

PRESENT: Justine D. Tilghman, Chairwoman
 George A. Coyner, II, Vice Chairman
 Thomas W. Bailey
 Daisy A. Brown
 Steven F. Shreckhise
 Sandra K. Bunch, Zoning Administrator and Secretary
 Michael Lockaby with Guynn & Waddell, P.C.
 Beatrice B. Cardelicchio-Weber, Executive Secretary

ABSENT: James R. Benkahla, County Attorney

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, August 1, 2019 at 9:00 A.M., in the County Government Center, Verona, Virginia.

The staff briefing was held at 9:00 a.m. in the Board of Supervisors Conference Room where the Board reviewed the staff report for each request on the agenda. Copies of the staff reports can be found in the Community Development Department.

On motion of Ms. Brown seconded by Mr. Coyner the Board went into closed session under Section 2.2-3711 subsection A.8 of the Code of Virginia, 1950, as amended, for the purpose of Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel, specifically with Michael Lockaby with Guynn & Waddell, P.C. to discuss the appeal of the Friends of Seawright Springs.

On motion by Mr. Coyner, seconded by Mr. Shreckhise the Board certified, by a roll call vote, that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under FOIA and (ii) 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 by the BZA.

Roll Call Vote was as follows: Yeas: Tilghman, Coyner, Brown, Shreckhise, Bailey
 Nays: None

VIEWINGS

The members of the Board of Zoning Appeals assembled at the Government Center and went as a group to view the following:

- BRENT J. WARREN - SPECIAL USE PERMIT
- TAYLOR CARWILE, AGENT FOR SA HOLD CO., LLC - SPECIAL USE PERMIT

At each location, the Board observed the site and the premises to be utilized. The Board also viewed the development and the character of the surrounding area.


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ABSENT: None

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, August 1, 2019, at 1:30 P.M., in the County Government Center, Verona, Virginia....

Chairwoman Tilghman stated the Board of Zoning Appeals has a new member, Thomas Bailey. She said Mr. Bailey is from the Middlebrook area.

MINUTES

Vice Chairman Coyner moved that the minutes from the June 6, 2019, meeting be approved.

Ms. Brown seconded the motion, which carried unanimously.

BRENT J. WARREN - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Brent J. Warren, for a Special Use Permit to expand an accessory building located in the front yard on property he owns, located at 14 Birchwood Road, Staunton in the Wayne District.

Mr. Brent Warren stated he would like to add an eight (8') foot roof off of the existing roof for a wood shed. He presented pictures to the Board.

Chairwoman Tilghman stated the Board visited the site today. She asked if it is directly in the back near the fence?

Mr. Warren stated that is correct. He would like to put it off the back of the 24' x 24' shed.

Chairwoman Tilghman stated they saw the wood in the front yard. She asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairwoman Tilghman declared the public hearing closed.

Mr. Shreckhise stated the Board visited the site today. He said this is not out of character with the area, therefore, he moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Be permitted to construct an 8' X 24' addition to the existing accessory building located in the front yard.
2. Obtain all necessary permits and inspections.
3. Site be kept neat and orderly.
4. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.

Vice Chairman Coyner seconded the motion, which carried unanimously.

JOSEPH D. OR SONNEE SHOMO - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Joseph D. or Sonnee Shomo, for a Special Use Permit to have a short term vacation rental on property owned by Joseph D. Shomo, located at 676 Haytie Lane, Swoope in the Riverheads District.

Mr. Joseph Shomo stated this request is for a short term vacation rental at the premises.

Chairwoman Tilghman asked when it is rented, will you move across the street to the old house?

Mr. Shomo stated yes.

Vice Chairman Coyner asked if they moved their permanent address to this location?

Mr. Shomo stated yes. He said their address is 676 Haytie Lane.

Vice Chairman Coyner asked if the rental would be short term, just for the weekend?

Mr. Shomo stated yes. He rents through vacation rentals by owner.

Vice Chairman Coyner asked if they will still have weddings?

Mr. Shomo stated no weddings. He is allowed to have two (2) events per year. He does have plans to come back before the Board after the twelve (12) month waiting period.

Vice Chairman Coyner asked if they advertise?

Mr. Shomo stated yes on vacation rentals by owner.

Ms. Brown asked if they will have a fully stocked kitchen?

Mr. Shomo stated they will have dishes and plates in the kitchen only. He said normally guests do not cook, they typically go out. He said they may provide muffins.

Ms. Brown asked if they will only rent out to one family at a time?

Mr. Shomo stated yes.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to the request?

Ms. Susan Baldwin, 427 Haytie Lane, Swoope, stated she is not in opposition to them having a vacation rental. She does not mind them having a vacation rental as long as they abide by the number of people permitted. She also has a vacation rental. She is afraid of them having wedding venues and she would like them to be restricted on the amount of activity at the site.

Chairwoman Tilghman stated they are limited to eight (8) people by the number of bedrooms.

Ms. Baldwin said they could have two (2) events a year for family members but they are still advertising as to taking weddings in 2021 and 2022. She wanted to make sure this is just a vacation rental.

Chairwoman Tilghman stated the Special Use Permit for the wedding events was denied. She said they can have family gatherings but they cannot rent the site for events on a regular basis.

