

**BOARD OF SUPERVISORS  
REGULAR MEETING  
SEPTEMBER 26, 2017**

At a regular meeting of the Board of Supervisors of Floyd County, Virginia, held on Tuesday, September 26, 2017 at 7:00 p.m. in the Board Room of the County Administration Building thereof;

PRESENT: Case C. Clinger, Chairman; Joe D. Turman, Vice Chairman; J. Fred Gerald, Linda DeVito Kuchenbuch, Lauren D. Yoder, Board Members; Terri W. Morris, County Administrator; Cynthia Ryan, Assistant County Administrator.

Chairman Case Clinger called the meeting to order at 7:00 p.m. with the reading of the handicapping statement.

Agenda Item 2. – Opening Prayer.

The Opening Prayer was led by Supervisor Fred Gerald.

Agenda Item 3. – Pledge of Allegiance.

Vice Chairman Joe Turman led in the Pledge of Allegiance.

Agenda Item 4. – Joint Public Hearing with the Floyd County Planning Commission on Amendments to Section 4-2, Family Subdivisions, of the Floyd County, Virginia Subdivision Ordinance.

Ms. Becky Howell called the Planning Commission into order. Members in attendance were Ms. Deborah Baum, Mr. Fred Gerald, Ms. Becky Howell, and Mr. Jeremy Yuvanavattana. Members absent were Ms. Linda Wagner.

Ms. Morris read the call for the Joint Public Hearing with the Floyd County Planning Commission on Amendments to Section 4-2, Family Subdivisions, of the Floyd County, Virginia Subdivision Ordinance. Ms. Morris stated the proposed ordinance amendments modify and clarify certain terms and conditions for the creation, transfer and recordation of family subdivisions for the purpose of conveying a parcel to a member of the owner's immediate family. Ms. Morris noted that it was published in the September 7, 2017 and September 14, 2017 editions of *The Floyd Press*.

Mr. Mike Bedsaul of Sands Anderson, the law firm that serves as County Attorney for Floyd County, explained the reason for the proposed amendments to Section 4-2, Family Subdivisions. As all of you are aware, under the Code of Virginia a county is required to have a subdivision ordinance. The Code of Virginia also requires that most localities make reasonable provisions for subdivisions of land between family members, a family subdivision ordinance. The Code of Virginia, however, has an exception to that requirement that a locality have a family subdivision ordinance. If you are a locality that constitutes a high-growth locality, under the Code of Virginia you are not required to have a family subdivision ordinance. You could choose

to not have one. Floyd County is considered a high-growth locality. By definition legally you are a high-growth locality. In that respect the County is being generous in that you are providing a family subdivision ordinance to your community when you are not required to.

In regards to the proposed amendments, we have reviewed them. If you choose to recommend and to adopt these proposed amendments, we feel that they are in conformity with state law. They would be defensible. They would be reasonable. They would be valid. They would be all those things if you choose to recommend them and adopt them.

As we understand it, the issue that has essentially given rise to these proposed amendments comes out of Section 4-2-1 of your family subdivision ordinance, which states, "Only one such division per parcel shall be allowed per family member, and shall not be made for the purpose of circumventing this Ordinance." The issue, as we understand it that has given rise to these proposed amendments is your family subdivision ordinance in its current form states that it shall not be used to circumvent the requirements of the subdivision ordinance as a whole, but there really is no guidance or definition in your ordinance as to what constitutes circumvention. This has created some ambiguity in the interpretation as well as the enforcement of your family subdivision ordinance.

The proposed amendments propose to do the following things. This is under section 4-2-1. The proposed amendment would provide, "Once a family lot is created, it may not be conveyed to a person other than a member of the immediate family for a period of at least three (3) years from the date of original transference from the grantor to the grantee, except for the singular purpose of financing improvements to the lot created by a deed of trust or mortgage. The Planning Commission may allow a waiver of time requirements for family ownership when there are unusual personal situations including but not limited to: (a) death, (b) marital status change. The Planning Commission procedure for waiver of time requirements shall be the same as the procedure for deciding an exception as specified in this chapter." So in essence the first amendment you have before you is putting in place a three year period of time by which the lot that the family member received cannot be reconveyed to someone else. After that three year period they could give it to whoever they want to, even a non-family member. Now there are some exceptions in the amendment to this three-year holding period – one of which would be if you had one family member who wanted to transfer the property to another immediate family member that could still be done. There are, of course, the practical exceptions that if you are going to build a home on it you could transfer an interest in the property to a lender for example to finance the construction of the home. You also have in the amendment the opportunity for exceptions or waivers to be made when there are unusual personal situations. The two that have been specifically identified are death and a change in marital status. Although the way the amendment is worded, you are not limited to those grounds for the waiver of that three-year wait period.

