



# Clarke County Planning Commission

MINUTES – Work Session

Tuesday, November 29, 2022 – 3:00PM

Berryville/Clarke County Government Center – Main Meeting Room

| ATTENDANCE:                            |   |                               |   |
|--|---|-------------------------------|---|
| George L. Ohrstrom, II (Chair/Russell) | ✓ | Ronnie “Ron” King (Buckmarsh) | ✓ |
| Randy Buckley (Vice-Chair/White Post)  | X | Scott Kreider (Buckmarsh)     | ✓ |
| Matthew Bass (Board of Supervisors)    | X | Frank Lee (Berryville)        | ✓ |
| Buster Dunning (White Post)            | ✓ | Gwendolyn Malone (Berryville) | ✓ |
| Robert Glover (Millwood)               | ✓ | John Staelin (Millwood)       | ✓ |
| Pearce Hunt (Russell)                  | ✓ | Doug Lawrence (BOS alternate) | X |

**STAFF PRESENT:** Brandon Stidham (Director of Planning) and Jeremy Camp (Senior Planner / Zoning Administrator)

**OTHER PRESENT:** Jordan Brunel (Hecate Energy), Chris Mohn (Greenway Engineering), Bill Beran (Hecate Energy)

**CALL TO ORDER:** By Brandon Stidham at 2:59PM.

### **Approval of Agenda**

Commissioners had no additions to the agenda.

### **Review of November 29 Business Meeting Agenda Items**

#### *Agenda Review*

SUP-22-03/SP-22-04, Hecate Energy Gun Barrel Road Solar, LLC; Hecate Energy, LLC (applicants)/Debra Diane Davis, Administrator of the Estate of Montie Wood Gibson, Jr. (owner-deceased)

Mr. Camp provided an update on this application. He noted that the applicant previously requested to address the Commission at the Work Session to discuss the application and, if the Commission had no objection, the applicant’s representatives would speak after his presentation.

Mr. Camp said that the application and public hearing was deferred at the November 4 meeting to give the applicant more time to address Staff’s review comments. He said the applicant responded to these comments on November 18 which includes a revised decommissioning plan that is currently under review. He added that he informed the applicant that Staff would need additional time to review the revised decommissioning plan which would include review by the County Attorney. He also said that the County Attorney would not be able to review the document until next week. He said that this item is incomplete but that it appears the applicant has made a legitimate attempt to address Staff’s comments. Chair Ohrstrom asked if this includes “may” vs. “shall” issues. Mr. Camp replied yes along with all of the other points Staff noted are required for full compliance with State Code and to protect the County’s interests.

Mr. Camp said that the applicant submitted additional information on November 28 regarding the commissioners' request to reverse the positioning of the landscaping and perimeter fencing so that adjoining property owners would view the landscaping instead of the fence. He said the applicant confirmed that they will do this and it will require a revision to the site plan to show the change. He noted that Staff mailed notices of the continued public hearing to the adjoining property owners. Chair Ohrstrom asked for confirmation that the Commission continued the public hearing and Mr. Camp replied yes. Chair Ohrstrom asked if the public hearing must be re-advertised and Mr. Camp replied that it only needs to be advertised once. Mr. Camp added that we previously discussed providing ample opportunity for citizens to comment on the application and he has received one phone call from a neighboring property owner who plans to attend the public hearing. He also noted that Staff is recommending deferral of the application to the January 6 meeting primarily due to the incomplete decommissioning plan review.

Jordan Brunel, Hecate Energy representative, said he is available to answer any questions from the Commission about the application. He requested the Commission consider advancing the application to the Board of Supervisors at the Business Meeting. He said he believes that they have addressed Staff's comments on the decommissioning plan and that if there is any minutia to be resolved that they can address that as well. Chair Ohrstrom said that it is more than minutia. Mr. Brunel said his position is that they have put forward everything that has been requested by Staff including financial guarantees to ensure the County and its citizens are protected.

Commissioner Staelin asked if there are economic hardships involved if the Commission defers action on the application. Mr. Brunel replied that there would not be economic hardships however they are anxiously looking forward to advancing the project to construction. Chair Ohrstrom pointed out that the Commission does not do conditional approvals as a practice, adding that the Board of Supervisors expects the Commission to do their job. Commissioner Kreider said that he agrees with the Chair. Commissioner Staelin said that Mr. Stidham informed him of the Commission's procedures for conditional approvals. He said the procedures contain three circumstances in which conditional approvals may be granted, none of which exist in this case. Chair Ohrstrom said that during his tenure, the Commission has tried to avoid conditional approvals whether for a missing signature or for a significant issue. Mr. Brunel asked whether the decommissioning plan needs to be approved in its final form in order for the Commission to forward the application to the Board and Chair Ohrstrom replied yes because that is their job as a review agency. Commissioners had no additional questions on this application. Mr. Camp noted that the Commission has until January 15 to act on this application.

MS-22-11, Donald & Dianna DeWitt

Mr. Camp presented the Staff Report on this minor subdivision application. Chair Ohrstrom asked if the Virginia Department of Health (VDH) approved the proposed onsite sewage disposal system sites and Mr. Camp replied yes. Commissioners had no additional questions on this application.

