County of Surry Virginia
Planning Commission Meeting Minutes
February 24, 2025

MEETING CONVENED: The meeting of the Surry County Planning Commission was called to order at 7 PM on Monday, February 24, 2025, in the Surry County General District Court, 45 School Street, Surry, VA, by Mr. Giron Wooden, Jr., Chair.

ATTENDANCE: The following members responded present to Roll Call:
Mr. Giron Wooden, Jr., Chair
Mr. Thomas Hardy, Vice-chair
Ms. Carmen D. Judkins
Mr. Theodore Lunsford
Mr. Earl Newby, Sr.
Mr. Breyon Pierce
Mr. Stephen Berryman
Mr. David Coggin
Ms. Dianne Cheek
Mr. Eddie Brock

Absent:
Mr. William Seward, IV

Staff Presents
Mr. Horace Wade, III, Director of Planning and Community Development
Ms. Regina Hilton, Administrative Assistant
Mr. Lorenzo Turner, Planner
Ms. Lola Perkins. County Attorney

Others Present:
Mr. Scott Foster, Attorney for Clenera, LLC

PLEDGE OF ALLEGIANCE: All

ADOPTING OF AGENDA: Chair Wooden entertained a motion to adopt the meeting's agenda. It was moved by Mr. Newby and seconded by Mr. Lunsford.

In favor: (10) Brock, Wooden, Newby, Hardy, Berryman, Lunsford, Cheek, Judkins, Coggin, Pierce
Opposed: 0
Abstain: 0

ADOPTING OF BYLAWS:

Ms. Perkins stated that tonight's packet includes a document outlining changes proposed by the Planning Commissioners. Some were discussed at the January Planning Commission meeting, and other changes were pursuant through other conversations.

- Page two; The proposal to change the meeting time from seven o'clock to six o'clock. An alternative proposed by Mr. Wade is to shift the meeting start time to six o'clock and have any public hearing that would be before the Planning Commission at 6:30. It would be advertised for required advertisements for 6:30 or to keep the meeting time at seven. In the event of a six o'clock start time and a six-thirty public hearing, we would rearrange the agenda if other items are completed before the 6:30 scheduled public hearing.
- Page four; Ms. Cheek had recommended changes to say, "To put in writing to codify what the PC Secretary is currently doing. To have consistency, it would be spelled out in the bylaws of what the Planning Commission expects from the PC Secretary." Ms. Perkins said what she did in the new section at the bottom of page four, under the duties of the secretary, it reads, "Communicate regularly, with the Commission on matters relevant to the work of the Commission, such as calendar review, discussion of topics of interest, and status updates on pending and future projects." This would be the proposed language, and amendments can be made.
- Page five, Article five, "Committees": Each committee shall consist of no less than three and no more than five Commission members. Ms. Perkins explained that the reason for capping it at five would be that six would constitute a quorum of the entire Planning Commission. We need to avoid inadvertently creating a meeting of the full Commission when trying to have a subcommittee meeting.
- Page six, Article seven, Order of Business": This change was recommended by Ms. Perkins. In light of potentially having a start time at 6:00 and public hearings at 6:30, it would be beneficial to change the language to read, "The order of business at regular meetings will generally include the following items." The existing language is very restrictive and constricts flexibility. A proposed change is to provide greater flexibility.
- Page eight; Article 10, "The Docket and Agenda", section four, item four, the agenda shall be heard. Ms. Perkins said that the first option is what Ms. Cheek originally proposed, an amendment of five days. "The cases to be heard shall be posted on the County website, in the agenda, not less than five days before each regular meeting, and the agenda of cases to be heard at a special meeting shall be posted on the County website in the agenda, and on the door of the meeting place, not less than 24 hours before such special meeting."
- Ms. Perkins proposed that if a change is desired to the section, the Planning Commission adopt the same language that is in the Board of Supervisors' bylaws. It reads "The agenda and accompanying information shall be provided to each Commissioner at least five days prior to the meeting. Except in the case of special or emergency meetings, when an agenda and information will be provided as soon as practicable.

- Pursuant to Virginia law, “The minutes provided to the Commission with an agenda and agenda materials must be made available to the public.” Ms. Perkins said that this language adheres to that Virginia Code requirement. There is nothing illegal with the language that Ms. Cheek proposed. It would be her recommendation to go ahead and be consistent with what the Board of Supervisors language is and lessens confusion for the public as well.

Mr. Coggin asked if the public hearing, scheduled for 6:30, would include the presentation for the public hearing. Ms. Perkins said it could not start from a legal standpoint and would not be able to begin earlier than 6:30, as it would be advertised to start at 6:30, and this part would be discussed for the first time. Mr. Coggin said that at six o'clock, we would do the pledge of allegiance and the Commission formalities. Then, at 6:30, the public would be invited to the public hearing. Ms. Perkins said yes or later if the meeting has other discussion pushing it into 6:45.

