

**MINUTES
PLANNING COMMISSION REGULAR MEETING
JUNE 1, 2017, 7:00 PM
TOWN HALL COUNCIL CHAMBERS**

PRESENT: Theresa Stein, Chairman
Chip Paciulli, Vice Chairman/Planning Commissioner
Britt Adkins, Planning Commissioner
Tip Stinnette, Planning Commissioner
David Estey, Planning Commissioner
Kelli Grim, Planning Commission/Council Liaison

ABSENT: EJ Van Istendal, Planning Commissioner

STAFF: Daniel Galindo, AICP, Senior Planner
Michele Snyder, Planning Associate

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:

Daniel Galindo stated that staff had no amendments but referenced a revised motion for the civil penalties item.

COMMISSIONER DISCLOSURES:

None

PUBLIC HEARINGS:

None

PRESENTATIONS:

None

DISCUSSION ITEMS:

None

ACTION ITEMS:

**a. OA16-06 – Amendment of Zoning Ordinance Article 11, Section 17
 (“Administration and Enforcement”)**

Sally Hankins stated she was given the draft ordinance for the civil penalties for review and included a version in the staff report that is ready for public hearing. Ms. Hankins noted that when the Town Council initiated this text amendment that they only addressed the civil penalties portion, and the ordinance that was produced addressed other factors to include enforcement, civil penalties, rewritten criminal penalties and adjunctive relief. She recommended that the Planning Commission adopt the motion that was included in the staff report as corrected in yellow on the dais because it includes necessary language under state code to initiate a text amendment. Ms. Hankins added that if the motion were to be adopted that all the facets of the ordinance would have been initiated by the Planning Commission.

Chairman Stein asked if it would then move to the Town Council. Sally Hankins stated it would have a public hearing first, and asked the Commissioners if they had any questions.

Commissioner Paciulli asked how a complaint gets reported – through staff, Council, a citizen and asked what the procedure is or would be. Sally Hankins stated the ordinance only requires that a complaint be documented and that the rest is up to internal processes of the Community Development Dept. and that it would be preferred to have a form to fill out when a complaint is received either in person or over the phone for tracking purposes. Ms. Hankins noted that the language as presented in the draft she received stated that the Zoning Administrator has a duty to enforce all aspects of the zoning ordinance, and that the Town does not proactively go out looking for violations and added that she struck that language and recommends it be struck because to put a duty on an officer that there is no system in place for would set him up for failure on that duty. Ms. Hankins added that the Town responds to complaints but does not go and actively seek them out.

Commissioner Paciulli referenced page 5 where it says “any structure or development that is established” and questioned the word “any” and asked if it includes existing. Sally Hankins stated wording could be added to item two that addresses that the paragraph excludes non-conforming structures. Chairan Stein added that you would not want to limit yourself and because you are non-confirming structure does not mean you do not have a valid violation. Sally Hankins confirmed and added that the sentence would need to say something like “the status of a structure as non-confirming cannot form the basis of a violation” or something to that effect. Sally Hankins stated she would work on clarifying that.

Commissioner Paciulli referenced pages eight and nine, item six “Violations excluded” and asked what it is saying. Daniel Galindo stated that the reason for those two is that they are excluded under Virginia Code and there cannot be a violation for those things.

Commissioner Paciulli referenced item three on page nine “Notwithstanding the other provisions of this section, any conviction resulting from a violation of provisions regulating the number of

unrelated persons in a single-family residential dwelling...” and asked if there is a current ordinance definition of this detail as to how many people are allowed in a house. Daniel Galindo stated he believes there is a definition.

Commissioner Stinnette stated he was interested in understanding how we exceed the implied scope of resolution 16-10-02 and that Ms. Hankins said because criminal penalties was included in the work. Sally Hankins confirmed and added that the enforcement section was clarified. Commissioner Stinnette asked if this was looked at from a remedial versus punitive perspective in terms of the civil penalty. Commissioner Stinnette stated that it came across to him that the draft was a schedule which consists of two categories – over occupancy and everything else and he does not feel that is much of a schedule. Commissioner Stinnette added that after some research the question about the design of the penalties needs to be answered about whether they are designed to be remedial and punitive and where the money needs to go which drives the character of how the penalty is defined.

Sally Hankins stated that the monetary amounts in the ordinance were the maximum allowed under the statute and could be less. Ms. Hankins added that it is her intent to get compliance without having to go to court and expressed concern for the high amount. Ms. Hankins stated that every violation starts with a notice stating the amount of time given to correct the issue without the civil penalty being imposed.