Ms. Baldwin asked what kind of events, family events?

Ms. Bunch stated they are allowed to have two (2) events per year and 200 guests based on the acreage of the site. She said they can only have two (2) per year by the owner or operator.

Chairwoman Tilghman asked if there is anyone else wishing to speak regarding the request?

There being none, Chairman Tilghman asked the applicant to speak in rebuttal.

Mr. Shomo stated he signed a contract for advertising prior to coming in for the Special Use Permit for one (1) year and they are just fulfilling their obligation.

Chairwoman Tilghman declared the public hearing closed.

Vice Chairman Coyner stated the weekend rentals would be in character with the area. He moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Be permitted to use the existing four (4) bedroom dwelling for short term vacation rentals.
2. Be limited to eight (8) persons maximum occupying the home.

- 3. Applicant reside on premise and be available at all times the dwelling is rented.
- 4. Site be kept neat and orderly.

Mr. Shreckhise seconded the motion, which carried unanimously.

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TAYLOR CARWILE, AGENT FOR SA HOLD CO., LLC - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Taylor Carwile, agent for SA Hold Co., LLC, for a Special Use Permit to continue the existing campground and to continue to rent out for recreational use the two bedroom cottages, two (2) three bedroom cottages, fourteen (14) room lodges, and to continue to have a seasonal restaurant within the beach house and to increase the number of extended stay sites occupied more than 240 days on property owned by Shen Acres Realty, LLC, located at 256 and 348 Lake Road, Stuarts Draft in the South River District.

Mr. John Androck, Property Manager for Lockland Management, stated they will operate the facility for SA Hold Co. He is an affiliate of the ownership. He said they are excited to do business in Augusta County. He is requesting to continue the existing uses. He said they plan to purchase the property by mid-September. He said they will not add the thirty (30) extended stay sites but would like to transfer the use of thirty (30) sites that are currently transient to extended stay all within the extended stay community.

Ms. Bunch stated essentially you are adding what was originally approved.

Ms. Brown asked how many employees will you have?

Mr. Androck stated they will maintain the employee count through the end of the season which is currently two (2) owners and twenty-eight (28) full-time staff members, offseason fourteen (14) employees, and they plan to add five (5) or six (6) more employees in March or April.

Ms. Brown asked how often will you be there onsite?

Mr. Androck stated the regional manager will come to the site weekly. He will be onsite every weekend during the transition period. He said they will keep staff that has been there for ten (10) years or more and will promote them to senior management. He said the regional manager also visits Smith Mountain Lake and she will be onsite on Monday

and Tuesday. He said they will have three (3) senior onsite managers. He said they own four (4) other campgrounds.

Ms. Brown asked if they will keep the twenty-eight (28) employees?

Mr. Androck stated yes and next season they may add positions.

Ms. Brown asked when is the staff reduced?

Mr. Androck stated about October but potentially November.

Ms. Brown asked in order to get onto the property a passcode is needed?

Mr. Androck stated yes.

Ms. Brown asked if they will still have entertainment?

Mr. Androck stated either every weekend or every other weekend but they have not looked at that yet. He said currently all of the entertainment is either live music or a band and are all volunteers from the campground.

Ms. Brown asked if they have amplified music?

Mr. Androck stated yes.

Vice Chairman Coyner asked how is it controlled?

Mr. Androck stated the DJ and onsite staff controls it.

Vice Chairman Coyner stated the music should be monitored.

Mr. Androck stated that is the benefit of onsite staff.

Mr. Shreckhise stated the previous property owner was very responsive with problems about the music.

Mr. Androck stated they will maintain that also. He said they will have 24 hour availability and that will not change.

Ms. Brown asked how many spots are there now?

Mr. Androck stated 456 sites.

Vice Chairman Coyner stated the Board visited the site this morning and looked around. He said it looked like tent city in between the campers in the White Oak area. He said some areas have totally enclosed freestanding tents for golf carts.

Mr. Androck stated that is weather protection for the golf carts. He said as a landlord he thinks it is reasonable for them to maintain their property and protect it. He can encourage them to not have permanent sheds.

Chairwoman Tilghman stated when you look at that area, the campers are closer together than in some of the other spots. She said that when the new part was approved, she said the screening did not happen. She said from the road you do not know what you are looking at and it is not very presentable.

Mr. Androck stated they will comply with the operating conditions of staff regarding the screening. He said it may not be immediate but it will happen. He would not want to plant over the winter months because they may die.

Chairwoman Tilghman stated it will need to be discussed. She said it will not be thirty (30) days but it needs to be done.

Mr. Androck stated he agrees to that but it is a matter of the timeline.

Vice Chairman Coyner asked how many tents would be allowed?

Mr. Androck stated they will revisit that. He said the current owner is allowing that. He said they want it to be aesthetically pleasing. He said they may regulate type and age of RV and camper. He said they do not accept anything over ten (10) years at their other locations. He said they have to look at it on a case by case basis. He said at other locations we ask for approvals before installing anything. He said there are a number of protective coverings there. He said they will look into it.

Chairwoman Tilghman stated once they got closer to the area, we saw what they were. She said they understand they want to protect their property. She said they have to protect the public view.

Mr. Androck stated they can satisfy this issue by planting an evergreen wall of trees.

