater management facilities
  - e. passive recreational facilities
  - f. archaeological and historic preservation activities
  - g. development, to the minimum degree necessary and in no case closer than 50 feet to the watercourse, when necessary to achieve a reasonable buildable area for a principal structure and necessary utilities, only if the lot was recorded prior to October 1, 1989 and application of the 100-foot buffer would result in a loss of buildable area on the lot
  - h. removal of dead diseased dying trees as well as shrubs and noxious weeds
  - i. tree pruning
  - j. tree removal, provided such trees are replaced with equally effective vegetation
2. Consider whether to exempt ephemeral streams from setback requirement.
  3. Does the ordinance result in any non-conformities? Staff should identify in advance.
  4. Does the Town want property owners to submit plans for tree pruning/clearing within the 100-foot setback?
  5. Should plans showing existing waterbodies be surveyed? How are the limits of the waterbody identified?

**BUDGET IMPACT:**

There is no budget impact with this item other than the use of in-house staff resources.

**MOTION:**

No motion at this time; for discussion only.

**ATTACHMENT(S):**

1. Draft *State Waters Protection Ordinance*

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**TOWN OF PURCELLVILLE**  
**IN**  
**LOUDOUN COUNTY, VIRGINIA**

**ORDINANCE NO.**

**PRESENTED:  
ADOPTED:**

**AN ORDINANCE: REPEALING ARTICLE 14 (“STREAM AND CREEK BUFFER”) OF THE TOWN OF PURCELLVILLE ZONING ORDINANCE, AND REPLACING IT WITH ARTICLE 14 (“STATE WATERS PROTECTION ORDINANCE”)**

**WHEREAS,** the Purcellville Planning Commission recommended that the Town strengthen its protection of streams and creeks located within the Town; and

**WHEREAS,** the Town Council adopted Resolution 16-10-02, initiating an amendment of Zoning Ordinance Article 14, directing the Planning Commission to revise Article 14 for the purpose of strengthening the Town’s protection of streams and creeks; and

**WHEREAS,** the Commonwealth of Virginia recognizes the importance of protecting riparian lands to the health of state waters. It has authorized localities to adopt zoning regulations that provide for the preservation of lands significant to the protection of the natural environment, and has also adopted the Chesapeake Bay Preservation Act, which encourages all localities - even those not mandated to adopt the Chesapeake Bay Preservation Act regulations - to adopt the water protection criteria promulgated under the Act; and

**WHEREAS,** pursuant to authority under the Chesapeake Bay Preservation Act, the Virginia State Water Control Board promulgated regulations that allow the Town of Purcellville to require a buffer of 100 feet in width adjacent to, and landward of, certain riparian lands; and

**WHEREAS,** under the Chesapeake Bay Preservation Act, this 100 foot buffer is measured not from the watercourse, but from the land adjacent to the watercourse to the extent such land serves ecological and biological processes that are important to the health of the watercourse; and

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**WHEREAS,** the scientific literature on watercourse ecology generally concludes that the land abutting watercourses serves important functions to the health of the watercourse, including the removal of non-point source pollution, the assimilation and filtration of sediments and nutrients, the stabilization of soil, and the regulation of watercourse temperatures that can in turn affect the health of aquatic life; and

**WHEREAS,** the scientific literature on watercourse ecology generally concludes that a riparian buffer of at least 100 feet from the watercourse is necessary to achieve all of the protective functions that such lands perform; and

**WHEREAS,** pursuant to Va. Code 15.2-2283, the Town of Purcellville is authorized to adopt zoning ordinances that provide for the preservation of lands significant to the protection of the natural environment; and

**WHEREAS,** the Town of Purcellville finds that all lands within 100 feet of a watercourse have an intrinsic water quality value due to the ecological and biological functions they perform, and the protection of such lands is necessary to protect the quality of the state’s waters; and

**WHEREAS,** the Town finds that the public necessity, convenience, general welfare, and good zoning practice require the protection of lands adjacent to water bodies and watercourses, whether such water bodies and watercourses have flows that are perennial, intermittent, or ephemeral, because such lands perform important ecological and biological functions.

**NOW, THEREFORE,** the Council of the Town of Purcellville, Virginia hereby ordains:

**Section 1. Repeal and Replace**

That Town of Purcellville Zoning Ordinance, Article 14 “Stream and Creek Buffer” is hereby deleted in its entirety and replaced with Article 14 “State Waters Protection” as follows:

Sec. 14-1. Authority

This article is adopted pursuant to the authority vested in the Town by Va. Code 15.2-2283, authorizing zoning regulations designed to preserve lands significant to the protection of the natural environment, and pursuant to the authority vested in the Town by the Chesapeake Bay Preservation Act.



**AN ORDINANCE: REPEALING ARTICLE 14 (“STREAM AND CREEK BUFFER”) OF THE TOWN OF PURCELLVILLE ZONING ORDINANCE, AND REPLACING IT WITH ARTICLE 14 (“STATE WATERS PROTECTION ORDINANCE”)**

Sec. 14-2. Purpose.

The Town considers lands adjacent to all waterbodies, including ephemeral, intermittent, and perennial streams and creeks, to have intrinsic water quality value due the ecological and biological processes they perform, and considers their protection to be necessary to the protection of state waters. These riparian areas serve as a transition between terrestrial and aquatic ecosystems, significantly influencing the exchange of energy and matter between the two systems. These riparian areas, when properly protected, serve the following functions: (i) significantly reduce the ability of sediment and non-point source pollution, contained in waters flowing to waterbodies from adjacent uplands, from reaching ground water, streams and creeks, (ii) stabilize soils thereby preventing erosion of soils into streams and creeks, (iii) provide shade that regulates watercourse temperatures, thereby protecting the health of aquatic life, (iv) help to absorb periodic flood surges, and (v) provide a source of food to fish and other wildlife.

