

**PURCELLVILLE PLANNING COMMISSION SPECIAL MEETING
THURSDAY, OCTOBER 29, 2020, 7:00 P.M.
VIRTUAL**

The meeting of the Purcellville Planning Commission convened at 7:00 P.M. via GoTo Meeting with the following in attendance:

PRESENT VIA REMOTE PARTICIPATION:

Chip Paciulli, Chairman, Planning Commission
Nedim Ogelman, Commissioner
Nan Forbes, Commissioner
Stanley Milan, Town Council Liaison
Stosh Kowalski, Commissioner
Ed Neham, Commissioner
Boo Bennett, Commissioner

STAFF PRESENT VIA REMOTE PARTICIPATION:

Andrew Conlon, Senior Planner
Diana Hays, Town Clerk/Executive Assistant

CALL TO ORDER:

Chairman Paciulli called the meeting to order at 7:00 P.M. The Pledge of Allegiance followed.

AGENDA AMENDMENTS: (Planning Commission and Staff):

Commissioner Neham requested the following discussion items be added to the agenda:

- Additional vulnerable properties
- Permitting process
- Hatcher Ave. project

COMMISSIONER DISCLOSURES:

None

PRESENTATIONS:

None

CITIZEN COMMENTS: (First Opportunity)

None

DISCUSSION ITEMS:

a. Downtown South; review and vote (presented by Council member Milan)

Discussion centered around a number of aspects of the Hatcher Avenue project including whether there should have been a site plan presented, drainage here seems to be too few parking places for the uses, lack of notification given to neighbors, suggestion that the Focus Area be divided into two distinct zoning districts., and others There are also a number of comments on the report that need to be addressed. Council Member Milan acknowledged that the report requires additional work before being sent to the Planning Staff. The Planning Commission agreed that this report should be updated and re-presented at the Commission's next meeting on December 3, 2020.

b. Downtown north; review and vote (presented by Commissioner Kowalski)

There were no issues with or comments on this report since its initial presentation on October 15, 2020. The Planning Commission agreed that this report should be forwarded to the Planning Staff for its gap analysis and zoning ordinance modification suggestions

c. Hirst East; presentation and discussion (presented by Chairman Paciulli)

In reviewing the Comprehensive Plan, a discrepancy was discovered between this Focus Area's Guiding Statement and Recommendations regarding residential uses. This discrepancy came about when the Town Council modified the land use that was originally described by the Planning Commission. A fix was suggested but it will (probably) require a text amendment to the Comprehensive Plan and a public hearing. The Planning Commission agreed that this report should be updated and re-presented at the Commission's next meeting on December 3, 2020.

d. East End; presentation and discussion (presented by Commissioner Forbes)

Commissioner Forbes stated there are two distinct types of uses in the area – some that are fully developed and some open to redevelopment, and talked about the Catoctin Corner development as well as the Gateway. She talked about language needing clarification about being a tourism related business and discrepancies in the area.

The current language of the comprehensive plan requires clarification, as it specifies that uses must include tourism-related business compatible with rural character. This requires further clear and finite definition to avoid interpretation problems. The Zoning Ordinance or comprehensive plan talks about appropriate use of Area 2 as agricultural, with an emphasis on providing open space at its eastern edge. Commercial development is restricted, except for uses such as a farm store, plant nursery, agricultural, rural, or tourism-related businesses.

Area 3 must also have provision for the reservation of forest, old trees, streams, and natural features. Crooked Run is in a private conservation easement, made by a deed of gift of easement on 21 December 2007 between H. Samuel Brown Jr. and the Land Trust of Virginia. This limits

building on that property. The area is also in an Agricultural Conservancy Commercial District. The zoning for this district is not consistent with the comprehensive plan, which specifies extensive open space setbacks and substantial landscaping. The zoning does not allow for this. The zoning is also full of inconsistencies, and provides for uses outside what is dictated by the comprehensive plan. The zoning currently only applies to Crooked Run and is superseded by the conservation easement, but must be updated to be consistent with the comprehensive plan.

Commissioner Forbes asked the Planning Commission for their thoughts on how to define a tourism-related business that is consistent with the rural character.

Commissioner Neham asked whether this definition would need to be incorporated into the comprehensive plan. Commissioner Forbes clarified that the zoning ordinance needs to have a limited set of by right uses. Anything else must be a special exception. Commissioner Neham asked whether the changes should be led by the zoning ordinance or the comprehensive plan. It was noted that the comprehensive plan does not have to be specific, but the zoning ordinance does. The zoning ordinance can both provide a definition of agriculture-related tourism and restrict the by right use.