Chairwoman Tilghman stated you see more tents than you do campers.

Mr. Androck said they can plant Leland Cypress.

Chairwoman Tilghman said she would like to see ground level shrubbery along with pine trees.

Mr. Shreckhise stated a six (6') foot giant arborvitae would be better with eight (8') foot spacing. He said the Leland Cypress has had a lot of problems. He said the screening plants break up the view.

Chairman Tilghman asked if they will keep 456 campsites or do they plan to increase the number?

Mr. Androck stated they will keep it as is.

Chairwoman Tilghman asked if the cottages are rented year round?

Mr. Androck stated they will have an annual lease on any structure available for rent.

Chairwoman Tilghman asked what are the plans on the lodge?

Mr. Androck stated they will have standard annual leases with the individual apartments.

Ms. Brown asked how long will the lease be for the apartments?

Mr. Androck stated annually.

Mr. Shreckhise asked about the former owner and staff?

Mr. Androck stated they will retain all staff. He said they will offer promotions. He said they will have employment agreements. He said the current owner will stay on board and be available on a consulting basis to us.

Mr. Shreckhise stated the Board is concerned that the new applicant not create any more disturbances. He said the current owner did a good job with the public relations and responsive to neighbors when they had problems.

Mr. Androck stated the staff have the same values and he does not think that will be a concern. He said they will continue to operate the same as they operated previously. He plans on having additional community engagement as well. He does not think there will be noise concerns. He said they will not operate differently than they are currently. He said if someone complains they will turn the music down.

Ms. Brown asked if the empty lot with the RVs is just for storage?

Mr. Taylor Carwile stated along Lake Road there is a storage area of RV vehicles while the owner is away or out of town.

Ms. Brown asked if they are moved after so many months being there?

Mr. Androck stated corporate policy is they can store the recreational vehicle or camper for a fee. He said they will power wash the camper and maintain shrubs and grass. He said they are not allowed there for more than nine (9) months.

Ms. Brown stated some have RVs with decks and buildings. She asked how long will they stay there?

Mr. Androck stated in the extended stay, the improvements convey with the property and remain with the property. He said they have the option to keep the deck there if someone else rents the site. He said with their corporate policy they do have to have management approval. He said some may be ADA compliant.

Chairwoman Tilghman stated it did not appear that they were attached.

Mr. Bailey asked if the amplified music is year round or seasonal?

Mr. Androck stated seasonal.

Ms. Brown asked if the electricity and water is still on after the season?

Mr. Androck stated yes.

Vice Chairman Coyner asked if they are all on County sewer?

Mr. Androck stated yes.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to the request?

Mr. Robert Shipp, 102 Duck Pond Lane, Stuarts Draft, stated he sent in a letter to the Board on July 23, 2019. He is opposed to increasing the number of extended stay sites that can be occupied for more than 240 days and he has a petition from the neighbors with their signatures. He has highlighted the signatures from the adjacent property

owners. He also has concerns about the amplified music. He said since the campground has reopened in 2014, noise has been an issue. He said the current operators over time has improved the monitoring of amplified music and they have been more responsive to complaints. He said this could be a nuisance from time to time. He said because the new owners would be absentee it could be an impact on the neighbors and adjacent property owners. He said it will disturb the peace and tranquility of people living there on Lake Road, Gerties Lane, and Dodge Street. He said most of the time it is quiet. He received eighty-five (85) signatures from the residents impacted by the operation of the campground. He would request the Board remove the operating condition that allows any amplified music at the campground. He said the music during the day has been muted. He said we as neighbors need a safeguard and assurances that their peace and quiet will not be interrupted. He said they should not operate like that all day long and weekends and the evening. He has been appreciative of the initial response of the applicants and they said they are going to do something when we complain. He does not want to be the complainer and chief. He said even when you go online and look at the campground reviews, they are praised for the job that is being done but the only negative is about the noise and music into the night. He noted this is their only opportunity to express concern and ask you and the applicant to address this issue. He asked that the Board restore the peace and tranquility we have enjoyed in the past. He said if you allow any amplified music he would ask that you knock back the hours and that it can be reviewed annually and not approved like that forever.

Chairwoman Tilghman stated the Board visited the site today. She asked if you would consider the music playing at the beach a nuisance?

Mr. Shipp stated yes. He said the part-time youngsters crank the amp up. He said it sounds like it is playing right on his front porch. He said this is an amenity and they will not lose campers eliminating the music. He said those people at the campground go home, he and the other neighbors have to listen to it for the entire season.

Chairwoman Tilghman stated the campground provides a band at night. She asked if you also want campers to not have music?

Mr. Shipp said the campground and beach house does not have to provide music. He has no issues with the campers playing their own music. He would like the new owners to control the volume within the campground if they were to disturb the other campers.

Chairwoman Tilghman stated she cannot believe there are eighty-five (85) homes in the area that can hear the music.

Mr. Shipp said the music volume was turned down and they have tried to get it to a happy medium.

Chairwoman Tilghman said you should not have to listen to music 24/7.

Mr. Shipp said these signatures are from people in close proximity to the campground.