The Commonwealth of Virginia recognizes the importance of protecting riparian lands to the health of state waters. It has authorized localities to adopt zoning regulations that provide for the preservation of lands significant to the protection of the natural environment, and has also adopted the Chesapeake Bay Preservation Act, which encourages all localities to adopt the water protection criteria set forth in regulations promulgated under the Act.

Section 14-3. Definitions

Waterbody: All ponds, lakes, rivers, creeks, brooks, streams, springs, and reservoirs, whether perennial, intermittent or ephemeral in nature. The term “waterbody” excludes manmade waterbodies and ditches, unless they are part of a natural drainage way, and also excludes wetlands and groundwater. The term “waterbody” shall include all perennial, intermittent, and ephemeral waterbodies.

Sec. 14-4. Setback Established.

No construction, grading, clearing, development, or other land disturbance shall occur within 100 feet of a waterbody. If the waterbody is a creek, brook, or stream the 100-foot setback shall be measured in “plan view” around the entire perimeter of the waterbody from the centerline of the waterbody. If the waterbody is a pond, lake, spring, or reservoir the 100-foot setback shall be measured in “plan view” around the entire perimeter of the waterbody from the outer edge of the waterbody.

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Section 14-5. Exceptions.

To be determined by Planning Commission and Town Council.

Section 14-6. Applicability

This article shall apply to all properties and waterbodies within the Town of Purcellville.

Section 14-7. Relation to other Town ordinances and regulations

To the extent this article conflicts with other local regulations, the regulations offering the greatest protection to the natural environment shall control.

Section 14-8. Plan submission

All plans for development, clearing, grading, and construction shall show existing waterbodies.

Section 14-9. Existing Uses

This article shall not apply retroactively to uses and activities that are existing and ongoing. However, this article shall apply at the time an existing and ongoing use or activity is changed.

**Section 2. Savings Clause**

That the Stream and Creek Buffer Ordinance, which is repealed by this ordinance, shall remain in full force and effect until the effective date of this ordinance. The repeal of the Stream and Creek Buffer Ordinance shall not affect the authority of the Town to prosecute, punish or penalize any violation of the Stream and Creek Buffer Ordinance that occurred before the repeal hereunder takes effect. Repeal of the Stream and Creek Buffer Ordinance does not revive any prior version of the Stream and Creek Buffer Ordinance that may have been in force before or at the time this repeal takes effect.

**Section 3. Severability**

That if any section or provision of this article is held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining sections or provisions of this article, which shall remain in full force and effect.

**Section 4. Effective Date.**

That this Ordinance shall be effective upon adoption.

**AN ORDINANCE: REPEALING ARTICLE 14 (“STREAM AND CREEK BUFFER”) OF THE TOWN OF PURCELLVILLE ZONING ORDINANCE, AND REPLACING IT WITH ARTICLE 14 (“STATE WATERS PROTECTION ORDINANCE”)**

**PASSED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.**

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Kwasi A. Fraser, Mayor  
Town of Purcellville

ATTEST:

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Diana Hays, Town Clerk

Legal and General References:

1. The *Chesapeake Bay Preservation Act*, as adopted by the General Assembly of the Commonwealth of Virginia, Va. Code § 62.1-44.15:67, et seq.
2. The *Chesapeake Bay Preservation Area Designation and Management Regulations*, as adopted by the State Water Control Board, Va. Admin Code § 9 VAC 25-830, et seq.
3. *Riparian Areas – Functions and Strategies for Management*, prepared by the National Resource Council’s Committee on Riparian Zone Functioning and Strategies for Management, <https://www.nap.edu/catalog/10327/riparian-areas-functions-and-strategies-for-management>
4. *Streamside Forest Buffer Width Needed to Protect Stream Water Quality, Habitat, and Organisms: A Literature Review*, Journal of the American Water Resources Association, June 2014.
5. *Watershed Management for Potable Water Supply: Assessing the New York City Strategy* (2000), Chapter 10, Setbacks and Buffer Zones, National Research Council Commission on Geosciences, Environment and Resources; Committee to Review the New York City Watershed Management Strategy, <https://www.nap.edu/catalog/9677/watershed-management-for-potable-water-supply-assessing-the-new-york>
6. *Compensatory Stream Mitigation*, Army Corps of Engineers, Little Rock Division, 2008
7. *Riparian Buffer Zones: Functions and Recommended Widths*, Hawes and Smith, Yale School of Forestry and Environmental Studies, April 2005

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## **STAFF REPORT - PLANNING COMMISSION** **INFORMATION**

**SUBJECT:** Civil Penalties Text Amendment

**DATE OF MEETING:** April 6, 2017

**STAFF CONTACTS:** Patrick Sullivan – Director of Community Development

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### **SUMMARY and RECOMMENDATIONS:**

When there is a major code violation staff has limited options to deal with that violation. Under our present system we send a notice of violation to the violator and hope that the violator will “do the right thing” and come into compliance. If the violator does not comply we are left with inadequate tools to enforce compliance. There are two basic enforcement tools. The first being a limitation on securing future permits and the second being a court filing to request the Court to convict the violator and abate the violation. Both of these options have flaws and as such an additional method that allows for a fine process will help code enforcement and reduce violations. That additional method is adopting a Civil Penalties process. Civil Penalties will streamline the enforcement process and will provide a significant incentive for violators to think twice about ignoring code violations as it will hit them where they don’t want to be hit, in their pocket book.

### **BACKGROUND:**

Civil Penalties is essentially a process to deal with repeat violations of the zoning code and attempts to circumvent the zoning process. Most people abide by the zoning code and will do so willingly when they are told they must comply with the code. However, there are a number of people that just refuse to comply or continue to repeat the violation. Once they have taken this stance it is hard to bring them into compliance. The present ordinance provides that violations of the zoning ordinance are a misdemeanor and therefore a criminal offense and it is the courts that determine the amount of a fine if any. This makes enforcement difficult as it requires a visit to the general district court. Misdemeanors must be prosecuted in court and the standard is proof beyond a reasonable doubt. This tends to discourage enforcement because of the complexity, the expense, and the timeliness of the process. It is time consuming and expensive to take it to court. The result or fine imposed, if any, may likely be less than the cost of taking it to the court in the first place. On the other hand, with a civil penalties ordinance, enforcement is easier, less time consuming, less expensive, and therefore more effective. The Town can levy the fine immediately without a court approval and failure to pay will result in an appearance in court. Violators tend to pay the fine to the Town rather than go to court. If they do go to court, violations under the civil penalties ordinance are only held to the standard that a preponderance of the evidence is sufficient to establish guilt which makes it much easier to litigate.