Commissioner Stinnette referenced the Budget Impact on page four and questioned the “should” in both instances. Commissioner Stinnette stated he would like to understand what the current annual expense is associated with criminal enforcement. Ms. Hankins stated that she feels it is almost nothing as the Town does not pursue many violations criminally. Commissioner Stinnette asked what the expected annual revenue would be. Ms. Hankins stated that the statement that the Town should see some revenue seems to be accurate since the Town currently receives no revenue from violations and added that the reason to adopt the item is for the simplicity of enforcement. Sally Hankins added that judges are reluctant to convict people of criminal misdemeanors for property violations and that her understanding in speaking with others is that the benefit to this is that the judge can handle it and that it helps to build a case for future actions against a violator.

Daniel Galindo added that there would not be anything precluding the Town from adopting a schedule of fines for various violations. Sally Hankins confirmed and feels that this is anticipated. Commissioner Stinnette stated he feels this should be addressed before going to public hearing. Commissioner Stinnette asked where the revenue would go. Sally Hankins stated it would go into the General Fund. Commissioner Stinnette asked why the option of regular and certified mail was stipulated in the text in the delivery of the notice of violation. Daniel Galindo stated that this item was included in the original draft but could be modified.

Commissioner Stinnette referenced the Notice of Violation and it not being clear that upon delivery of the notice that it could be remedied at that point. Sally Hankins referenced section 4.A.viii. Commissioner Stinnette asked why the occupancy issue is at a substantially different rate other than because it is allowed by statute. Sally Hankins stated that is the only reason.

Commissioner Paciulli stated he did not see this as a revenue stream for the Town and more of a way to gain enforcement. Commissioner Stinnette stated that it is clear that staff thinks otherwise since it notes that this should result in new revenues for the Town. Daniel Galindo stated that staff has no anticipation of it but that it would be easier to remedy issues. Sally Hankins added that the section referenced is mandatory for staff reports.

Commissioner Estey referenced the thirty days timeframe to correct issues and asked if there is an additional warning period when the violation is first issued if the person is contacted notifying them that a violation will be issued if the issue is not remedied or if they just receive a letter stating that they have thirty days to correct the issue. Sally Hankins stated that the way it is currently written that a notice of violation is sent with thirty days to correct the issue and that when the warrant in debt is filed with the court, the practice is that a copy of the warrant in debt is mailed by the Town to the violator. Ms. Hankins added she does not feel this is necessarily necessary because once the warrant in debt is filed in the general district court that the Sheriff then takes the warrant and serves it. Ms. Hankins noted that once they are served and see they have a court date, the Town would reach out to the violator about paying the fine to avoid the court date. Daniel Galindo stated that the Town would reach out to the violator during the investigation letting them know about the violation. Commissioner Estey asked about the budget impact and as citizen would feel the Town is looking for a big source of revenue from it and suggested changing the word "should result" to "may result". Sally Hankins stated she would reword it to say that the intent of adopting a civil penalties ordinance is not to generate revenue for the Town and that the intent is to simplify the practice of enforcing zoning ordinance violations, however because civil penalties necessarily involve fines there may be some nominal financial benefit to the Town.

Commissioner Estey referenced section 17.1 number three, Structures without zoning permits and asked for clarification on prior buildings who are not in compliance who have zoning issues but that the application was started, established, etc. Sally Hankins stated this would apply to any violation including an established building that may at one time have had no violations. Ms. Hankins stated that the paragraph would be clarified to state that the non-conforming status of a structure or lot cannot be the sole basis for finding a violation.

Commissioner Estey referenced section 17.2.4.A. and asked if there is a posting on the building about the violation or if the violation is mailed. Sally Hankins stated that the Zoning Administrator would select the method. Commissioner Estey spoke in favor of the violation posting on the building which may expedite the remedy. Sally Hankins stated that if this is the consensus that it could be reworded to include two of the items. Daniel Galindo stated that, in the past, staff would not post something unless the person refuses to accept the official notice of violation that has been mailed to them.

Commissioner Estey referenced 17.3. and asked if the "employee" would be held responsible. Sally Hankins stated she feels the idea is that it is not only just the property owner who is lawfully in charge of property and feels "employee" may not be the best word. Commissioner Estey stated he hopes the Zoning Administrator would not speak to the employee but goes to the

owner or whoever is in charge. Sally Hankins stated that the way it was worded that the owner must receive notice but also a lessee, occupant or property manager could be notified, and that "employee" could be removed.