Mr. Roy Simmons, 61 Gerties Lane, Stuarts Draft, stated he has no problem with the music during the day. He said Shenandoah Acres has always been nice but they can only get so big and they keep wanting to keep adding. He said if they go any further they will come against Gerties Lane. He asked the Board to take into consideration the way it looks and the peace and quiet of the area.

Ms. Shayla Branch, 79 Gerties Lane, Stuarts Draft, asked what are the six (6) additional positions for. She said she was confused about the thirty-five (35) sites.

Ms. Bunch stated the campsites are all there. She said it depends on how long they are occupied.

Ms. Branch asked where will they plant trees?

Chairwoman Tilghman stated in the White Oak area (new part). She said trees should be planted in the front of it along the main road.

Ms. Branch asked if they plan on expanding any more sites?

Ms. Bunch stated no.

Mr. Richard McHaffa, 43 Gerties Lane, Stuarts Draft, stated he is in a similar position like Mr. Simmons. He said this is his retirement home and it is a peaceful and tranquil area. He is not against the music but he does hear every note when the band is playing. He is concerned about them adding more sites for extended stay. He said he sees storage buildings and the area looks like a trailer park and that is his concern. He asked what will it do to property values in the future. He is wondering what it will look like in the future. He said there has been no mention of the screening for Gerties Lane. He is against the extended stay sites and anything going toward Gerties Lane.

Chairwoman Tilghman stated Mt. Laurel is not new. She said the sites are bigger and not as congested as White Oak.

Mr. McHaffa stated this time of year it is not as visible but as soon as the leaves are down you see it.

Ms. Elice Blacka, 351 Lake Road, Stuarts Draft, wrote a letter to the Board and asked that they pay close attention and give it the attention it deserves. She said the entire campground is designated as an extended stay.

Chairwoman Tilghman stated no.

Ms. Blacka asked how many sites are designated as extended stay?

Ms. Bunch stated some are short term and tent sites. She said the extended stay is in mostly White Oak and Mt. Laurel. She said thirty-five (35) sites are occupied more than 240 days. She said 70% of the campground could be rented up to 240 days.

Ms. Blacka stated 30% could be rented to 240 or more days. She is strongly opposed to any increase of the extended stay campsites 240 or more days.

Mr. Gary Campbell, 74 Carter Circle, Stuarts Draft, stated he is a 0.25 of a mile from the campground. He said the music does get intense at night. He stated his other concern is 240 days or more. He asked what is the more? He stated there are permanent residents in the campsite. He asked how many more sites could they get?

Ms. Bunch stated they are requesting the entire 30% but the Board of Zoning Appeals limited those sites occupied more than 240 days to thirty-five (35) sites. She said they want the total 30% of the total camping lots.

Chairwoman Tilghman stated if approved they can have 137 of those become year round. She said they all have the right for extended stay but we reduced the number because we did not want it to become a housing development. She said many people no longer tent camp and they do not want to move the RVs. She said they may not be living there but they do not want to move their campers.

Mr. Campbell stated he does not want folks to be living there full-time as their permanent residence.

Chairwoman Tilghman stated 30% would be 137 in this case and the camper could be there year round but now they are only allowed to have thirty-five (35).

Mr. Campbell stated he is opposed to the 137 if approved.

Ms. Teresa Fust, 333 Lake Road, Stuarts Draft, stated she is directly across from a field of campers that do not move. She would like the new owners to put a barrier fence around the used camper lot. She asked the Sheriff's office to print the number of calls made to Shenandoah Acres from 2009-2016. She asked how many full-time families are living in the cottages? She said they are asking for more extended stay which could be additional extended stay sites with 137 families.

Ms. Bunch stated permanent homes can be rented yearly. She said this is for recreational rentals.

Ms. Fust said none are permanent homes except for the roundhouse. She said they are allowed to rent those as seasonal rentals and allowed it to be their permanent residence. She said these are not all individual addresses. She said all of the cottages are seasonal but are occupied permanently. She said 137 out of 456 will be occupied permanently.

Ms. Bunch stated this is what was specifically approved in 2014.

Chairwoman Tilghman asked if the noise and music bothers her?

Ms. Fust stated she is blessed to have central air. She said when the live music plays she sits on her deck and listens but not everyone wants to hear it. She said it is the same music with the same ads. She said they should get rid of the ads at the very least. She is very concerned about the full-time living in the campground. She said Garland Eutsler has done great. She is concerned about who will stay here year round, are they sexual predators, and if she has problems who does she go to. She said this is more about them making money and the maximum number of income instead of the interest of the people. She does not like what is going on with this. She asked the Board to consider all property values. She said we are all in opposition to the extended stay sites with people living at Shenandoah Acres permanently.

Mr. Shreckhise asked if the apartments are approved for year round rental?

Mr. Eutsler stated ten (10) apartments at Cranberry Cove are year round. He said eight (8) are tenants and two (2) are employees. He said the Sandstone Lodge is a six (6) unit building rented long term but now two (2) are long term and the other four (4) are weekly rentals. He said there are also ten (10) cottages and they are all rented for the weekend or weekly. He has not changed anything different than what was there before. He said the roundhouse is rented by a staff member and the house next to it is where his mom lives.

Ms. Bunch stated in 2014 the permit was approved to rent out for recreational use the two (2) bedroom cottages, two (2) three bedroom cottages, and fourteen (14) room lodges.