The Code of Virginia provides that any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance

The method or structure for implementing civil penalties is the fine/ticket/notice of violation (NOV) system. The Code of Virginia provides for not more than \$200 for the initial summons or ticket and no more than \$500 for a repeat violation up to a maximum of \$5,000; we could also require that the first notice is always a warning and the fine doesn't kick in until the second offense. Each day that a violation is found to have existed constitutes a separate offense. As an example, we could establish a \$50 fine for temporary sign violations. Failure to remove the sign after the first warning would result in a \$50 ticket.

These are steps that can be taken to increase the effectiveness of our enforcement and provide a reasonable method to deal with scofflaws.

To move forward we will have to amend the Zoning Ordinance and set a fine schedule.

The Town of Leesburg recently instituted a civil penalties ordinance. Fairfax County and City, along with Herndon have similar ordinances as does Loudoun County.

Increased population has brought increased zoning violations. Staff is having trouble with enforcement and would appreciate additional tools that would help with that enforcement.

It should be noted that this will not fix all the problems, but it does provide staff with an additional tool to help with our job and an added incentive for violators to come into compliance.

### **ISSUES for discussion:**

1. Adoption. The first and perhaps the most important issue is do we want to adopt civil penalties?
2. Required warning. You will find, built into the amendments, a mandatory warning before a fine is issued. This provides the violator with an opportunity to come into compliance without incurring a fine. Mandating a warning as part of the process should be considered and is recommended by staff.
3. Noncompliance. Our present system comes to a halt when the violator decides not to comply. We do have the power to deny any future permits until the violation is corrected but many violators never need a new permit. The only other option is the court system which can take over six months and can result in lots of research and attorney time. Prosecuting small fines is not efficient or cost effective.
4. Fines. If we charge a fine, how much should that fine be? State Statute limits the amount of fine that can be levied, a maximum of \$200 for the first offense and a maximum of \$500 for a second or succeeding violation. The total that can be levied is \$5,000. We could set the bar lower if you feel \$200 is too high. As an example, sign violations could have lower fines if allowed by Statute (Sally would have to weigh in on this one). The other localities mentioned above charge the maximum allowed by Statute.

5. Business community. Much of the fines will be levied against business owners and will most likely be violations of the sign ordinance. I expect a considerable amount of pushback. That doesn't mean we shouldn't do it; it does mean that the damage could outweigh the benefits. Would we be alienating our business community by instituting a fine system? This is situation that should be carefully discussed and reviewed.

**BUDGET IMPACT:**

There is no budget impact for this item. There is a potential for additional revenue once the civil penalty amendment has been adopted and initiated.

**MOTION(S):**

This is a discussion item and is not ready to be moved.

**ATTACHMENT(S):**

1. Draft text amendment language
2. Scenario memo

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## Article 11 Administration and Enforcement

### Section 17. Violation and Penalties.

~~17.1 In case any building is erected, constructed, reconstructed, altered, repaired, or converted or any building or land used in violation of this ordinance, the administrator is authorized and directed to institute any appropriate action to put an end to such violation.~~

~~17.2 Where there is reasonable cause to believe that a violation of this ordinance has occurred, the administrator or his authorized representatives may, with written consent of the owner or occupier of the premises in question on a form provided by the administrator, enter the premises for the purposes of inspection. Where permission to enter is withheld, the Administrator shall seek a court order from the General District Court of Loudoun County or a search warrant from a magistrate of the jurisdiction as may be appropriate.~~

~~17.3 Any person or corporation who shall violate any of the provisions of this ordinance or fail to comply therewith, or with any of the requirements thereof, or who shall use any land or build or alter any building in violation of any detailed statement or plan submitted and approved hereunder shall be guilty of a misdemeanor punishable by a fine of not less than \$10.00 nor more than \$1,000.00. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10.00 nor more than \$1,000.00, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of not less than \$100.00 nor more than \$1,500.00. The owner or owners of any building or premises, or part thereof, where anything in violation of this ordinance shall be placed, or shall exist, and any architect, builder, contractor, agent, person, or corporation employed in connection therewith, and who have assisted in the commission of any such violation shall be guilty of a separate offense and upon conviction thereof, shall be fined as hereinbefore provided. However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000.00. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000.00, and any such failure during any succeeding ten-day period shall constitute a separate misdemeanor offense for each ten-day period punishable by a fine of up to \$7,500.00. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with Chapter 13 or Chapter 13.2 of Title 55 of the Code of Virginia, 1950, as amended, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.~~

~~(Ord. No. 08-08-06, § III, 8-12-2008; Ord. No. 11-05-01, 6-14-2011)~~

### Section 17.1 VIOLATIONS

**The following are violations of this Ordinance and are declared to be unlawful:**

The Zoning Administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this Zoning Ordinance. In

acting to enforce this Zoning Ordinance, the Zoning Administrator, or authorized agent thereof, shall act in the name of the Town of Purcellville. The Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce this Zoning Ordinance. The Zoning Administrator shall refuse to issue any permit for any building, or for the use of any premises which would violate any of the provision of said ordinance.

**17.1.1 Uses.** Any use of a structure, improvement or land, established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning clearance, or condition accepted or imposed in conjunction with any Town approval under this chapter, or without any required permit, certificate or other required approval under this chapter.

