IN RE: CALL TO ORDER

The Chairman called the meeting to order at 7:00 p.m.

IN RE: PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

The Chairman asked everyone to stand for the pledge of allegiance and a moment of silence.

IN RE: ROLL CALL

The Chairman asked for the roll to be called and Mr. Cunningham was not present.

IN RE: APPROVAL OF AGENDA

The Chairman asked the members if there were any corrections to the agenda. He said if there are none he would entertain a motion to accept the agenda as presented.

Mr. Tucker made a motion to accept the agenda as presented. It was seconded by Mr. Simmons and with Mr. Hayes, Mr. Prosise, Mr. Simmons, Mr. Tucker, Mr. Harvell, and Mr. Titmus voting “AYE” the agenda was approved as presented.

IN RE: MINUTES

The Chairman asked the members if there were any corrections to the May 10, 2017 regular meeting minutes before them. He said if there are none he would entertain a motion to accept the minutes as presented.

Mr. Prosise made a motion that the minutes be accepted as presented. It was seconded by Mr. Simmons and with Mr. Tucker, Mr. Simmons, Mr. Hayes, Mr. Prosise, Mr. Harvell and Mr. Titmus voting “AYE” the minutes were accepted as presented.
The Chairman asked the members if there were any corrections to the June 14, 2017 workshop meeting minutes before them. He said if there are none he would entertain a motion to accept the minutes as presented.

Mr. Harvell made a motion that the minutes be accepted as presented. It was seconded by Mr. Tucker and with Mr. Prosise, Mr. Simmons, Mr. Hayes, Mr. Tucker, Mr. Harvell and Mr. Titmus voting “AYE” the minutes were accepted as presented.

**RE: CITIZEN COMMENTS**

The Chairman opened the citizen comment portion of the meeting and asked if anyone had signed up or was present who wanted to speak. The Chairman said since there is no one signed up to speak he is closing the citizen comments portion of the meeting.

**RE: PRESENTATION AND DISCUSSION: Airbnb lodging – Jamie Sherry, Zoning Administrator/Principal Planner**

Ms. Sherry said she was present to talk a little about the Airbnb. She started the presentation by discussing what short term rentals are. She continued the discussion with Airbnb’s. The presentation surrounding that discussion is listed below.

**Short-Term Rentals & the “Sharing Economy”**

What is a short-term Rental?

Short-Term Rentals have been defined in many way, but most localities share the common trait of being rental stays of *less than 30 days* in duration.

Is this currently allowed in Dinwiddie County?

**Hotels (B-2, PUD-C)**

*Hotel:* A building designed or occupied as the more or less temporary abiding place for 14 or more individuals who are, for compensation, lodged, with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.

**Motels (A-2 with a CUP, PUD-C)**

*Tourist court, auto court, motel, autel, cabins or motor lodge:* One or more buildings containing individual sleeping rooms, designed for or used temporarily by automobile tourists or transients, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit.

**Bed and Breakfasts (A-2 with a CUP)**

*Bed and breakfast:* An establishment based in an existing or rehabilitated residential structure whose purpose is to provide rooms and meals for temporary guests, meals possibly for patrons who would not be guests at the inn, and possibly a residence at the inn for the owner.

**Tourist Homes (R-2)**

*Tourist home:* A dwelling where only lodging is provided for compensation for up to 14 persons (in contradistinction to hotels and boardinghouses) and open to transients.
Guest Houses (A-2)
*Guest house:* Living quarters within a detached accessory structure located on the same premises with the main building subject to certain restrictions.

Farm Stay (A-1, A-2, R-R with farm since 11/10)
*Farm stay:* Means visiting a farm at least overnight as a paying guest, providing some experience of rural life.

### Short-Term Rental
#### In the Digital Sharing Economy
Online platforms to connect travelers with short-term housing outside of the traditional hotel concept. This could include renting a room or an entire house in a single family residential neighborhood, a small studio apartment above a commercial store, or an even couch in someone’s apartment.

#### Pushback and Lobbying Efforts
- **Lodging Industry (Hotels and Bed and Breakfasts)**
  - Because they are not subject to regulations and taxes.
- **Home Owners Associations and Neighborhoods**
  - The impact of having short-term rentals in neighborhoods or apartment not licensed or intended for such a use can present difficulties for the renter, neighbors and owners.