Mr. Eutsler stated the ten (10) cottages are weekend and week rentals. He said the Sandstone Lodge has four (4) of the six (6) units rented on the weekend and by the week for the lake. He said two (2) of them are occupied by long term tenants, one of which is a staff member. He said the roundhouse and the four (4) houses beside it are rented by three (3) staff members, one (1) tenant, and one for his mom.

Mr. Shreckhise asked if these are occupied by staff seasonally?

Mr. Eutsler stated all year.

Chairwoman Tilghman stated this is their full-time home.

Ms. Bunch asked if they have separate addresses?

Mr. Eutsler stated they have a PO Box.

Ms. Brown asked how many staff live there?

Mr. Eutsler stated two (2) in the apartment building, three (3) Cranberry Cove houses, one (1) Sandstone Lodge as well as the other roundhouse and his mom.

Ms. Bunch stated staff members can stay onsite year round.

Ms. Phyllis Kiser stated she lives across the street from the shop where they repair the vehicles. She said there was not loud music when her children were growing up. She said back then it stopped around 9:30 p.m. or 10:00 p.m. She now comes home to a used trailer lot across from her house with all old campers as well as a Staunton Braves bus. She said it looks messy there. She said this new area is very unsightly. She does not think the trees will fix it up much. She said the trees could not be planted because they will die in the fall.

Chairwoman Tilghman said the applicant stated what they wanted to do but we did not say what they would do.

Ms. Fust stated she does not think the community realizes what will happen if this is continued. She said the decision in 2014 was for recreational use and not long term. She said this is recreation, not long term. She said there will be 137 sites and additional housing long term. She said when the Blackas were there it was not used long term.

She is a little overwhelmed because there will not be locals there. She said the Board should pick an evening that people that work can come. She noted almost all of the adjoining neighbors do not want this to happen.

Chairwoman Tilghman asked if there was anyone else wishing to speak in favor or in opposition to the request?

There being none, Chairwoman Tilghman asked the applicant to speak in rebuttal.

Mr. Androck stated he hears that music is a concern and they will address it under their corporate policies. He said they intend to hire security which is a standard at all of their parks which would alleviate any concerns that Ms. Fust had. He hopes to continue the same sense of community. He said the extended stay sites are traditionally larger and used to accommodate larger recreational vehicles and much more expensive. He said it is a convenience for the owner of the RV to leave those in place there for the entire season. He said this is very common in the industry. He said the uses that are annual uses will stay. He said they will maintain the same uses as before. He said nightly, weekend, and weekly rentals will also be maintained. He said Garland's mom requested to still live at the site.

Chairwoman Tilghman stated extended stay means they are allowed to keep the camper 365 days a year but it does not mean they will live in it. She asked what percentage of people pay to keep a camper in a spot year round and actually live in it?

Mr. Androck stated in their four (4) other locations we have extended stay and they are weekend retreats. He said they are not living 24/7 365 days a year in the camper. He said in the summer grandparents often bring the camper for a few months at a time. He said that is the extent of their long term occupancy. He said the structure is setup permanently but it is not permanently resided in. He said they do an intense credit and background check on all of the tenants. He would not accept anyone on the national sex offenders registry or anyone convicted of a crime. He said they will be responsible landlords.

Chairwoman Tilghman asked how many people keep their camper there 365 days and how many are full time residents?

Mr. Eutsler stated outside of staff members, less than twenty (20). He said the end of October the water is turned off and they are gone. He said the campers are not occupied in the winter.

Chairwoman Tilghman asked how many people live in campers twelve (12) months a year?

Mr. Eutsler stated he has a permit for thirty-five (35) extended stay. He said the campers are there but they are not occupied. He said less than twenty (20).

Ms. Brown asked if the electric and water is off to these sites?

Mr. Eutsler stated 120 sites do not have winter water and it is turned off. He said the extended stay areas have to have winter water.

Chairwoman Tilghman declared the public hearing closed.

Mr. Shreckhise stated the permit is for what has been there except more of the extended stay sites. He thinks the residents are set against any more campsites. He noted this is a new owner. He is against increasing the number of extended stay campsites.

Vice Chairman Coyner said he agrees with Mr. Shreckhise. He said they should keep everything like it is if we move forward with this.

Mr. Shreckhise stated the permit should be reviewed in a year like one of the neighbors suggested.

Vice Chairman Coyner stated there should be screening along White Oak where the tents are and also where the RV lot is.

Ms. Brown suggested a solid fence near the camper area or trees.

Vice Chairman Coyner stated the trees would work good but they would need to be maintained.

Chairwoman Tilghman stated there needs to be a timeline on the planting of the trees. She asked about the time for the music.

Ms. Bunch stated the current permit states no outdoor music after 10:30 p.m.

Chairwoman Tilghman said it would be hard to regulate the music by decibels.

Mr. Eutsler stated the only time there is music is on Saturday nights. He does not compromise the time at all and they quit by 10:30 p.m. He said the music is only one (1) time a week.

Chairwoman Tilghman asked if the music is only during the season?

Mr. Eutsler stated April – October. He said they have two (2) car shows with music during the day.

Chairwoman Tilghman asked if they need a Special Use Permit for the car show?