**17.1.2 Structures or improvements.** Any structure or improvement and, within the flood hazard overlay district, any development as that term is defined in section Article 12 Section 7, that is established, conducted, operated or maintained in violation of any provision of this chapter, any approved application plan, site plan, code of development, zoning permit, zoning clearance, or condition accepted or imposed in conjunction with any Town approval under this chapter, or without any required permit, certificate or other required approval under this chapter.

**17.1.3 Structures without building permits.** Any structure for which a building permit application is required that is started, established, constructed, reconstructed, enlarged or altered without a building permit.

**17.1.4 Use of structure or site without certificate of occupancy.** Any use of a structure or site for which a certificate of occupancy is required that is conducted, operated or maintained without a certificate of occupancy.

**17.1.5 Requirements and standards.** Any person, entity, firm, partnership, or corporation, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Zoning Ordinance, or permits any such violation, or who fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this Zoning Ordinance or the provisions of any approval granted by the Town under this Zoning Ordinance shall be subject to the enforcement provisions of this article.

**State law reference** – Va. Code § 15.2-2286.

## **17.2 ENFORCEMENT**

The zoning administrator is authorized to enforce this chapter as follows:

**17.2.1 Investigation.** Upon receipt of a complaint or a request to investigate whether this chapter is being violated, the zoning administrator or his designee shall conduct an investigation.

**17.2.2 Inspection warrants and search warrants.** The zoning administrator is authorized to request and execute inspection warrants issued by a magistrate or court of competent jurisdiction to allow the inspection of dwellings authorized under Virginia Code § 15.2-2286(A)(15). The zoning administrator also is authorized to request and execute search warrants issued by a court of competent jurisdiction as provided by law. Prior to seeking an inspection warrant or a search warrant, the zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant to enter the structure or property to conduct an inspection or search.

**17.2.3 Subpoenas duces tecum (court order to produce records).** Whenever the zoning administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of this chapter that limits occupancy in a dwelling unit and, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the Town Attorney petition the judge of the general district court for a subpoena duces tecum against any person refusing to produce the data or information, as authorized under Virginia Code § 15.2-2286(A)(4).

**17.2.4 Notice of violation; exception.** If, upon completion of the investigation, the zoning administrator determines that a violation of this chapter exists, a notice of violation shall be issued to the person committing or permitting the violation, or both, if the zoning administrator determines to pursue enforcement; provided that a notice of violation shall not be required to be issued for a violation initiated by a ticket or NOV under section 17.3.

**17.2.4.A Contents of notice.** The notice shall include the following information: (i) the date of the notice; (ii) the basis for the decision; (iii) a statement informing the recipient that the decision may be appealed to the board of zoning appeals within the applicable appeal period provided in section Article 9 Section 11 & 12 and that the decision shall be final and unappealable if it is not timely appealed; (iv) the applicable appeal fee; (v) a reference to where additional information may be obtained regarding filing an appeal; and (vi) the time within which the violation shall be abated.

**17.2.4.B Delivery of notice.** The notice shall be either hand delivered, posted on the door of a building on the site, or mailed by regular or certified mail, provided that notice to the property owner, sent by certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this section.

**17.2.5 Remedies.** In the enforcement of this chapter, the zoning administrator may pursue any remedy authorized by law. The remedies provided in sections 17.3, 17.4 and 17.5 are

cumulative and not exclusive except to the extent expressly provided therein, and shall be in addition to any other remedies authorized by law.

**State law reference** – Va. Code § 15.2-2204, 15.2-2286(A)(4), 15.2-2311.

### **17.3 CIVIL PENALTIES**

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter as provided in section 17.1, or permits either by granting permission to another to engage in the violating act or by not prohibiting the violating act after being informed by the zoning administrator that the act violates this chapter as provided in section 17.2, shall be subject to the following:

**17.3.1 Warning notice.** All civil violations shall first be issued a notice of warning prior to the issuance of a ticket or summons according to the procedures set forth in 17.2 of this Section. Failure to correct the violation within the time period specified on the warning, which shall be no less than 10 days, shall result in the issuance of a ticket, notice of violation, or summons.

**17.3.2 Procedure.** Proceedings seeking civil penalties for all violations of this chapter under this section shall commence either by filing a civil summons in the general district court or by the zoning administrator or his deputy issuing a ticket or notice of violation.

**17.3.3 Minimum elements of a civil summons or ticket.** A civil summons or ticket shall contain, at a minimum, the following information: (i) the name and address of the person charged; (ii) the nature of the violation and the section of this chapter allegedly violated; (iii) the location and date that the violation occurred or was observed; (iv) the amount of the civil penalty being imposed for the violation; (v) the manner, location and time in which the civil penalty may be paid to the Town; (vi) the right of the recipient of the summons to elect to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of a court; and either the date scheduled for trial, or the date for scheduling of such trial by the court.

**17.3.4 Amount of civil penalty.** Any violation of this chapter shall be subject to a civil penalty of two hundred dollars (\$200.00) for the initial summons, and a civil penalty of five hundred dollars (\$500.00) for each additional summons arising from the same set of operative facts.

**17.3.5 Maximum aggregate civil penalty.** The total civil penalties from a series of violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000.00). After the civil penalties reach the five thousand dollar (\$5,000.00) limit, the violation may be prosecuted as a criminal misdemeanor under section 17.4.

**17.3.6 Each day a separate offense; single offense in 10-day period; stay.** Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled

violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period. Any such civil penalty shall not be assessed during the pendency of the 30-day appeal period provided in accordance with § 15.2-2311 of the Code of Virginia, 1950, as amended.

**17.3.7 Option to prepay civil penalty and waive trial.** Any person summoned or ticketed for a violation of this chapter may elect to pay the civil penalty by making an appearance in person or in writing by mail to the department of finance prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.

**17.3.8 Civil penalties are in lieu of criminal penalties.** A violation enforced under section 17.3 shall be in lieu of any criminal penalty except as provided in section 17.3.4 and section 17.4 and, except for any violation resulting in injury to any person, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this chapter.