Mr. Coggin asked, regarding number two, whether it is possible to receive the Commission information electronically instead of in paper form. Mr. Wade said that it could be emailed as well and is posted on the website. You can also access the agenda documents and the agenda for the public, typically within the next day after the Planning Commission receives their packet.

Chair Wooden said there's some confusion, and maybe on his part, about the meaning of PC Secretary communication. The agenda is laid out for the Commission. And looking at the last part of the agenda, it says PC Secretary communication. If there is any communication that the PC Secretary must communicate to the Commission, isn’t it being done via the agenda as it's presented? Chair Wooden said, “Furthermore, many of us sitting on the Commission have attended subcommittee meetings when projects have been brought to staff. At the preliminary meetings, most of the time, the PC secretary will call whoever's in that district, about that project.” Chair Wooden said he doesn’t agree with the idea of writing it in the bylaws because it's already on the agenda. The PC secretary is to communicate with the Commission, and in his opinion, it is already being done.

Ms. Cheek said that since she made the recommendation, communication has not been consistent, and she has asked questions about the status of various projects. What’s helpful is to go back and review the information, since the meetings aren't recorded like the videos of the Board of Supervisors. Her intent when making this recommendation is that we codify these as the types of things that would be given at each meeting on the status of projects.

Mr. Brock stated that Mr. Wade usually presents the committee updates, calling on individuals who are part of a special committee. Mr. Brock stated that if asked, Mr. Wade would give a list of everything that's going on at every meeting, it would be just as long as the meeting itself. Chair Wooden said in addition, it would be strenuous on Staff. He did not think that the meeting was videotaped or recorded like the Board of Supervisors meeting. Also, the Commission has access to Mr. Wade and staff to ask questions about projects that are being reviewed. Mr. Wade said the meetings, at this point, are being recorded. They are accessible on the website and available one or two weeks after the meeting.

Vice-Chair Hardy said, referring to page two and the “timeframe”, that he would like to comment that everyone should consider the staff. They are here early in the morning and then late at night. The start time of the meeting does benefit the Staff a little. They could then get home to their families a little earlier as well. Mr. Hardy noted that the seven o’clock meetings would sometimes end after nine o'clock. Not just considering the Commission, but also thinking about staff and their work-life balance.

Chair Wooden asked if there were any other comments related to the bylaws from the Commission? Mr. Pierce said, if there weren’t any more comments, he would like to make a motion to move that we approve the bylaws with the following amendments, which were approved. Ms. Perkins said, "Some of the amendments before the Commission are contradictory because there are multiple options available. It would probably be clearest for the record if you made a motion to adopt amendments to the bylaws, which include, and then go through each area of proposed change."

Mr. Pierce said he moved that we approve the bylaws with recommended amendments. "Amendment number one, the time starting at six with the public hearing starting at 6:30. Judging on the comments from the Commissioners, redundancy, move to strike letter G from section four, under PC Secretary. Approving the amendment to have no less than three and no more than five Commissioner members on a committee. Amend article seven, "Order of business", number four, amend that on the County website and agendas, not less than five days, and that according to the recommendation from Ms. Perkins to align with the Board of Supervisors' bylaws."

Ms. Perkins asked Chair Wooden if she could ask a clarifying question. She asked Mr. Pierce, "On the last change, under article 10, is the change that you're referring to correct on page eight?" Mr. Pierce said yes. Mr. Pierce said under article 10, "the docket of change", with your recommendations, as far as the bylaws, align with the Board of Supervisors. Vice-Chair Hardy seconded it.

In favor: (10) Brock, Wooden, Newby, Hardy, Berryman, Lunsford, Cheek, Judkins, Coggin, Pierce
Opposed: 0
Abstain: 0

APPROVAL OF CONSENT ITEMS: Chair Wooden asked the Commissioners for the disposition of the minutes for January 27, 2025. A motion to approve was made by Mr. Pierce and seconded by Mr. Newby.

In favor: (10) Brock, Wooden, Newby, Hardy, Berryman, Lunsford, Cheek, Judkins, Coggin, Pierce
Opposed: 0
Abstain: 0

OLD BUSINESS:

PC ORDINANCE AMENDMENT 2024-04:

The Planning Commission will consider and intends to take action on the adoption of an ordinance amendment initiated by Clenera, LLC and to the Surry County Zoning Ordinance, amend Article II - Definitions and Uses, Article III – Zoning Districts and Boundaries, and Article IV – Supplementary Regulations to incorporate and add language including a new section 4-609 regarding definitions, use type descriptions, district requirements, application requirements, required plans, and performance standards for Battery Energy Storage Systems to allow this use by conditional use permit in Agricultural-Rural, M-1 and M-2 General Industrial.