Ms. Bunch stated if it is not during the camping season then they would need a Special Use Permit.

Mr. Shreckhise stated there is already enough restrictions on the music.

Chairwoman Tilghman stated this permit should be reviewed in a year and amplified outdoor music be only one (1) night a week.

Vice Chairman Coyner moved to approve the request with the following conditions:

Pre-Conditions:

1. Obtain letter of approval from the Augusta County Service Authority and provide a copy to Community Development.
2. Obtain Health Department campground permit and provide a copy to Community Development **within thirty (30) days.**
3. Obtain all necessary permits, engineering, inspections and Certificate of Occupancy for new beach house and game room in accordance with the Uniform Statewide Building Code.

Operating Conditions:

1. Be limited to no more than thirty-five (35) extended stay RV sites occupied more than two hundred forty (240) days in a calendar year, located to the rear of "White Oak" furthest away from the road.
2. The applicant plant a double row of six (6') foot high staggered evergreen trees planted ten (10') foot on center in front of the "White Oak Section" for screening.

3. The RV storage lot be screened by an eight (8') foot high opaque vinyl privacy fence or a double row of six (6') foot high staggered evergreen trees planted ten (10') foot on center by **December 1, 2019** and must be maintained at all time.
4. Applicant keep a log tracking occupancy data for all sites.
5. No outdoor amplified music after 10:30 p.m. and be limited to no more than one (1) night per week.
6. Obtain yearly outdoor music festival permit.
7. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.
8. No further expansions.
9. Permit be reviewed in a year and renewed if all of the conditions are met.

Ms. Brown seconded the motion, which carried unanimously.

MICHAEL W. SHARP, AGENT FOR FRIENDS OF SEAWRIGHT SPRINGS - APPEAL OF THE ZONING ADMINISTRATOR'S DECISION

An appeal by Michael W. Sharp, agent for Friends of Seawright Springs, to the Board of Zoning Appeals of a decision of the Zoning Administrator regarding the decision to forego requiring a Special Use Permit for a water withdrawal business on property owned by Flow Beverages, Inc. (formerly owned by Seawright Mineral Springs, LLC), located at 40 Seawright Road, Mount Sidney in the North River District. – TABLED AT THE JULY 3, 2019 MEETING

Vice Chairman Coyner moved to bring the item forward.

Ms. Brown seconded the motion, which carried with a 4-0 vote.

Chairwoman Tilghman stated we have a new member of the Board and he will abstain.

Mr. Bailey stated he did not participate in the prior hearing on Seawright Springs so at this time he will not vote on this one.

Chairwoman Tilghman stated they received many letters and many correspondences on this. She said they have talked with many people. She said this is not a public hearing but this is for us to make a decision and explain as best as we can on why we are making the decision that we arrive at. She noted this has definitely not been a straight forward decision for any of us. She said one minute everything looks like this is obviously what should happen but the next minute you get a new piece of information and you look at it a totally different way. She said any member that would like to make a statement regarding their feelings, please feel free to do so.

Mr. Shreckhise stated after we render our decision we want to make some comments.

Chairwoman Tilghman said yes, she forgot that. She said we have to take a vote on this but we also in talking between ourselves rather than you leave because what normally happens is we render a vote, yea or nay and then thirty seconds later everyone is talking or everyone is out the door, we would appreciate it if you would not do that this time. She said for one reason we have some comments we would like to make and we have a resolution that we would like to present too. She said it will not take long and we will not keep you. I would appreciate you hearing us out before you left.

Mr. Shreckhise stated at the end of our last meeting our counsel told us that we might be able to make some modifications to the zoning determination and he thought this might partially give us an out because we are all concerned on giving more protection to the neighbors and he personally had in mind and he thinks the rest of the Board members would have been in agreement with me that we wanted to do something like put a condition similar to the groundwater mitigation plan that mining people have when there is a question of water rights and whatnot. He said I consulted with counsel and he consulted back with the Board and it was determined that putting such a condition is not legal to put that kind of condition on the zoning determination that was already met. I asked what legal rights if we grant this and agree that this was a legal decision, what legal rights do the landowners/adjacent property owners have and he looked into this. I will let counsel make comments on this as far as what he was able to find out.

Michael Lockaby with Gynn & Waddell, P.C. stated the basic principal in Virginia is that Virginia is a Common Law State and the basic principal in Virginia is that you cannot use a well on your land in a manner that is going to materially diminish either the quality or quantity of the supply of water on your neighbors land. He said there are three layers of regulatory enforcement of this requirement that happen regardless of what the Board of Zoning Appeals or Board of Supervisors does. 1. The Virginia Department of Health (VDH) has a regulation that requires that if a well is going to interfere with the legal rights of neighbors and it is far more eloquently or legalistically stated than that but the upshot is that the Virginia Department of Health has a responsibility to make sure that the well is