Commissioner Estey referred to the "fines of not less than ten dollars" and asked if a cost benefit analysis had been done. Sally Hankins noted that it restates what is in the state code and that the Town can recommend what the fine should be based on the ordinance.

Commissioner Grim stated that the County has criteria for the family member's occupancy but that the Town has nothing and feels this should be remedied to at least follow the same as the County has in place. Commissioner Grim referenced page eight, item six, Violations excluded and talked about it being too broad and relating to large commercial projects and that she does not like to see that the Zoning Administrator, at his discretion, can make these decisions. Sally Hankins stated that the statutory authority enabling legislation for civil penalties, the last paragraph in the statute states that no provision in the statute shall be construed to allow the imposition of civil penalties or activities related to land development. Ms. Hankins added that the language could have been repeated and left at land development but feels the intention is to try to get out of the constraint which is broad. Ms. Hankins added that the General Assembly says the Town cannot impose a civil penalty for activities related to land development and talked about placing it under criminal penalties. Commissioner Grim asked about notice and stated she knows that someone in the Community Development Dept. would go with a police officer and serve something and talked about the delivery method and prefers certified mail as proof of delivery and talked about an escalation for the violation.

Chairman Stein referenced page six, section 17.2. where it notes the Zoning Administrator is authorized to request and execute a warrant to allow the inspection of dwellings and that it does not state anything about the inspection of the property. Sally Hankins stated it is statutory language and that the next sentence expands upon the dwelling and that anytime the Town cannot get a zoning inspection warrant because it is limited to dwellings that the Town would seek the search warrant.

Chairman Stein referenced item 17.4. and the title word "exception" and asked what the exception is. Ms. Hankins stated that since there is no exception that the word would be deleted. Chair Stein referenced in the same provision that "a notice of violation shall be issued once the violation is determined" and agrees that there should be a courtesy letter requirement in the ordinance that says they are given a courtesy letter with a number of days to respond before a violation is issued. Commissioner Stinnette noted that the notice of violation is a courtesy note saying if the issue is not remedied within the time specified then the fine is applied. Sally Hankins agreed. Chairman Stein talked about issued notice prior to the notice of violation. Commissioner Stinnette noted he is not in favor of this and feels there is not a lot of good that will come from it. Chairman Stein stated she disagrees and that there are properties that are violating the ordinance with no method of getting them into compliance. Commissioner Stinnette noted he feels this would not solve the problem because some would think the value of their noncompliance is worth the penalty. Chairman Stein talked about the money from the penalties

and getting into compliance eventually. Daniel Galindo stated that most will comply once they see a penalty.

Commissioner Grim agreed and asked when the Town would be in a position to go and do the work if the offender does not comply. Sally Hankins stated that that is a different statute which requires a certain amount of public outreach such as advertising and sending certified letters as well as process time before the property can be entered. Commissioner Grim talked about starting with smaller fines.

Chairman Stein referenced the notice of delivery being by hand delivery, by notice on the door, regular mail and certified mail all being options and feels it should be just certified mail to ensure delivery. Sally Hankins stated that certified mail could be mandated and added people may not pick it up and that actual notice does count as notice and that having a second mechanism is valuable.

Chairman Stein stated that the state code does define family and Sally Hankins noted that would apply only if there is an ordinance provision.

Commissioner Adkins asked after the notice of violation if there is an avenue for a petition for a longer cure period if needed. Sally Hankins stated there is and that it is at the discretion of the Zoning Administrator and that once the notice of violation is written with the time to abate included, would recommend that if they decide to extend that period that it is documented.

Commissioner Paciulli referenced the zoning setback and asked when the Town would get a house location survey to look at setbacks. Daniel Galindo stated at the zoning permit and a final as part of occupancy. Daniel Galindo stated that typically the Community Development staff would not go out when something is being built but that the Public Works Inspectors may but would not commonly be checking setbacks. Michele Snyder referenced a situation where a neighbor questioned a setback of a neighboring property and brought in a wall check and that normally it would be complaint-based.

Commissioner Grim asked for clarification about the definition of family in the state code and if it is not defined in the Town ordinance that the state would not apply either. Sally Hankins stated it would be enforced per the Town ordinance. Daniel Galindo added that all of the dwelling definitions have family mentioned in them other than accessory dwelling.