The second amendment is under 4-2-5. What it essentially provides for is a specific minimum lot width of one hundred (100) feet when the lot created by the family subdivision is on a publicly maintained road. I don't want to put words in the Planning Commission's mouth, but it is my understanding that this is an interpretation that the Planning Commission has already given to the family subdivision ordinance in its current form – that a 100' lot width would be required when the lot is on a publicly maintained road. So in essence what this amendment

would do is simply codify what has been the practice, as I understand it, of the Planning Commission. So that is more of a practical amendment.

The next amendment would be a new section under 4-2-10 that will require, "The subdivider (grantor) and all grantees shall sign an affidavit for family subdivision stating the family relationship and that the newly created family lot/s shall not be conveyed to a person other than a member of the immediate family for a period of three years from the date of original transference from the grantor to the grantee, except for the singular purpose of financing improvements to the lot...Such affidavit shall be recorded with the plat and referenced within all subsequent deeds of conveyance." That is the extent of the amendments that are before you tonight.

Supervisor Kuchenbuch asked if the affidavit also has to be notarized?

Mr. Bedsaul recommended that it be notarized.

Supervisor Kuchenbuch asked if that should be put in there?

Mr. Bedsaul replied, yes, you can put that in there. I think that is a good idea.

Ms. Kuchenbuch pointed out that the plats when they are recorded, they are notarized, but I think this should be notarized as well.

Mr. Bedsaul stated that because of the nature of the document, I think it should be on parity with all the other representations that they make on the face of the plat. I think it is a good idea. I think the intended purpose of these proposed amendments was really twofold and I am specifically referring to the amendments to 4-2-1 and the new 4-2-10. The intended purposes are really twofold. Number one is to provide greater clarity to the public, to family members as to what would constitute a circumvention of the family subdivision ordinance. As I understand it, and Lydeana [Martin] is in a better position to remark on this than I because she is sort of in the trenches we'll call it, you have members of the public, family members who have engaged in a lawful family subdivision and they are concerned about...let's say something unexpected happened to my daughter on down the road and she needed to sell the lot I conveyed to her. Would she get into trouble? Would the conveyance be deemed invalid as a violation of the family subdivision ordinance? What are the rules? How long does she have to wait before she lawfully can convey this property? Part of the purpose here is to provide more clarity as to when property can be conveyed and have it not be considered a circumvention of the ordinance by family members who have done lawful family subdivisions. It is also, however, intended to deter circumvention of the requirements of your regular subdivision ordinance or the other requirements of your subdivision ordinance as well as making enforcement easier. If you have this three-year holding period then that should deter people who are simply trying to get around your subdivision requirements from calling it a family subdivision ordinance with the intention of simply transferring the property to a non-family member who is going to flip it so to speak. I really see the intended purpose here as twofold. One is to provide more clarity to the public as a whole, particularly those family members who are doing lawful family subdivisions. But it is also to deter circumvention of the other requirements of the subdivision ordinance and make enforcement easier.

Supervisor Yoder said we are allowing a waiver for improvements to the lot, but we are not necessarily allowing a waiver for financing the lot itself if no improvements are being made. Am I reading that right? For example, if I buy an acre of land from my father but not doing any improvements on it, we wouldn't allow a waiver for the purchase of the land.

Chairman Clinger said it states "deed of trust or mortgage."

Supervisor Yoder read, "for the singular purpose of financing improvements."

Supervisor Kuchenbuch suggested that it be worded, "purchase or improvements."

Mr. Bedsaul agreed that is a good point because you may not always have the situation whereby dad is financing it for his son. They have to go to a commercial lender. I think that you could amend this language to include, "financing of the purchase of the lot itself or for improvements."

Supervisor Yoder stated his concern is that there may be a family situation where I would buy an acre of land to essentially help my father out. I know of a situation in my family where that has happened and someone is financially tight and needs a little bit of cash.

Mr. Bedsaul said this is a good point. The way it is worded right now it is really limited to improvements. I interpret that to mean the construction of a home or some other type of improvement. That is a good point.

Chairman Clinger said I have heard two major changes that we want to incorporate. We want to add notarizing the affidavit and add financing the purchase of the lot.

Mr. Bedsaul said the changes you are making are not more restrictive, they are less restrictive. You can make those changes and still vote tonight without having to re-advertise. All the changes you are proposing right now...clearly adding the provision that Supervisor Yoder suggested gives people more options. I don't feel that the notarization is materially more restrictive.