#### 2017 General Assembly Actions
Senator Tommy Norment patroned Senate Bill 1578 which will regulate the short-term rental market in Virginia. The Bill has the following major points:
- Localities may establish a short-term (administrative only) rental registry with required annual registration.
- Short-term rentals must meet the same Alcoholic Beverage Controls regulations as Bed-and-Breakfast establishments.
- Persons licensed by the Real Estate Board or represented by real estate licensee are not required to register. (Brick and Mortar Licensed Firms)
- Penalties cannot exceed $500 per violation. Operators who do not register may not continue to offer short-term property rental.
- Three violations of applicable state laws, local ordinances or regulations allows a locality to prohibit a specific property for short-term rental.
- Local land use requirements are not limited.

#### 1st Airbnb in Dinwiddie
**Dinwiddie Farms Private room - $30 per night.**

**Airbnb**
- An online marketplace and hospitality service, enabling people to lease or rent short-term lodging including vacation rentals, apartment rentals, homestays, hostel beds, or hotel rooms.
- Does not own any lodging; it is merely a broker and receives percentage service fees from both guests and hosts in conjunction with every booking.
- It has over 3,000,000 lodging listings in 65,000 cities and 191 countries, and the cost of lodging is set by the host.

VRBO, HomeAway, Roomorama, Wimdu, and 9flats
What other localities are doing

Administrative Policies
  - Registries/Permit Applications/Application Fees/Taxes

Land Use/Zoning
  What zoning districts these rentals would be allowed in the County
  - Entire house v. single room
  - Number of people per room
  - How often they could be rented out (number of days)
  - What types of structures could be rented out
  - How many people would be allowed to stay in a property at any one time
  - Restrict events such as parties, weddings
  - Establish fines for violations

Why create an ordinance?
  - Protect the character of Dinwiddie neighborhoods;
  - Reduce barriers for those who are, or intend to, use their homes through online services for short-term rental (e.g. Airbnb, Craigslist, etc.) in a legal and responsible manner;
  - Implement safety requirements to ensure that a short-term residential rental property complies with zoning, building, fire and other safety codes that are designed to protect public health and safety, property values and neighborhood character;
  - Provide a mechanism for enforcement of this type of use if problems arise and
  - Collect taxes.

Ms. Sherry said that sums up her presentation and she would answer any questions the members may have.

Mr. Hayes asked if the one short term rental that is on the Airbnb website located in Dinwiddie County was the same property involving the airsoft case we heard.

Ms. Sherry said yes.

Mr. Prosise asked what the difference is between this business and someone who wants to have a farm day for the public and the people who volunteer stay overnight on that farm to help with the farm day.

Ms. Sherry said the difference or distinction would be through Agritourism, which does allow for someone to stay on the farm.

Mr. Prosise asked how we are going to reconcile the difference between the Airbnb and Agritourism.

Ms. Sherry said hopefully people will do the right thing and register as an Airbnb. If they register through the Airbnb or similar website, I can police them. That’s the best way I know to reconcile the difference. Another way of being made aware of an Airbnb or short term rental is also through complaints.

Mr. Tucker said hotels and motels have certain cleaning requirements. Are any of those requirements in place for an Airbnb?
Ms. Sherry said she is inclined to say yes, but at what level it is policed I do not know. The reason I say I’m inclined to say yes is because I do know that Airbnb’s have a cleaning fee listed in the cost of the renters’ total amount.

Mr. Titmus said the only difference between a bed & breakfast and me renting my home out for someone to stay in because there is a major drag race at the track is me registering my home as a bed & breakfast.

Ms. Sherry said that is not correct. Bed & breakfasts are held at a higher standard of scrutiny than an Airbnb and the County Zoning Ordinance requires a conditional use permit for a bed & breakfast.

Mr. Titmus asked if a home owners association says you cannot use your home as an Airbnb, does that put an end to that home owner having it in that subdivision.

Ms. Sherry said that is correct and we would not have to enforce that decision, because it would be a civil matter between the home owner and his/her homeowners association. We could however help with the situation by letting the home owner know their H.O.A does not allow them.

The Chairman said if there are no more questions we will move on to item 8, which is keeping of Domestic Fowl in Residential Zoning Districts.

RE: PRESENTATION AND DISCUSSION: Keeping of Domestic Fowl in Residential Zoning Districts – Jamie Sherry, Zoning Administrator/Principal Planner

Ms. Sherry said I’m here tonight to talk a little bit about backyard chickens. tic Fowl in Residential Zoning Districts. Her presentation is listed below.