**17.3.9 Violations excluded.** Section 17.3 shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development where, for the purposes of this section, the term “land development” means a human-made change to, or construction on, the land surface including, but not limited to, land disturbing activity within the meaning of chapter 17 or the construction of buildings, structures or improvements under an approved site plan or subdivision plat, but does not mean the land development project’s compliance with this chapter; or (ii) for the violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.

**17.3.10 Assessment of civil penalties during appeal period.** No civil penalties shall be assessed by a court having jurisdiction during the pendency of the thirty (30) day appeal period provided under section 17.3.2.

**State law reference** – Va. Code § 15.2-2209.

## **17.4 CRIMINAL PENALTIES**

Any person, whether the owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter that results in injury to any person, or to whom the five thousand dollar (\$5,000.00) maximum aggregate civil penalty provided in section 17.3.3 has been reached and who continues to violate any provision of this chapter as provided in chapter 17.1, or permits either by granting permission to another to engage in the violating act or by not

prohibiting the violating act after being informed by the zoning administrator that the act continues to violate this chapter as provided in section 17.2, shall be subject to the following:

**17.4.1** The person shall have committed a misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00).

**17.4.2** If the violation is uncorrected at the time of conviction, the court shall order the person convicted to abate or remedy the violation in compliance with this chapter, within a time period established by the court. Failure to remove or abate such violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period, punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand five hundred dollars (\$1,500.00).

**17.4.3** Notwithstanding sections 17.4.1 and 17.4.2, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall be punishable by a fine of up to two thousand dollars (\$2,000.00). Failure to abate the violation within the specified time period shall be punishable by a fine of up to five thousand dollars (\$5,000.00), and any such failure during any succeeding ten (10) day period shall constitute a separate misdemeanor offense for each ten (10) day period punishable by a fine of up to seven thousand five hundred dollars (\$7,500.00). However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of the dwelling unit against a tenant to eliminate an overcrowding condition in accordance with chapters 13 or 13.2 of title 55 of the Virginia Code, as applicable. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwelling units shall not be punishable by a jail term.

**State law reference** – Va. Code § 15.2-2286(A)(5).

## **17.5 INJUNCTIVE RELIEF AND OTHER REMEDIES**

Any violation of this chapter may be restrained, corrected, or abated as the case may be in an action by the Town Council seeking injunctive or other appropriate relief.

**State law reference** – Va. Code § 15.2-2208.

# MEMO

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Date: March 23, 2017  
To: Planning Commission  
From: Patrick Sullivan, Director Community Development  
Re: Civil Penalties

Process for a civil penalty violation.

1. Community Development is made aware of a potential violation. (Generally we work off a complaint system; we do not go out in search of problems).
2. Violation is researched to make sure there is actually a violation.
3. Violator is notified by first class letter that there is a problem. We also follow up with a phone call or email message. We try to talk directly with the violator where possible. If we are successful in contacting the person they will normally agree to correct the problem and no further action is taken. If not, we provide enough time (10 days) for the violator to correct the problem. Usually it is as simple as coming in to the department and filling out a zoning permit and paying the fee.
4. If we are unable to contact the person or the violator refuses to correct the violation the next step would be to have the Zoning Administrator issue a ticket or file in district court a civil summons. The violator and the owner of the property shall be notified by certified letter. This letter will formally require that the violation be abated and a fine would be imposed according to the process set forth in the ordinance (amount of fine to be determined).
5. The violator then has the option of abating the violation and paying the fine to the Town or by challenging the fine in district court.
6. If all else fails and the violator has been fined the maximum amount allowed by law then the final recourse is to go to court to collect the past fines and get the violation abated. Only the most obstinate of violators will reach this point.

Below are a couple of examples regarding how civil penalties would be used.

Scenario 1. Failure to obtain a zoning permit.

We had a situation where a property owner built an 8 foot high retaining wall and back filled it to create additional parking spaces. He never applied for a permit. We didn't catch it until sometime after it was built. Our response was to send him a notice of violation and request that he get a permit. He ignored our requests. It is still an open violation. If a fine system had been in place we could have instituted fines which may have forced him into compliance. Once fines exceed \$5,000 we can take him to court to collect the fines and abate the problem and the judge can impose additional fines until he comes into compliance.

## Scenario 2. Repeat violators.

There are many situations where the violator cures the violation but soon thereafter commits the violation again. One example would be signs. The Town is able to remove signs if they are placed on public property or are within the public right of way. However, if the signs are placed on private property we have to request that they be removed, give them a period of time to remove them and then file a notice of violation if the signs haven't been removed. What happens is that the business places the signs illegally and then removes them after they have been notified only to put them back within a few days. This is a vicious cycle that is very difficult to control. The process for civil penalties would be the same as detailed above. Only those that continually violated the ordinance would actually be fined each time they put the sign out and would be subject to a continuing fine. Repeat offenders would not receive a warning as they should already be aware that what they are doing is a violation.

Civil Penalties could provide a remedy for this type of violation by fining the offender when they continued to commit the same violation over and over again.

I would recommend that we start with a \$100 fine for zoning violations and \$35 for temporary sign violations. Repeat fines would be \$300 for the second ticket and \$500 for the third ticket. Remember, the violators have been duly warned and are fully aware of the consequences if they fail to come into compliance.

If there are concerns about the ability to effectively enforce this new system I would call your attention to the fact that, historically, more than 90% of zoning violations get resolved prior to a formal notice of violation. Our number one goal is always "compliance without formal notice". There are, however, a small number of violators that will not comply without being held to account for their violations; but they too will receive, as all others, plenty of time to correct the violation before significant, if any, fines accrue.

The Town already has a track record with a specific civil penalty. We enforce overgrown grass violations with the use of fines and civil penalties. This has been on the books and utilized for years. Our ordinance provides for civil penalties for overgrown grass as noted below; see highlighted areas below. It has been very effective in keeping lawns mowed.