Commissioner Forbes noted that, as a result of this, the only zoning district that currently exists as agricultural conservancy is Crooked Run Orchard. This is a theoretical model, as it cannot be developed because of the conservation easement. It must be updated to remove the inconsistencies, narrow it down, add in extensive open space, big setbacks, lots of landscaping, and achieve the stated goals of the comprehensive plan. It is important to ensure the by right uses are as specific as possible to avoid unwanted businesses.

Commissioner Forbes commented that Area 3 contains a stream, adjacent slopes, and an abandoned railroad bed which must be protected. Commissioner Neham asked the size of the area, and noted that the owners had requested a zoning change earlier this year so they could build multi-family housing.

Commissioner Ogelman commented that the LSU AgCentre have an Agritourism list, which defines agricultural tourism activities. Commissioner Forbes asked whether there should be an overnight housing element permitted. They felt anything of size should be avoided. B&Bs are divided into 2 types. One is a small, owner-occupied house, and the other is a larger non-owner-occupied property. Commissioner Forbes asked whether the group felt overnight housing was an acceptable tourism-related activity, and how they wished to define a restaurant or eating establishment. Chairman Paciulli noted the Planning Commission had reviewed these smaller uses and permitted smaller establishments. And noted that the Planning Commission can't specify which companies can come in, but can dictate the size and type of structures, setbacks, and ratios of floor space to land. This is the purpose of farm-based zoning. The size of businesses and buildings can therefore be restricted. If someone wants to present a different issue, they can bring it before the town rather than being allowed to proceed by right.

Commissioner Forbes noted that the use of light and sound must also be considered. It's important to be clear that wedding and event uses are not what the Planning Commission has in mind. Commissioner Neham will forward the conservation easement to all Planning Commission

members. Commissioner Neham advised Commissioner Forbes to engage as many Commissioners as possible in defining tourism-related businesses, so that a definition can be produced by the December meeting.

The conservation easement defines that division or subdivision of the property in any manner is prohibited, and specifies the size and purposes of the buildings or structures that may be built on the site. It also restricts the activities that can take place, which are predominantly agricultural.

The Kipfer and O'Toole properties are the main focus of development. Their permitted uses must be defined. A small piece of land next to the Kipfer property is owned by Patrick Henry College. The owners will be pushing for higher density builds. Specificity is important to avoiding problems, and zoning does not provide a vested right.

e. Hirst West; presentation and discussion

As many of the businesses in Hirst West are long-standing, it is important to tighten up what could replace them. Taco Bell, Kentucky Fried Chicken, and a yoga studio have already closed. AC noted that his office has not yet processed any new tenants. A zoning determination was issued a couple of years ago determining the space could be used for restaurant uses, among other things. It was noted that the community did not originally want restaurants there, but that they had proved popular. Chairman Paciulli noted that he would send any comments on Hirst West to Commissioner Bennett.

f. Content of Meeting Minutes

The Commissioners discussed requirements of the Code of Virginia as well as Robert's Rules and determined that summary minutes would suffice since the meetings are recorded and can be referred back to.

g. Additional Vulnerable Properties (added via agenda amendment)

Commissioner Neham reviewed additional properties as previously provided by staff and requested that Andy Conlon create a document on how permitting in town is done, and he summarized the process as it relates to the Hatcher Avenue Trails End project.

Sally Hankins created a list of Properties Vulnerable to Development, which covered each of the focus areas. Item 8 was outside the focus area but within town, item 9 was outside the town, but town owned, item 10 was Planning Commission, and was to identify the location of large residential lots vulnerable to further by right subdivision and item 11 was substandard narrow recorded residential lots that are vulnerable to new housing development. Commissioner Neham added that these things must be considered as the Commissioners go through the gap analysis.

Commissioner Neham asked whether the Planning Commission can write zoning about property that is outside of town. Andy Conlon clarified that they are governed by Loudoun County land-use regulations. The properties identified in Item 9 do not need addressing through zoning ordinance. Commissioner Forbes questioned whether the Planning Commission would be able to

recommend covenants on properties controlled by the county to prevent future development. Commissioner Ogelman noted that the reservoir and Aberdeen property already have covenants and Mr. Conlon stated he would forward.

h. Permitting Process (added via agenda amendment)

Commissioner Neham and Andy Conlon would produce a Permitting 101 document to explain how permitting is down in town. Commissioner Milan asked if there was a formal process for every type of permit as it appears the developer is often allowed to do it how they want to.