Chairman Stein talked about having staff revise the document to include the items discussed. Sally Hankins asked for guidance on the schedule. Council member Grim referenced viewing those from other jurisdictions. Chairman Stein stated she feels the Zoning Administrator may be able to look up what other jurisdictions have done and put together a fee schedule. Sally Hankins requested guidance on the fees. Chairman Stein stated she would be ok with every violation being the same for simplicity purposes. Chairman Stein requested to have the revised information available at the July 6th meeting.

INFORMATION ITEMS:

a. Status of Priority Work Items

Daniel Galindo referenced the report provided and had no new information to add.

b. Comprehensive Plan Update Status

Daniel Galindo noted he has spoken with the consultant about the schedule and intends to meet the schedule provided via email. Mr. Galindo added that Julie Herlands with TischlerBishe will be at the June 13th Council Meeting to provide more information.

Chairman Stein asked about the VRT lot and that review comments had been provided. Daniel Galindo added that VRT was to speak to neighbors and he is waiting on VRT to clean up a few things before it would return to the Planning Commission for a hearing.

Commissioner Grim requested that the draft of what was submitted be forwarded. Daniel Galindo noted that it is posted on the website.

CITIZEN COMMENTS:

None

COUNCIL REPRESENTATIVE'S REPORT:

Commissioner Grim stated that at the last meeting the budget was adopted as well as appropriation of expenditures and taxes and fees and that it did not include increases to water or sewer rates as was proposed at 7% each.

Commissioner Grim stated the fiscal aspect of the comprehensive plan was discussed and Council is looking forward to a presentation.

Commissioner Grim stated that as liaisons on committees, commissions and boards, Council is going through tasks and working on a spreadsheet on the importance of items to help with work flow.

Commissioner Grim stated the Purcellville Cannons are back for the summer.

Commissioner Grim talked about a list of twenty-nine municipalities and that Purcellville was number one on the list in the top net debt per capita and added that the number was not correct at the time it was published.

Commissioner Grim talked about the landlocked parcel in Village Case off Kinvarra that was proffered and encourage the Commissioners to look at it provide ideas on how to monetize it,

and that this is a good example of what not to do and added that maybe the current developer can look at solutions how to fix it.

Chairman Stein asked Daniel Galindo about the Village Case application and the proffers for the rezoning and whether they could amend the proffers when they come back in to rezone. Daniel Galindo stated that because of the way the proffers are currently written, they specifically reference the church lot and the commercial lots are currently approved. Mr. Galindo added that the current proffers could be amended or replaced as part of the rezoning as the Town could adopt a new proffer document superseding the section that is in conflict with the new updated development plan. Mr. Galindo stated it would depend on the issue with the farm community garden site to be addressed.

CHAIRMAN'S COMMENTS:

Chairman Stein stated that on May 10th she and Commissioner Paciulli met with the Western Loudoun Planning Commission Chairs and that a representative from the County talked about the JLMA zoning and what it allows on certain pieces of property as opposed to the AR zoning and impacts of the JLMA that are expired or no longer in effect.

Chairman Stein stated they meet next in August and feels it is a good way to share information with other Planning Commission Chairs.

PLANNING COMMISSIONERS' COMMENTS:

Commissioner Grim asked if the Country representative provided any printed material on the subject. Chair Stein stated she would look but does not believe so.

APPROVAL OF MINUTES:

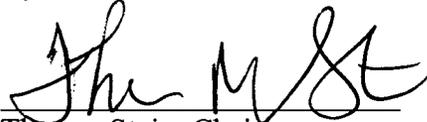
- a. **April 20 2017 Regular Meeting**
- b. **May 4, 2017 Regular Meeting**

Commissioner Stinnette referenced the April 20th minutes on page five and asked if it reflects Commissioner Grim's vote. Commissioner Grim stated it did not reflect her vote and Chair Stein confirmed the vote was 4-2-1.

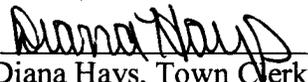
Commissioner Stinnette made a motion to approve the minutes, as amended, for the April 20, 2017 and the May 4, 2017 meetings and waive reading. The motion was seconded by Chairman Stein and carried with Commissioner Adkins abstaining and one absent.

ADJOURNMENT:

With no further business, Commissioner Stinnette made a motion to adjourn the meeting at 8:18 PM. The motion was seconded by Commissioner Estey and carried with one absent.



Theresa Stein, Chairman



Diana Hays, Town Clerk