MS-22-12/MLSE-22-02, Timothy Tumblin, Sr., Successor Executor for Larrie P. McDonald Estate

Mr. Camp presented the Staff Report on this minor subdivision and maximum lot size exception application. Commissioner Lee asked whether the applicant is required to install the proposed system to replace the existing cesspool prior to final approval of the plat. Mr. Camp replied that this has not been required in the past. Mr. Stidham said that he did not think we have the authority to require the

cesspool to be replaced because it is an existing system. Commissioner Lee asked if they can continue using the cesspool. Mr. Stidham replied yes and noted that VDH probably could not require them to construct the new system because the cesspool is an existing system. Chair Ohrstrom said that this is an interesting point and several commissioners agreed. Commissioner Lee said that he does not like to see cesspools being used given the karst terrain and the number of sinkholes in the area of the subject property. He said this creates the potential for contamination and the Commission should consider establishing rules to require replacement of cesspools in the future. Commissioner Staelin said that this raises the issue of nonconformities and Chair Ohrstrom wondered if you could require a failing system to be replaced. Commissioner Lee noted that VDH can force someone to replace a failing system where there is sewage on the ground or a backup in the house. He added that VDH cannot require the replacement of a nonconforming system that is not failing. He also noted that the subdivision process would be the time to address existing systems that are problematic before they get any worse. He said that cesspools are different from undersized systems because of their direct connection to groundwater.

Mr. Stidham noted that timing is an issue because if the goal is to require system replacement as a condition of plat approval, you may have a property owner that has legitimate plans to construct the system in the future but not right away. Chair Ohrstrom said that this is something to discuss for the future but there is not much that can be done with the current application. Mr. Stidham suggested that Mr. Camp could ask the applicant about their timing and whether they would agree to install the new system as a condition of final plat approval. Commissioner Kreider asked whether VDH approved continued use of the cesspool and Mr. Camp replied that their approval was only for the proposed system. Mr. Camp said that he did not know whether adding a condition of approval would work because the applicant could agree to the condition and then sell the lots. Commissioner Lee said that the lot could be sold with an existing cesspool and that there are a number of lots in Shenandoah Retreat with cesspools. Mr. Camp asked about the maintenance cost on a cesspool. Commissioner Lee said that there is no maintenance on a cesspool because it is just a hole in the ground into which the sewage drains. He added that once the sewage reaches the top of the ground, the cesspool is usually pumped out. Chair Ohrstrom noted that they are not good for groundwater quality. Commissioner Glover asked what size they are and Commissioner Lee replied that they can be any size but most are either 6' X 6' or 10' X 10' with a depth of 6-8 feet. Commissioner Dunning asked if you can have a well and a cesspool at the same time and Commissioner Lee replied yes. Commissioner Lee added that cesspools are the only alternative on some old small lots aside from having an off-site system. Mr. Camp said that he will talk to VDH staff to see if they have any ideas on this issue. Commissioner Glover asked how long the property owners have owned the property and Mr. Camp replied that it is owned by an estate that is being settled. Mr. Stidham suggested researching whether the County could prevent any lot containing a cesspool from being subdivided or reduced in size by boundary line adjustment.

Commissioners had no additional questions or comments.

### ***Status of Deferred Applications***

Mr. Stidham stated that the applicants for the Carter Hall Estate, LLC special use permit and site development plan application requested an additional one month deferral to the January 2023 Business Meeting. He also noted that the Horus Virginia solar power plant special use permit and site development plan application will be coming up soon as it was deferred earlier in the year by the applicant to the February 2023 Business Meeting.

**Old Business Items**

None scheduled.

**New Business Items**

***Preparation for Annual Organizational Meeting***

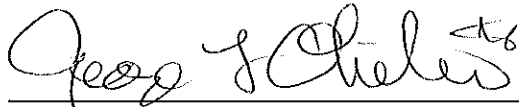
Mr. Stidham presented the advance materials for Commissioners to review in preparation for the January Organizational Meeting. He reviewed the recent appointments of Commissioners King and Staelin to replace former Commissioner Anne Caldwell's committee and board seats. Chair Ohrstrom noted on the Committee listing that former Commissioner Doug Kruhm is still listed as a member of the Broadband Implementation Committee. Mr. Stidham noted that the Committee is on hold pending the status of the fiber broadband project and there has been no request for the Commission to fill the vacancy yet.

Regarding the draft By-Laws, Mr. Stidham explained that a change to State law took effect on September 1 that now allows unlimited electronic meeting participation for family health reasons and increases the number of electronic meeting participations in a calendar year to two or 25% of the committee's meetings rounded up to the nearest whole number. He said that since the Commission has 22 scheduled meetings each year, this would allow the electronic meeting participation policy in the By-Laws to be increased to six meetings. He noted that this number could be less if meetings are cancelled in a given year. He asked if members would like these changes to be added to the draft 2023 By-Laws and commissioners had no objections.

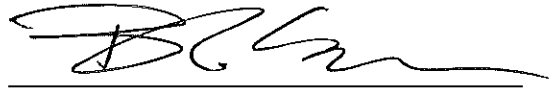
**Other Business**

Mr. Stidham briefly discussed a new recent article about the Town of Warrenton's Planning Commission deferring a special use permit application indefinitely in violation of the 100-day review period set forth in the Town Code.

**ADJOURN:** The Work Session adjourned by consensus at 3:40PM.



George L. Ohrstrom, II (Chair)



Brandon Stidham (Clerk)