Mr. Conlon agreed to produce the document, and addressed a few immediate concerns. All processes are divided into legislative acts and ministerial acts, and legislative acts are decided by the Town Council, and require the Town Council advises the Planning Commission to make a recommendation at a public hearing held by the Town Council. These acts are comprehensive plan amendments, zoning map amendments, and use permits. Some of these can be acted upon by the Town Council and others by the Board of Zoning Appeals. The Board of Zoning Appeals is a quasi-judicial body, and does not deal with use permits. Use permits are scrutinized by the Planning Commission, public hearing, and Town Council and ministerial acts are decided at a staff level. Demolition permits are issued on a purely ministerial basis, unless they are in the historic quarter overlay district or being demolished by the property owner.

i. Hatcher Avenue Project (added via agenda amendment)

The Trail's End properties have redevelopment plans, and have chosen to go to the Board of Architectural Review for the architectural aspects of the project before doing a site plan. They cannot redevelop the property until they have an approved site plan and Certificate of Design Approval from the Board of Architectural Review. They have the CDA, may have the demolition permits soon, but have not filed the site plan, and the site plan would be a ministerial approval. The Hatcher property will have to be consolidated, as it is no longer permitted to build across property lines, and everything proposed for the Trail's End property comes under ministerial approval. There is no public hearing process required and once the town standards are met, the town must approve it with no room for discretion.

Commissioner Bennett expressed concern that the resident of 131 Hatcher had not been notified of the proposed demolition of the three other houses. Commissioner Paciulli commented that the drainage will not work without her permission, and will prevent the building of the parking lot. Grading permits are required from the W&OD Trail, the Eagle's, the town-house project and the resident of 131 Hatcher. Commissioner Ogelman agreed that this was a fundamental flaw in the town's zoning ordinance, and creating a zoning ordinance with scale, design, and form-based limits would prevent this from happening again. A built-in non-contiguous historical area ordinance would also help prevent the demolition of houses and buildings. Commissioner Ogelman asked why the adopted design guideline does not apply, and noted that the document is inconsistent in where it states it applies to. It states that the applicability for the design guidelines applies to the whole historic overlay district. This would give the Board of Architectural Review the right to determine whether or not the buildings may be demolished. The Board of Architectural Review has previously told a developer that they cannot demolish a building

because it has a historically contributing value to the town. Andy Conlon has discussed this concern with the town manager, but not the zoning administrator or town attorney. The town's positioning is that 'corridor' is implied throughout the document, as the town has only one historic overlay district. This may be open to debate, but is the town's current position.

The Code of Virginia puts the authority for this interpretation and determination on the zoning administrator, and the town does not currently have its own administrator. Andy Conlon was named acting zoning administrator, but this was partially retracted. Diana Hays clarified that David Mekarski was appointed as the interim zoning administrator the previous Tuesday.

Commissioner Milan questioned the process by which the Hatcher properties were being allowed to be demolished and that there should be a set process which everyone must follow. Andy Conlon noted that there is no inconsistency and the development of the Trail's End property remains a long way from being approved. No permits for construction can be issued until a site plan is approved. It was noted that this allows developers to demolish properties as soon as this is permitted. If costs rise, they could refuse to build anything to replace the demolished structures. Andy Conlon commented that this situation had arisen with a development proposal for a restaurant, which gained the demolition permits and demolished the buildings, but has not yet submitted a site plan. Commissioner Neham noted that the developers are allowed to apply for permits in whatever order they choose and this restricts the town's say in its own processes.

Chairman Paciulli noted that the demolished buildings along the W&OD were historic. Many buildings which contributed to the character of the town have been lost to new developments. Commissioner Ogelman commented on the importance of passing the historic overlay district legislation. Andy Conlon stated that the Planning Commission could propose that projects such as the Hatcher development must go through a public process, before the Commission at a public hearing, and the Town Council, at a public hearing. The ordinance being administered is not the ideal ordinance and the Planning Commission can amend it.

Commissioner Neham commented that the Planning Commission must look at all the applications which can be made to the town, and ensure that if there is a set of steps to follow and these are documented and followed. This may require the introduction of ordinances specifying this, and suggested a group of individuals, separate to the Planning Commission, could bring this before the Town Council with their recommendations.

Commissioner Ogelman asked for Mr. Conlon's opinions on the gap analyses in terms of the process and impediment, and how the Commissioners can help. Andy Conlon commented that the staff have focused on the 7 focus areas. The comprehensive plan identified 12 land use categories. The different focus areas are revealing different lessons regarding these categories. For example, the East End's proposed agricultural tourism commercial land use category does not match well with the current agricultural zone. In the West End, the gap analysis shows how the comprehensive plan land use category incorporates a number of zoning district categories, and that staff must be assisted with a consultant to draft up language for these new zoning districts. These will be brought to the Planning Commission for approval. Andy Conlon will create draft zoning districts and take them through the process.