Backyard Chickens

What zoning districts are chickens currently allowed?
Chickens are currently allowed in the agricultural zoning districts which make up over 90% of the County

- Agriculture: The tilling of the soil, the raising of crops, horticulture, forestry and gardening, including the keeping of animals and fowls, and including any agricultural industry or business, such as fruit packing plants, dairies or similar uses.

- Domestic fowl: Is any bird of the order Galliformes, including but not limited to chickens, turkeys, pheasant, partridges and quail; birds which are hunted or kept for food and also waterfowl of the order Anseriformes such as ducks, geese and swans.

What are other localities are doing?
Prince George
Allows 6 hens in the residential districts for each 2 acres of land. No slaughtering of poultry will be permitted unless for personal use and conditions such as required fencing, larger setbacks, and sanitary guidelines. The sale of eggs can only be done off premises.
Chesterfield
Allows residents to keep up to 6 hens, provided the hens are kept within a minimum 10-square-feet structure and at least 25 feet from all property lines.

Powhatan
Chickens are allowed in nonagricultural district, but require a Private Kennel license. In the more restrictive residential districts a conditional use permit is required. Other localities cont.

City of Richmond
A person or family can now keep up to 4 hens in their backyard. Roosters aren't allowed and the chickens must be kept in a coop at least 15 feet away from adjacent properties. Cost $60

Fairfax County
Residents who live on a property of more than 2 acres can keep chickens as an accessory use - no permit or special permission required.

If the property is less than 2 acres, it requires a special permit from the Fairfax County Department of Planning and Zoning to allow backyard chicken keeping on your property. Cost $435 and requires a public hearing at the Board of Zoning Appeals

Things to consider:

Dogs – Sanitation – Noise/Odor and Enforcement

Ms. Sherry asked the members if they had any questions.

Mr. Tucker asked Mr. Bassett how many subdivisions in the County have Home Owners Associations.

Mr. Bassett said there are some that have Home Owners Associations on the books, but there are only a couple that have active associations. The active associations are Lake Jordan and Waterford Landing.

The Chairman said if there are no other questions we will move on to item 9 on the agenda.

RE: LEGAL UPDATE AND PROPOSED ORDINANCE REVISIONS: Zoning Permits & Delinquent Charges on Taxes, Sign Ordinance, Zoning for Wireless Communication Infrastructure, Non-Conforming Uses and Board of Zoning Appeals – Tyler Southall, County Attorney and Jessica Lipford, Legal Intern

Mr. Southall said Ms. Jessica Lipford, who is the Legal Intern for the County, grew up and still lives in Dinwiddie. She has just finished her first year at the University of Richmond Law School. She has been working on a couple of planning/zoning projects this summer. She has been spending most of her time with new laws and updates ensuring that our County Code is in compliance with the new state laws that went into effect July 1, 2017. The second thing she has been working on is the County’s Zoning Ordinance. He said her presentation is a combination of both of those issues. Ms. Lipford came forward the presentation that is listed below.
Legal Update
Zoning Permits & Delinquent Charges or Taxes
This year, the General Assembly passed HB 2469, which allows the treasurer to provide authorization as an alternative to a land use applicant providing evidence of payment of delinquent taxes or fees owed to the County prior to the initiation or final approval of his or her application.

The proposed ordinance would amend Section 22-28 of the Code of Dinwiddie County to add “unless otherwise authorized by the treasurer” to the Section.

Nonconforming Uses:
Proposed Ordinance Changes
The County Attorney’s Office has drafted a proposed ordinance to amend Article VI of Chapter 22 of the County Code to comply with changes to § 15.2-2307 of the Code of Virginia.

- Section 22-246(c) would state, “If any nonconforming use . . . is discontinued for a period exceeding two years after the enactment of the ordinance from which this chapter derives . . ., it shall be deemed abandoned and any subsequent use shall conform to the requirements of this chapter.
- Section 22-246(e) would be clarified to state, “Temporary seasonal nonconforming uses that have been in continual operation without a cessation for more two or more years prior to the effective date of the ordinance from which this chapter derives . . . are excluded.”
- Section 22-251(e) would be amended to add “damaged greater than 50 percent,” so that it reads “If such building is damaged greater than 50 percent and cannot be repaired, rebuilt, or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so, subject to the following conditions.”
- Section 22-251(e) would also be amended to define “act of God” and to include the disclaimer about accidental fires and arson, which the state code provides.
- Section 22-251(f) would be added to state, “An owner of real property shall be permitted to replace an existing on-site sewage system as prescribed in § 15.2-2307 of the Code of Virginia.”