Chairman Clinger declared the Joint Public Hearing open to anyone who wished to address the Board of Supervisors and Planning Commission regarding the proposed changes to Section 4-2, Family Subdivisions, of the Floyd County, Virginia Subdivision Ordinance.

Hearing no comments from the audience, the Chairman declared the Public Hearing closed.

Vice Chairman Turman requested that a vote on the family subdivision ordinance be tabled until the next Board meeting. He wants to talk to some more people before he would be comfortable taking a vote on it.

Chairman Clinger requested that the changes of notarizing the affidavit and adding financing for purchase of the lot be incorporated into the family subdivision ordinance. The ordinance with those changes will be on the next Board meeting agenda.

Becky Howell, Chair of the Planning Commission said she would take a motion to adjourn.

On a motion of Jeremy Yuvanavattana, seconded by Deborah Baum, and unanimously carried, it was resolved to adjourn the Planning Commission meeting.

Agenda Item 5. – Public Comment Period.

Chairman Clinger called for the Public Comment Period.

**Mr. Tom Cosgrave, Indian Valley District** – Mr. Gerald has talked to my wife Suzanne a couple of times. We are wondering on Firehouse Road about the paving or non-paving on that. We are trying to find out about that. We live on the dirt road part. We have property on both sides. We are trying to figure out if it is being paved or not paved. We get different stories from VDOT and other people and stuff. They keep pointing us back to the County.

Supervisor Gerald said I have sent an email to David Clarke about that. I have not gotten an answer back from him yet. I have called him a couple of times and he hasn't given me an answer yet.

Mr. Cosgrave said I guess there is no resolution on what is going on with it? Who controls that?

Chairman Clinger explained that we put the roads on the Six Year Plan. The order of work on the Six Year Plan is handled through David Clarke in the VDOT regional area in conjunction with state contracts. A lot of the work is bundled together and they wait until they are in an area and work on a specific group of roads. David Clarke with VDOT should answer since it is on our Six Year Plan.

Ms. Cosgrave asked he will be able to tell us what road is being moved and trees coming down and buildings needing to be moved or anything like that?

Chairman Clinger replied, yes.

Mr. Cosgrave said David Clarke with VDOT in Christiansburg. Okay, thank you.

Ms. Morris stated if we get your number then we will contact you.

Agenda Item 6. – Approval of month-end disbursements.

Supervisor Yoder asked on page 6, the third item down under 5640 [Parks and Recreation], have invoices been turned in for that much [\$19,834.54]?

Ms. Morris replied, yes.

Supervisor Kuchenbuch asked what was *The Roanoke Times* ad for with the EDA?

Ms. Lydeana Martin replied that was the ad for a RFP [Request for Proposals] for a consultant for the Economic Development Authority.

Ms. Morris confirmed a want ad seeking a consultant for the branding.

Ms. Martin said the ad was for a request for proposals.

Chairman Clinger asked about the Clark Gas and Oil invoice that is spread across multiple departments.

Ms. Ryan replied that is the gasoline and diesel we purchase and the cost is allocated to the using departments.

Chairman Clinger asked about the dollar amount of the total charges? He asked to see the invoices. After reviewing the invoices, Chairman Clinger said the \$1.79 per gallon charge for diesel is pretty good.

Supervisor Kuchenbuch asked if we are locked in on the price per gallon for the year?

Chairman Clinger replied, no.

Supervisor Yoder asked if we still have a contract for the propane?

Chairman Clinger said the cost for propane on this invoice is \$1.30. After looking at the gas and diesel invoices from Floyd County Public Schools, Chairman Clinger asked if this was the format from the new software being used at the school system?

Ms. Ryan replied, yes.

Chairman Clinger stated that helps us quite a bit.

Ms. Ryan replied, in a way it does and in a way it doesn't. The one thing I liked about the old system was each person had to sign in. I would always read the names on the log and make sure they were our employees and they were signing charges to the correct department. With this new system they put in their number and I don't know the numbers associated with each individual.

Supervisor Kuchenbuch suggested that she get a key for who the numbers are assigned to.

Ms. Ryan agreed that she would ask for that.

On a motion of Supervisor Turman, seconded by Supervisor Gerald, and unanimously carried, it was resolved to approve the month-end disbursements as presented.

Supervisor Gerald – yes  
Supervisor Kuchenbuch – yes  
Supervisor Yoder – yes  
Supervisor Turman – yes  
Supervisor Clinger – yes

Agenda Item 7. – County Administrator’s Report.

Ms. Morris stated she had put out a RFP for audit services for the next three years. We have received responses back. The last time we did this procurement we had a committee which included a couple of Board members to listen to presentations. The committee made a recommendation back to the entire Board. I wanted to see if you wanted to do that again and if anybody is interested in being on that committee to listen to the audit proposals.