properly designed. 2. Department of Environmental Quality (DEQ) has responsibility to ensure the health of the aquifers in Virginia and he thinks those of us that pay a lot of attention to water issues are aware that in order to put in a well that is going to pump more than 300,000 gallons per month east of I-95 that you have to get a permit and it includes an entire study of how it is going to pull on the aquifer and surrounding wells and those regulations have not been extended yet to the Shenandoah Valley, however, it is expected that those will probably be extended to the Potomac and Shenandoah aquifers within the next decade or so. He said there are a lot of people who pay attention to how those regulations work. Finally, there is also the possibility of a private civil action and George Somerville, a fine attorney who I am honored to know, wrote an article just a couple of years ago and his view is that you can bring a private civil action for trespass. He said he was involved in one in Louisa County, in which neighbors sued the County believe it or not because of the County putting in a well that they said was materially diminishing their water supply. He said finally there are provisions in the code that allow the County itself to do some amount of oversight of wells, however, this is generally speaking the responsibility of the Department of Health. He said the Department of Health statutes and regulations are very clear on that particular point. I think within the context of the Virginia Department of Health regulations they require that when a well is permitted you have to have a drawdown test. He said that means that you basically pull on that well until it runs out of water. He said his understanding from hearing what both Mr. Hawthorne said and what the neighbors said in fact, Flow did a 48 hour drawdown test and pulled that well down to nothing and they let it refill and found out how much water was in it and how much it could produce. He said it probably did in fact result in some bubbling of neighbors' wells and my overall experience in having worked for water authorities for cities and towns that use well drawn systems. He said when we were developing new wells that is not unusual and that is how you know when you stepped over the edge. He said because the fact of the matter is that when you are doing that drawdown test it is a little like the old joke, how does VDOT know how much weight a bridge can take, they drive bigger and bigger trucks over it until the bridge falls in and then they rebuild it. He said unfortunately with wells that is what your 48 hour drawdown test is and you pull it until it will not pull anymore and then you know the maximum and then you scale it back from that. He said given all of these legal constraints, Flow Beverages knows and has done that drawdown test in order to be sure that the construction and their draws are going to meet those VDH regulations. He said as a result if you run into a problem and your water is in any way being materially diminished whether it is by Flow or anybody else, you have two regulatory agencies that you can talk to, the Virginia Department of Health Office of Drinking Water and talk to DEQ and they have a department which is in charge of water and septic disposal health and safety and probably most importantly especially with somebody like Flow Beverages that is a relatively sophisticated outfit, you can talk with them directly. He said because the fact of the matter is that they do not want to fight and I bring this fact up because again in the Louisa County scenario that I was

involved in, we purposely put much higher restrictions on what we were doing with our wells than what DEQ and VDH was going to require us to do, simply because we were being good neighbors and we were able to do that within the context of what we needed to do for the public water supply. He said that is pretty much the state of the law in that matter. I hope that it clarifies it somewhat for you.

Mr. Shreckhise said they wanted to present that information and it was information that we needed to know also.

Vice Chairman Coyner stated our intent was to dive into this and see what we can do. He said as Steve mentioned, we are pretty confined as to doing any alterations.

Ms. Brown stated also when a company comes in and wants to buy land they go to the County to find out what can be built on that land before they make a decision. I want to let the public know that the company does go and get permission and they do go find out what can be put on that plot of land or lands before they do anything.

Chairwoman Tilghman stated one of the big concerns here was the decision was made and the letter was written by the Zoning Administrator in December but it did not become public knowledge until April. She said there is a time limit on when you can appeal a decision and that time limit had past and if you had gone specifically to the Planning and Zoning Office and said was there a determination letter done on Seawright Springs. She said they could have gotten that letter because it was public information but it is not advertised. She said we feel that it is a flaw in the system. She said it is not a County rule but comes under the State. I will explain more later when we get to other things we want to say. She said it is wrong and it is not something we as a Board can change and it is not something that Augusta County can change because when it becomes public knowledge a company or an individual taking over a piece of property if the State has been involved in it, you are going by State law. She said that is why the majority of the people were not aware of the situation.

Ms. Brown stated isn't it true that the State will not allow us to let that information out.

Chairwoman Tilghman stated that is correct.

Mr. Lockaby wanted to clarify with regard to an economic development deal, the Governor needs to be the person to announce that the deal is happening because otherwise the State money cannot be involved but I want to make clear that the fact of the matter is, as soon as the letter was written, you could have walked up to the Community Development desk and said have you issued any letters relating to Seawright Springs and

you would have gotten a copy of it, however, it is hard to get a copy of something that you do not know exists yet even if it is publically available information.

Mr. Shreckhise stated that was only one of the listed items that they gave us and it basically said if you answer to any of these questions yes, then you cannot overturn this decision. He said two of the questions were has the landowner incurred extensive obligations and the first was has the landowner relied on good faith on this significant affirmative government act and they have. He said yes to any of these questions then legally we cannot overturn this decision. He said we have to support this decision. He said the other question that I have a hard time not saying yes to was has the landowner incurred extensive obligation on the reliance of the significant affirmative government action and they have, there is no question about that. I think the Board sympathizes with the Seawright Springs people but legally I do not think we have a way of not supporting the decision of the Zoning Administrator because she acted according to the law, according to the laws of the State and County. He said that about sums up my feelings now. He said the Seawright Springs people have other recourses. He said they can appeal this if we decide in favor of Flow and they have outlets that our counsel has presented as far as if they have water problems.

Chairwoman Tilghman asked if there is further discussion or do you want to have a vote on this particular item.

Vice Chairman Coyner stated we have discussed this pretty well. He moved to uphold the decision of the Zoning Administrator.