Commissioner Ogelman asked whether Andy Conlon would benefit from additional support. Mr. Conlon stated he will liaise with the newly appointed acting zoning administrator about the division of labor and will provide feedback on if more staff will be hired, and has 3 months to fill the vacant spot. Commissioner Milan asked when Mr. Conlon had ceased to cover the duties left vacant by Patrick Sullivan. It was agreed this would be discussed in a side meeting.

Commissioner Neham questioned how the development of the historic district ordinance was proceeding. Commissioner Ogelman asked how this could be acted on quickly. Andy Conlon stated that this process (CLG and historic district) was already initiated, and needs to find out why it was not pursued to completion. CP commented that it may be because people on Main Street didn't want to be told what to do with their houses. Commissioner Milan noted that the certified local government allow people with historical relevant property to apply for grants to renovate and rebuild structures on their property. It will not tell people what to do with their property, and costs the town no money to apply for. Commissioner Ogelman noted that it may include restrictions, but that more information is required. Finding this will require some digging, perhaps with the Virginia Department of Historic Resources and asked how the Commissioners can help. Andy Conlon will send the name of a contact at the Department to Commissioner Neham. Commissioner Milan noted that he spoke to the representative for the area and that back in 2007 the town applied for the CLG but never continued. Ms. Hankins has the paperwork with the documentation required. Commissioner Milan noted that the Council had discussed using volunteers to help gather this information to relieve the burden on staff. Commissioner Neham proposed that he, Commissioner Ogelman and Commissioner Milan meet in sequence to begin following the process through. Commissioner Forbes asked whether the Town Council would need to approve this again. Commissioner Milan clarified that he is trying to get a motion on allowing the staff to approve it, and it will be on the agenda for 8th December.

Commissioner Milan asked for the name of the developer who demolished buildings and didn't proceed further. The restaurant name was Bia, and they are the same company doing the restaurant at Jack's Run, which has been withdrawn entirely. Commissioner Neham requested that the Planning Commission be informed of BAR agendas and any business development in town. Commissioner Milan noted that he had been assigned a job card to coordinate all committees, commissions and boards to share information and communicate amongst themselves.

PLANNING STAFF REPORT:

Andy Conlon confirmed he had not provided any formal gap analysis feedback to project owners, and there has been no progress on hiring the consultant. Commissioner Milan added that now that the RFP for nutrient credits is finished, staff can complete the RFP for the consultant for the zoning ordinance. Mr. Conlon stated there are no upcoming work items for the Commissioners or permitting activities that may arise. There was no news of interest to the Commissioners. The town still owes small payments on the comprehensive plan to the consultant and they want to receive this before they send the plan. It has been approved by the town manager and is going through the finance department.

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

None

COUNCIL REPRESENTATIVES REPORT: (Matters of concern to the Planning Commission)

Discussed throughout the meeting.

CITIZENS COMMENTS: (Second Opportunity)

None

CHAIRMAN'S COMMENTS:

Chairman Paciulli thanked the Commissioners for allowing him to serve as Chair over the past year as he begins his 14th year on the Commission. He feels the Commissioners have a good plan and are working towards an end result.

PLANNING COMMISSIONERS' COMMENTS:

Commissioner Ogelman thanked Commissioner Paciulli for all of his work, which was agreed upon by the other Commissioners.

DISCUSSION/APPROVAL OF MINUTES:

- a. August 6, 2020 Planning Commission Meeting
- b. August 20, 2020 Planning Commission Meeting-REVISED
- c. October 1, 2020 Planning Commission Meeting-REVISED
- d. October 15, 2020 Planning Commission Meeting

Commissioner Neham made a motion that the Planning Commission approve the minutes of the August 6, 2020, August 20, 2020, October 1, 2020 and October 15, 2020 Planning Commission meetings and waive reading. The motion was seconded Commissioner Milan and carried 6-0-1 abstention.

Commissioner Forbes thanked staff for their work on the minutes.


Commissioner Ogelman abstained from the August minutes since he was not yet on the Commission.

ADJOURNMENT:

With no further business, Commissioner Ogelman made a motion to adjourn the meeting at 10:43 PM. The motion was seconded by Commissioner Bennett and carried unanimously.



Chip Paciulli, Chairman



Diana Hays, Town Clerk