Supervisor Yoder stated that he would serve on that committee.

Supervisor Kuchenbuch stated that she would serve on that committee.

Ms. Morris said the only other item she had was that she drafted something similar to a small press release talking about the meals tax before the referendum comes up. I sent you the first draft of that and asked you to freely edit it for me.

Chairman Clinger expressed his appreciation for her writing this up.

Ms. Morris replied that Supervisor Kuchenbuch made a couple of good comments which she laid on their tables.

Supervisor Kuchenbuch added that she did a little bit of tweaking here and there on it. In this copy you can’t see those, I probably should have used a highlighter. I was trying to rework the flow.

Ms. Morris asked if they had any other suggestions.

Supervisor Yoder said he thought she did a great job.

Vice Chairman Turman echoed that, me too.

Supervisor Kuchenbuch asked if they all had a chance to read the email she sent that day? I think we should go to our constituents and help to educate them about this meals tax to help them understand. That is why I think we put in that it is not a tax on your groceries, because for many people that is what they are thinking. To qualify that is important. When you said applies to churches and their members did you mean like when they do fundraisers? We should lead with that and specify that those kinds of things like the Methodist Church do on Friday nights...

Chairman Clinger said they don't charge for that. I am talking about when they do spaghetti dinners or pancake breakfasts would be exempt.

Supervisor Kuchenbuch said we need to clarify this for everybody so they know. The more you can give people the information the better they can understand.

Ms. Morris said I took that straight from the Code. We can clarify that.

Vice Chairman Turman said in the last election that came up several times with people in my district. They understand what it is. They realize when you go to Galax or Hillsville or Montgomery or anywhere else, they are paying it.

Supervisor Kuchenbuch added right here in Town you pay it.

Ms. Morris said I think a lot of people don't realize that they have been paying it in Town since 2005.

Supervisor Kuchenbuch said putting the amount of money the Town has raised since then speaks volumes too. We know \$200,000.00 buys almost half a fire truck.

Supervisor Yoder said I appreciate how you spent a whole paragraph explaining where it would be spent.

Ms. Morris said I think that is important.

Supervisor Yoder said I have had a lot of people ask about that. The concern is that if it goes into the general fund, it disappears and then we will be looking at another tax.

Ms. Morris said the Registrar said she has had several people coming in for absentee voting and she has had several questions already. I will add Supervisor Kuchenbuch's recommendations.

Chairman Clinger said we have consensus to release this information.

#### Agenda Item 9. – Old/New Business.

Nobody brought forward any old or new business to discuss.

#### Agenda Item 8. – Closed Session – Real Property §2.2-3711 A.3. and Consultation with Legal Counsel §2.-3711 A.7.

On a motion made by Supervisor Gerald and seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to go into closed session under Section 2.2-3711, Paragraph A.3., Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body; and under Section 2.2-3711, Paragraph A.7., Consultation with legal counsel and briefings by staff

members or consultants pertaining to actual or probable litigation, where such consultations or briefings in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

Supervisor Kuchenbuch – yes  
Supervisor Yoder – yes  
Supervisor Gerald – yes  
Supervisor Turman – yes  
Supervisor Clinger – yes

On a motion of Supervisor Yoder, seconded by Supervisor Turman, and unanimously carried, it was resolved to come out of closed session.

Supervisor Gerald – yes  
Supervisor Kuchenbuch – yes  
Supervisor Yoder – yes  
Supervisor Turman – yes  
Supervisor Clinger – yes

On a motion of Supervisor Yoder, seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to adopt the following certification resolution:

#### **CERTIFICATION RESOLUTION CLOSED MEETING**

WHEREAS, this Board convened in a closed meeting on this date pursuant to an affirmative recorded vote on the motion to close the meeting to discuss Real Property in accordance with Section 2.2-3711, Paragraph A.3 and Consultation with Legal Counsel in accordance with Section 2.2-3711, Paragraph A.7 of the Virginia Freedom of Information Act;

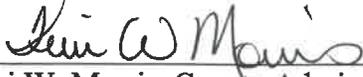
WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby certifies that, to the best of each member's knowledge (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act were heard, discussed or considered in the closed meeting to which this certification applies; and (2) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting to which this certification applies.

Supervisor Kuchenbuch – yes  
Supervisor Yoder – yes  
Supervisor Gerald – yes  
Supervisor Turman – yes  
Supervisor Clinger – yes

Agenda Item 12. – Adjournment.

On a motion of Supervisor Yoder, seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to adjourn to Tuesday, October 10, 2017 at 8:30 a.m.



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Terri W. Morris, County Administrator



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Case C. Clinger, Chairman, Board of Supervisors