Ms. Brown seconded the motion, which carried with a 4-0 vote. Mr. Bailey abstained from the vote.

Chairwoman Tilghman asked if someone would like to speak to the resolution that we would like to do.

Mr. Shreckhise stated our Board was given a hard job here. He said all of us were really disappointed in the lack of transparency in State and County government, especially State government. I think the County government had their hands tied somewhat. He asked counsel to correct him if he is wrong but I think the way the system works right now is that if someone comes in and wants to do something like Flow Beverages does, they can go to the State and the Governor and say we want to do this, can we get some help on it and if the County reveals this before it is announced by the Governor, then the Governor takes away state funding on it and that is why to my understanding the residents were not informed. He said like it was mentioned that you could go up there and ask if there has been a zoning determination but no one is going to do that. He said

they were disappointed in this lack of transparency of government. I want to make a resolution that we might vote here that we send a resolution to State government that whereby any zoning determination should be a process where the neighboring landowners are notified when the determination is made.

Chairwoman Tilghman stated one of the other things was according to the code the landowners were passed the time that they could appeal. She asked if it was ninety (90) days?

Mr. Lockaby stated the time period to appeal on the one hand is thirty (30) days and the time period for the vested right to accrue on the other hand is sixty (60) days so either way you look at it.

Mr. Shreckhise stated what we want to do with this resolution is to let the State government know that we do not approve of this lack of transparency and we want the landowners to be notified on any type of zoning determination by the Zoning Administrator to give the landowner a fair chance.

Chairwoman Tilghman said if the notification is delayed the period to appeal should change along with it.

Mr. Shreckhise would ask staff to send this resolution.

Chairwoman Tilghman stated staff should send this resolution to our Senators and our Representatives, and the Governor's Office.

Vice Chairman Coyner stated we want to try to learn from this experience. He said it was awkward and we do not want to go through this again.

Chairwoman Tilghman said nobody may ever read it but that is ok.

Mr. Shreckhise stated we need to vote on this because I want to make sure everyone is on board with this.

Vice Chairman Coyner stated we are.

Ms. Brown stated yes.

Mr. Shreckhise moved that the resolution as he stated be voted on and agreed that the letter be sent.

Ms. Brown seconded the motion, which carried with a 4-0 vote. Mr. Bailey abstained from the vote.

Mr. Shreckhise stated furthermore, we want the Board of Supervisors to know that there is a problem with this type of well mining. There should be another letter sent to the Board of Supervisors to let them know that we think that there should be a definite distinction on when withdrawal of water and such circumstances becomes an industrial use and when it is considered water mining and some type of water ordinance be put into effect so that people realize what their limitations are when buying something and also so that the neighbors realize what can be done and what cannot be done as far as extraction of water.

Vice Chairman Coyner stated there is a difference between a personal well and an industrial well.

Mr. Shreckhise said I think we need a little more clarification. I think the Board of Supervisors should be able to write something up to make a distinction.

Chairwoman Tilghman stated there is definitely a difference between that and you have some farmers pulling out huge amounts of water off of their land for crops and for different reasons and some more than others. She said it is definitely not a clear cut thing. I think we would ask the Board of Supervisors to please look into something that does not have a simple answer but as time goes on the water issue will become more and more important. I thank everyone for staying and listening to us. I appreciate that.

Mr. Lockaby asked the Board if they would like to vote on that last issue/resolution.

Mr. Shreckhise moved that be presented to the Board of Supervisors.

Vice Chairman Coyner seconded the motion, which carried with a 4-0 vote. Mr. Bailey abstained from the vote.

MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR

SANDON KNICELY - EXTENSION OF TIME REQUEST

A request by Sandon Knicely, for a Special Use Permit to have apartments in a pre-1980 structure on property owned by Deborah Simmons 1/4, Etal, located at 23 Buttermilk Road, Mount Sidney in the North River District.

Mr. Don Knicely stated his son, Sandon, is not able to be here today. He said his son received a letter that he needed all necessary permits for the apartments. He said there was no new construction.

Ms. Bunch stated initial permits were never obtained for all of the work that was done. She said it was a pre-condition on his permit. She said in order to issue the Special Use Permit all pre-conditions need to be completed. She said the Building Official needs documentation that everything was up to code. She said you would still have to obtain permits. She said the Building Official spoke with your son. She said the upgrades were done without permits.

Chairwoman Tilghman stated the applicant needs to get all of the appropriate permits.

Ms. Bunch stated the apartment was never established legally. She said Mr. Knicely should contact the Building Official with any questions.

Mr. Shreckhise moved to approve the six (6) month Extension of Time.

Vice Chairman Coyner seconded the motion, which carried unanimously.

STAFF REPORT

18-45	Mossy Creek Brewing Co., LLC
18-46	Gary J. Smith

Ms. Bunch stated both permits were inspected and are in compliance.

Vice Chairman Coyner wanted to address Stacey Payne’s Special Use Permit and the issues the neighbors were having last month. He said that Sandy sent a letter to the applicant and he has visited there and did not find any issues at all.

Ms. Bunch discussed the court cases with the Board.

There being no further business to come before the Board, the meeting was adjourned.


Chairwoman


Secretary