The following provision would be added to Section 22-8:

“If a use does not conform to the zoning prescribed for the district in which such use is situated, and if (i) a business license was issued by the county for such use and (ii) the holder of such business license has operated continuously in the same location for at least 15 years and has paid all local taxes related to such use, the county shall permit the holder of such business license to apply for a rezoning or special use permit without charge by the county or any agency affiliated with the county for fees associated with such filing.”

Nonconforming Uses:
2017 General Assembly Session - SB 1173
This year, the General Assembly passed a bill for nonconforming uses, which states:

“If the structure is one that requires no permit, and an authorized local government official informs the property owner that the structure will comply with the zoning ordinance, and the improvement was thereafter constructed, a zoning ordinance may provide that the structure is nonconforming but shall not provide that such structure is illegal and subject to removal solely due to such nonconformity. In any proceeding when the authorized government official is deceased or is otherwise unavailable to testify, uncorroborated testimony or the oral statement
No ordinance is required for this change.

**Signs**

*Reed v. Town of Gilbert*: The Facts

- Reed v. Town of Gilbert was a case decided by the U.S. Supreme Court in 2015.
- Reed was the pastor of Good News Baptist Church. The church’s services were held at various locations, and it would post signs indicating around the town indicating when and where those services would take place.
- The town’s ordinance provided exceptions to its permit requirements, one of which was an exception for “Temporary Directional Signs Relating to a Qualifying Event.”
- However, there were restrictions placed on these signs that were not placed on ideological or political signs. For example, the directional signs could only be six square feet, they could not be posted until twelve hours before the event, and they were required to be removed no later than an hour after the event.

*Reed v. Town of Gilbert*: The Holding

- Reed and the church sued the town, arguing that the ordinance was a violation of their freedom of speech, because the restrictions on the signs were based on the sign’s content.
- The Supreme Court concluded that the sign ordinance was content-based, because “on its face” it “applies to particular speech because of the topic discussed or the idea or message expressed.”
- The Supreme Court further held that because it was content-based and the ordinance was not narrowly tailored to further a “compelling government interest” (the “strict scrutiny test”), the ordinance violated Reed’s First Amendment Rights.
- An example of a compelling interest which would satisfy this test would be the county’s interest in ensuring the safety of its citizens (ex. allowing signs which indicate dangers).

*Reed v. Town of Gilbert*: Why Does it Matter?

- The holding from *Reed* case created implications for local governments around the country, requiring them amend their sign ordinances to make them content-neutral.
- This case has caused us to examine the sign ordinance in the Dinwiddie County Code to determine whether certain signs are treated differently based on the message they are conveying.
- The proposed ordinance would present the regulations in a content-neutral way. For example, limitations on signs would depend on factors such as the property the sign is located on, the material the sign is made of, or the size of the sign.

*Reed v. Town of Gilbert*: Why Does it Matter?

- The holding from *Reed* and the proposed changes to the sign ordinance also cause implications for the permitted uses and setback restrictions of each of the zoning districts.
- Many districts refer to specific signs, such as business signs, real estate signs, directional signs, location signs, etc.
- The proposed ordinance would change the permitted uses to refer directly to the sign ordinance by stating, “Signs as permitted by Article VII of Chapter 22,” instead of referring specifically to the types of signs. It would also remove the definitions of those types of signs from Article I and use the definition of “signs” found in Article VII.
The setback requirements would provide that signs may be erected up to the property line, provided, however, that signs shall not block the view of other traffic from a roadway.

However, these changes will not resolve all the issues with the sign ordinance. B-3 and PUD-C have sign limitations that are different from those provided in Article VII, and the code is unclear which provisions govern, so policy decisions would need to be made for those districts.

Zoning for Wireless Communications Infrastructure

- This year, the General Assembly passed SB 1282, which details the procedure for the way in which installation of small cell facilities on existing structures are approved by localities.
- Article IX of Chapter 22 of the County Code currently imposes regulations on Wireless Telecommunications Facilities.
- The County Attorney’s Office has drafted an ordinance which would add a section to this article, detailing the permit requirements for small cell facilities and distinguishing those requirements from the requirements for other wireless telecommunications facilities.
- We have also drafted an ordinance to amend Section 22-8 of the County Code to add a subsection indicating the permit application fees for these small cell facilities.

Zoning for Wireless Communications Infrastructure: What is a Small Cell Facility?

A “small cell facility” is defined as a wireless facility that meets both of the following qualifications:

- Each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet, and
- All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission.