## Chapter 86 - VEGETATION

**State Law reference**— Tree conservation ordinance, civil penalties, Code of Virginia, § 10.1-1127.1; planting of trees destroyed during construction, Code of Virginia, § 15.1-14.1; replacement of trees during development process in certain localities, Code of Virginia, § 15.1-14.2; destruction of trees, shrubs, etc., Code of Virginia, § 18.2-139 et seq.

- ARTICLE I. - IN GENERAL

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- Sec. 86-1. - Weeds and other foreign growth on developed or undeveloped property

(a) *Owner's responsibility to abate.* the owners of developed or undeveloped property in town shall cut the grass, weeds and other foreign growths on the area of such property adjoining a developed lot whenever such grass, weeds and other foreign growths are deemed to be overgrown.

(b) *Wetlands and stream buffer corridors.* As recognized by the town is exempt from this section.

(c) *Service of notice; deadline for abatement.* Upon information that grass, weeds and other foreign growths exist in violation of this section, the town shall cause written notice to be sent to the owners of the property that such grass, weeds and foreign growths exist in violation of this section and requiring such owners to cut such grass, weeds and foreign growths **within ten days** after the date of the letter.

(d) *Failure of owner to comply; abatement by town.* If the owners of such lands fail to comply with the notice and order in the time allowed, the town shall cause the work required to cut the grass, weeds and other foreign growths by the town's own agents or employees. The amount of money so expended shall be chargeable to the owners and collected by the town in the same manner of taxes.

(e) *Notice by town to owner of abatement; collection of costs and expenses; lien.* In the event the town has cut the grass, weeds and other foreign growth on such land, the owners shall be notified that the town has done so and shall be given an itemized statement of the costs and expenses. If the sum due to the town has not been paid within 15 days after mailing of the itemized list, the town manager is authorized to treat the unpaid sum as a lien against the property superior to the interests of any owner, lessee or tenant, and next to succession to the municipal real estate taxes thereon, and to add the charges and expenses to the amount due for the current municipal real estate taxes on such property.

(f) *Rank of lien; enforcement.* Every charge authorized by this section with which the owner and lien holder of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Code of Virginia, § 58.1-3940 et seq., and Code of Virginia, § 58.1-3965 et seq.

(g) Any owner who commits or permits any violation of this section, whether by act or omission, shall be subject to a civil penalty of \$50.00 for the first violation. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall be \$200.00. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000.00 in a 12-month period.



Community Development Department  
Town of Purcellville  
221 South Nursery Avenue  
Purcellville, VA 20132  
540-338-2304 [www.purcellvilleva.gov](http://www.purcellvilleva.gov)

This is presently on the books and there has been no indication of enforcement abuse or any other issues for that matter. It works well and provides incentive for the owner to mow the property.



**STAFF REPORT**  
**INFORMATION ITEM**

Item # 9a

**SUBJECT:** Status of Priority Work Items

**DATE OF MEETING:** April 6, 2017

**STAFF CONTACT:** Daniel Galindo, AICP – Senior Planner

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This report briefly summarizes any recent updates on the status of the Planning Commission's priority work items.

1. Comprehensive Plan Update – The consultant team has drafted significant portions of the plan's narrative which is now being reviewed and edited by Staff. The consultant team is currently creating illustrations of mock development designs for the Managed Change Areas which will provide examples of what would be appropriate in each individual area. In addition to editing, Staff's current focus is on crafting the plan's specific policies and implementation recommendations.
2. OA16-04 Tree Preservation Regulations Zoning Ordinance Text Amendment – No change.
3. OA16-01 Stream and Creek Buffer Zoning Ordinance Text Amendment – After reviewing the first draft amendment, the Town Attorney found that the draft, and even the language of the current ordinance, may not comply with the limitations that Code of Virginia §§ 15.2-960 through 15.2-961.1 places on when the Town can require tree plantings. The Town Attorney has since created a new draft amendment which would repeal the existing Stream and Creek Buffer regulations and replace them with a riparian buffer requirement based on the Chesapeake Bay Preservation Act. She is recommending that additional tree and vegetation requirements be handled in a later amendment once Staff has the necessary time available to devote to the topic. The draft regulations will be discussed at the April 6<sup>th</sup> Planning Commission meeting.
4. OA16-05 Reduce Maximum Building Heights in the C-4 District Zoning Ordinance Text Amendment – The draft amendment resulting from the Planning Commission's March 16<sup>th</sup> discussion was presented to Town Council at its March 28<sup>th</sup> meeting, and

Council did not express any significant concerns about the draft. The draft amendment has been scheduled for a public hearing before the Planning Commission at the April 20<sup>th</sup> meeting.

5. OA16-06 Civil Penalties Zoning Ordinance Text Amendment – Staff has finalized an initial draft of these regulations based off of the civil penalties regulations of Albemarle County which were recommended as a model by the Town Attorney. The draft regulations will be discussed at the April 6<sup>th</sup> Planning Commission meeting.
6. OA17-01 Definition of Duplex Dwelling Zoning Ordinance Text Amendment – On March 14<sup>th</sup>, Town Council approved Resolution 17-03-02 initiating a zoning ordinance text amendment to revise the definition of duplex dwelling. The Resolution also stated Council’s preferred design options regarding what forms of buildings should qualify as duplex dwellings. Staff will use this information to develop a revised definition that will be provided to the Planning Commission for discussion at a future meeting.
7. Sign Regulations – No change.
8. Accessory Dwelling Standards – No change.
9. Legislative Applications
  - a. *CPA15-01 O’Toole Property (Designate as Mixed Use Commercial)* – On March 13<sup>th</sup>, the Town received the third submission for this application, and it has been distributed for review. All submitted files have been uploaded to the Town’s website.
  - b. *RZ15-02 O’Toole Property (X to MC)* – On March 13<sup>th</sup>, the Town received the third submission for this application, and it has been distributed for review. All submitted files have been uploaded to the Town’s website.
  - c. *SUP16-01 7-Eleven Fueling Station Expansion* – On March 20<sup>th</sup>, review comments for the project’s first submission were distributed to the applicant. All review comments have been uploaded to the Town’s website.
  - d. *CPA16-01 Village Case (Neighborhood Commercial & Institutional/Government to Residential)* – No change.
  - e. *PCA16-01 Village Case (Commercial & Church to Single-family Detached Residential)* – No change.
  - f. *SUP16-02 Virginia Regional Transit Commuter Parking Lot* – At the Planning Commission’s March 16<sup>th</sup> meeting, the Commission voted to recommend that

Town Council conditionally approve this item. A public hearing before Town Council is being scheduled for April 25<sup>th</sup>.

- g. *SUP17-01 O'Toole Property Assisted Living Facility* – On March 13<sup>th</sup>, the Town received the first submission for this application, and it has been distributed for review. All submitted files have been uploaded to the Town's website. Notice of the application's acceptance was provided to Town Council at its March 28<sup>th</sup> meeting.

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**MINUTES**  
**PLANNING COMMISSION REGULAR MEETING**  
**MARCH 16, 2017, 7:00 PM**  
**TOWN HALL COUNCIL CHAMBERS**

**PRESENT:** Theresa Stein, Chairman  
Chip Paciulli, Vice Chairman  
Tip Stinnette, Planning Commissioner  
EJ Van Istendal, Planning Commissioner  
Britt Adkins, Planning Commissioner  
Kelli Grim, Planning Commission/Council Liaison

**ABSENT:** David Estey, Planning Commissioner

**STAFF:** Daniel Galindo, AICP, Senior Planner  
Tucker Keller, Planning and Zoning Technician

**CALL TO ORDER OF REGULAR MEETING:**

Chairman Stein called the Planning Commission Regular Meeting to order at 7:00 PM. The Pledge of Allegiance followed.

**AGENDA AMENDMENTS:**

Chairman Stein stated that item 8 will be discussed before item 7.

**COMMISSIONER DISCLOSURES:**

**PUBLIC HEARINGS:**

None

**PRESENTATIONS:**

None

**ACTION ITEMS:**

- a. SUP16-02 – Virginia Regional Transit Commuter Parking Lot

Eric Zicht came forward on behalf of the applicant and stated that Loudoun Transit has submitted materials which responded to questions from the Planning Commission. Mr. Zicht stated that the County has agreed to the sidewalks and the bike racks.

Mr. Zicht stated that the County expects to be in the new facility by 2022 or so and added that if the Town wanted to add a five year duration that they ask that it include a provision for an extension should the other facility fall behind.

In regards to limiting the number of buses, Mr. Zicht noted that Loudoun Transit did not respond to that question as they are trying to carry as many people as they can to the Silver Line. Mr. Zicht added that the cul-de-sac is an extra-large industrial cul-de-sac and that he designed it for this type of use.

In reference to the request about buses moving within the lot, Mr. Zicht noted that Loudoun Transit was silent about that but believes they do not mix buses with passenger traffic due to safety concerns.

Commissioner Grim read written comments that were submitted by Robert Anderson. A copy of the comments are included with the meeting file in the Clerk's office.

Commissioner Paciulli addressed the issue and stated he would like to move this to Town Council for disapproval.

Commissioner Stinnette talked about the bus schedule and does not feel that there would be traffic early in the day or after 5:00 PM that would interfere with buses. Commissioner Stinnette talked further about getting the buses off of Main Street.

Commissioner Grim stated she feels the first priority is to the businesses and their employees. In reviewing other park-and-rides, Commissioner Grim stated that all of the pick-ups happen inside the parking lot. Commissioner Grim added that she cannot support it if they are not taking the buses inside the lot.

Further discussion took place about screening and adding a condition to the motion.

Chairman Stein stated she is disappointed that it was specifically asked if the buses could go through the site and that was not addressed. Chairman Stein added that she does not have an issue with additional trees but that it is a bus parking lot already and that additional trees would not likely hide anything more. Chairman Stein added that the comprehensive plan supports having commuter facilities.

Chairman Stein summarized a motion for approval of the SUP with approval of the landscaping waiver. Chairman Stein made a recommendation that this be forwarded to the Town Council with a recommendation of approval with the following conditions:

1. That the applicant install the bike rack and lockers sufficient for the site
2. That the sidewalk be constructed

Commissioner Paciulli stated he sees three locations for additional trees: near the dumpster, where the parking lot angles, and the motorcycle spot on the right side.



Mr. Zicht stated that in five years the parking lot would go back to another use and that the property owner may not want asphalt removed for trees. Commissioner Paciulli stated that he understood but that it is an opportunity to add trees which would still help out in the future.

Daniel Galindo asked if the five year timeframe is the potential lease with Loudoun or a condition that the Commission would be setting. Mr. Zicht stated he could work with a condition if there was a provision that it could be extended for a couple of years.

Chairman Stein restated the proposed conditions:

1. That they would be in conformance with the concept plan
2. That they install bike racks and lockers
3. That they install and construct sidewalks
4. That they install additional trees along the southern border
5. A renewal mechanism is in place.

Commissioner Grim added that she may have considered a compromise if a plan was submitted that respected what the concerns are and cannot support it without the buses and pick up being inside of the parking lot.

Daniel Galindo clarified that the sidewalks would be near the islands on the north side of the building.

Chairman Stein made a motion for the reasons stated in the staff report dated March 16, 2017 that the Purcellville Planning Commission forward to Town Council with a recommendation to approve SUP16-02 allowing a commuter parking lot to be located at 408 and 412 Browning Court with the following conditions:

1. The use be developed as shown on the concept plan submitted with the application entitled "Virginia Regional Transit Commuter Parking Lot Special Use Permit SUP16-02 Concept Plan" prepared by Zicht and Associates PLC and dated January 12, 2017.
2. That the applicant shall install a standard size bike rack and lockers sufficient for the bike rack capacity.
3. The applicant shall construct a sidewalk in the area along the northern portion of the building.
4. An additional three trees are installed along the southern boundary.