Zoning for Wireless Communications Infrastructure: Permit Applications

- When a small cell facility is installed on an existing structure (1) with the structure owner’s consent, and (2) with notification to the County, the County CANNOT require a variance or special use permit, but it MAY require administrative review of the permit application.
- Applicants are allowed to request up to 35 permits per application, and the County may charge a fee based on the number of small cell facilities on the application:
  - A maximum of $100.00 each for up to five small cell facilities
  - A maximum of $50.00 for each additional small cell facility listed on the application
- Once the permit application has been submitted, the Planning Director will have 10 days to notify the provider if there is any missing information.
- The application must be approved or disapproved within 60 days, unless the deadline has been extended in writing for a maximum of an additional 30 days.
- If the Planning Director fails to act on the permit application before the deadline, it will be deemed approved.
- Disapproval of an application must be done in writing with an explanation for the disapproval.

There are only four reasons for which the application may be denied:

- Material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities;
The public safety or other critical public service needs;
Only in the case of an installation on or in publicly owned or publicly controlled property, excluding privately owned structures where the applicant has an agreement for attachment to the structure, aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies with jurisdiction over such property; or
Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306, or pursuant to local charter on historic property that is not eligible for the review process established under 54 U.S.C. § 306108.

Zoning for Wireless Communications Infrastructure: Micro-wireless facilities
Micro-wireless facilities are small cell facilities which are no larger than 24in x 15in x 12in.
They are exempted from locally-imposed permit requirements and fees when they “are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes.”
These micro-wireless facilities are also exempt from permit requirements for access to public rights-of-way. However a single use permit may be required if the installation, maintenance, or replacement of such facilities:
- **Involve working within the highway travel lane or require closure of a highway travel lane;**
- **Disturb the pavement, shoulder, roadway, or ditch line;**
- **Include placement on limited access rights of way; or**
- **Require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.**

Zoning for Wireless Communications Infrastructure: Access to Public Rights-Of-Way
SB 1282 also outlines the procedure by which the County may issue permits for access to public rights of way for installation and maintenance of small cell facilities on existing and new structures.
The County cannot impose a fee for the use of the right-of-way, however, it may require payment of certain fees of general application, and it may impose a reasonable fee of $250.00 or less to process the permit application. This fee is not included in the proposed ordinance of Section 22-8.
It also outlines the procedure that the County and the provider must follow if it is necessary for a structure to be relocated.

Zoning for Wireless Communications Infrastructure: Installation on Government-Owned Structures
If the County agrees to have small-cell facilities installed on its structures, it must do so in good faith, with just and reasonable rates, terms, and conditions.
SB 1282 provides instructions for both parties when the facility is installed on a government-owned utility pole and provides that “rates for attachments to government-owned utility poles may be based on fair market value.”
Board of Zoning Appeals: Proposed Ordinance

- The County Attorney’s Office has drafted a proposed ordinance to amend the Article III of Chapter 22 in order to comply with changes in the state code regarding the Board of Zoning Appeals.
- Because sections of the Code of Virginia regarding the Boards of Zoning Appeals change frequently, many sections of proposed ordinance would refer directly to the Code of Virginia.
- The proposed ordinance would also amend Article III to allow members of the Board of Zoning Appeals to “receive just compensation as may be authorized by the board of supervisors.”

The Chairman asked if there were any questions of Ms. Lipford. He said since there are none let’s move to the next item.

IN RE: COMMISSIONERS’ COMMENTS

Mr. Tucker said he believes we need to review the domestic fowl ordinance again. I have some very important concerns. We approved one case involving companion birds and there has been a lot of feedback that has come from it.

Mr. Prossis said we need to advocate for the process playing out. As Planning Commissioners we need to hear the arguments and we need to allow someone to present their case to us. In addition, all animals need to be looked at including dogs as it relates to confinement.

IN RE: PLANNING DIRECTOR’S COMMENTS

Mr. Bassett said he has two items to discuss. The first is a reminder to Mr. Simmons and Mr. Harvell about the Certified Planning Commissioners’ training. I have the registration information for you. The second item is a reminder to you that we have no public hearings schedule for August. We do, however, have certain text amendments that were discussed that will be advertised for public hearings.

IN RE: ADJOURNMENT

The Chairman said since there are no additional comments and no further business he would entertain a motion to adjourn the meeting. Mr. Harvell made a motion and it was seconded by Mr. Simmons and with all members present voting “Aye” the meeting adjourned at 9:25 p.m.

Respectfully submitted,

Mark Bassett
Planning Director

Signed: ______________________________
Planning Commission Chairman
Dated: ______________________________

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