The motion was seconded by Commissioner Adkins.

Motion: Chairman Theresa Stein  
Second: Commissioner Adkins  
Carried: 4-2-1 Absent

Grim - No  
Stein - Yes  
Van Istendal - No

|             |        |
|-------------|--------|
| Stinnette - | Yes    |
| Paciulli -  | Yes    |
| Adkins -    | Yes    |
| Estey -     | Absent |

**DISCUSSION ITEMS:**

**a. OA16-05 – Zoning Ordinance Text Amendment to Reduce Maximum Building Heights in the C-4 District**

Commissioner Paciulli stated he attended a BAR meeting to seek input on this item, and following the meeting they appointed a subcommittee which met. The recommendation from the meeting was to revise the zoning ordinance wording back to the wording of the prior ordinance as shown on page S-8 of the supplemental agenda packet. Commissioner Paciulli proposed that the Planning Commission authorize the public hearing process to reword the zoning ordinance section to the wording in the packet on page S-8.

Chairman Stein summarized that the existing language for building height would revert back to what was in existence prior to the amendment. Commissioner Paciulli noted one change made because a house in Town can be built up to 35 feet tall.

Chairman Stein noted that the current height is 60 feet and would be going back to a maximum height of 45 feet. Chairman Stein recommended that the language where it talks about “up to 3 stories” be eliminated and asked why both stories and heights would be regulated rather than just height.

Commissioner Grim stated she has concerns with the television antennas up to 125 feet in height being exempt from height regulations. Commissioner Paciulli stated he felt that was included because of state laws.

Daniel Galindo stated he would not recommend changing the “and” to “or” regarding the maximum number of stories and maximum height because it leaves the possibility of doing something that not everyone may like. Mr. Galindo encouraged the Commissioners to make good policy and to not make any new non-conformities if it can be avoided.

Chairman Stein stated she can do a red-line version incorporating comments and will send it to the Town Attorney for review.

**INFORMATION ITEMS:**

**a. Status of Priority Work Items**

Daniel Galindo stated that a Special Use Application was received for an assisted living facility as part of the O’Toole rezoning application.

Commissioner Grim stated she would forward an article about the water model which was based on original density.

Commissioner Stinnette asked for an update on the stream and creek buffer zoning ordinance. Chairman Stein stated that this item has been given to the Town Attorney's office for review and Daniel Galindo stated he hopes to have it at the next meeting.

Commissioner Grim stated that on March 20<sup>th</sup> the Tree and Environment Sustainability Committee will meet for the first time and will be looking at tree preservation and other regulations.

Commissioner Grim talked about civil penalties and stated she had gathered information from other municipalities, which she will forward to the Planning Commissioners, because the Town Attorney did not like the current draft based on Albemarle County. Daniel Galindo stated for clarification that the Town Attorney was the one that actually recommended Albemarle County's regulations.

**CITIZEN COMMENTS:**

None

**COUNCIL REPRESENTATIVE'S REPORT:**

Commissioner Grim stated the public hearing was held for the notice of proposed real property tax increase which was proposed and presented by the Town Manager at a maximum of .24 whereas last year's adopted rate is .22. Commissioner Grim noted that on March 22<sup>nd</sup> there is a special budget presentation meeting scheduled. Commissioner Grim stated that the Makersmiths lease was approved. Commissioner Grim noted the proceeds from the sale of the Mary's House of Hope property is being discussed as to where it should go as the majority of Council feel some it should go to the debt of the stormwater, maintenance, etc. and that it is currently in the General Fund. Commissioner Grim stated a sub-committee is forming to identify equitable policies for the use of the reservoir for recreational purposes. Commissioner Grim stated a pedestrian flag program will be implemented in the coming weeks at 21<sup>st</sup> Street and Main Street. Commissioner Grim stated that there are updates on telecommunication connectivity and capabilities that are being worked on, and that Council approved sports grant funding in the amount of \$5,200. Commissioner Grim added that Council has approved a waste, fraud, abuse and mismanagement hotline and online reporting program, Ethical Advocate, which is the same program that the County has and will be used by Town staff and possibly by residents in the future. Commissioner Grim reminded the Commissioners about the FOIA program next week in Leesburg.

**CHAIRMAN'S COMMENTS:**

Chairman Stein stated that at the next public hearing she will limit the hearing to be used by the public to speak and that the Commission's comments will be taken during the discussion section.

**PLANNING COMMISSIONERS' COMMENTS:**

Commissioner Paciulli stated that he believes that the height issues and the stream set backs are in the Town's hands and asked if he should attend a Council meeting to ask for permission to review the accessory dwelling units. Commissioner Paciulli talked about developable property and private streets and that private streets provide for more flexibility in development of particularly odd shaped properties. Commissioner Paciulli talked about reviewing what the Tree and Environment Sustainability Committee would be working on in terms of collaborating with the Planning Commission.

Chairman Stein stated that the Planning Commission has a strategic plan and it includes accessory dwellings and that it sounds like Commissioner Paciulli would like to add two new items to it – private streets and landscaping. Commissioner Paciulli stated he could handle landscaping outside of the Planning Commission.

Daniel Galindo recommended staying with what is currently presented. Mr. Galindo added that Council approved a resolution to initiate a zoning text amendment for the definition of duplex which has been added to the list. In addition, the Mayor has requested a review of outdoor storage standards. Further discussion took place on private streets, duplexes and setbacks.

**APPROVAL OF MINUTES:**

Commissioner Stinnette made a motion to approve the minutes of the February 2, 2017 Regular Meeting, the February 2, 2017 Work Session and the February 16, 2017 Regular Meeting and waive reading. The motion was seconded by Commissioner Van Istendal and carried with one absent.

**ADJOURNMENT:**

With no further business, Chairman Stein made a motion to adjourn the meeting at 8:29 PM. The motion carried with one absent.

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Theresa Stein, Chairman

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Diana Hays, Town Clerk