Mr. Wade said tonight we have Mr. Scott Foster, who's serving as the applicant's attorney, to address the changes that we recommended for the ordinance update

Mr. Foster said he would like to walk through the changes made in response to the Commission's comments and appreciate Ms. Cheek's summary.

- This is a red line to a red line, and the first change is on page 17. There was initially some flexibility in the language for Mr. Wade to determine which of the studies was necessary. They made it affirmative, saying that the application shall include those items and other things that may be determined as necessary by the Planning Director.
- Page 17, Ms. Cheek had a question about the notice provision. He confirms that the language is exactly what was adopted in the solar ordinance. Ms. Cheek had suggested, confirmation of or confirmation of delivery. That can be done by sending notices certified. Given that you've just put this in your solar ordinance.
- Page 18: All facilities will have fire suppression and protection technology. Additionally, on page 18, Ms. Cheek's suggestion for the placement of placards has been modified to have them placed at the facility entrance and on the individual containers.
- Setbacks. The Commission's consensus was that the conditional use permit process allows for the adoption of specific setbacks on a case-by-case basis, intended to clarify the process.
- Page 19, the change also applies to the Industrial District; a 20-foot buffer would constitute the non-flammable area.

Mr. Foster said, referencing page 19, Mr. Coggin said, "Just on the outside of the fence, in case of a fire, you would have 25 feet before attacking a fire. Mr. Foster said the way this reads, "A minimum of a 20-foot buffer shall be a service around the perimeter of the battery energy storage systems. Outermost structures, such as buffers, shall be cleared of combustible vegetation and or combustible growth." He asked Mr. Coggin if he was suggesting it would be on the outside of the fence, and Mr. Coggin said yes. That would give the firefighters the ability to fight a fire and spray water if they are 25 feet away from the truck.

Mr. Foster said that by not setting a trap for themselves, the following sentence says, "The buffer must also be covered in gravel, concrete, or some other non-rusting materials, like a gravel rim road." He said that may be more than you need. Mr. Foster asked What do you think about a tight mode of vegetation with access? Mr. Coggin said that gravel would be good, and they could weed kill around it. If you have vegetation, even in August, it would be dry and brittle. Mr. Foster said, "Let's leave that as it is and change to the outermost structure fence line.

Ms. Cheek asked, "Will non-flammable gravel or something of that sort be around the outside of the fence?" Mr. Foster said that is what Mr. Coggin asked for. Mr. Berryman asked if any vegetation is planted to screen would be beyond the outside. Mr. Foster said exactly. Having a 200-foot setback, you would be working within that setback from the fence.

Mr. Foster said noise was talked about last time, and he said we could go to 65 dBA, which he knows that they could from the property line to the adjoining parcel. It is noted to have 55 dBA, "At the outer wall of any occupied structure, an adjacent parcel in the AR district in existence at the time the project received its conditional use permit." They went with that 55 dBA at the outermost wall of a structure on an adjacent parcel.

Ms. Cheek asked if, technically, "Could they go down lower than that?" Mr. Foster said that he did not believe so, and the numbers are confident that they will comply. Ms. Cheek said she understood, but technically, "You have done the research, you cannot go less. Do you have information that supports it?"

Mr. Foster said that he didn't, but he does know that each battery manufacturer makes different levels of noise. What they have done is taken the louder end of the spectrum, and said, "We think we can comply with that at 200 feet. Given that 55 dBA, at the outer wall of an occupied structure, really accounted for adjacent residences to make sure it's a reasonable limit. Because 55 dBA, using the chart shared the last time, is a normal ambient background noise of leaves rustling."

Mr. Coggin asked if it could be corrected by installing sound barriers. Mr. Foster said yes, and the change in the next section states, "Once the manufacturer's specifications and the batteries are selected, the noise specifications on the individual batteries, as part of the final site plan approval, will be submitted to the County, providing proof that we can comply with these standards."

Ms. Cheek said that maybe the Commissioners should think about, "We encourage students to aspire to an A-plus, and it feels like this is saying, you can aspire to a D-minus, at what is being presented here. She would like the Commissioners to think about it. What we want for our County is the best possible partners we can have. And using the CUP, which has been pointed out numerous times, as we look at each vendor that comes, and if we find that we want them to or allow them to go higher, then that's okay."

"But as an ordinance, we should think about putting out there what we really want them to achieve as a good partner doing business in our County." She appreciates bringing the ordinance as a new company comes in, but really feels that we should think about this level and do more research or discuss what Mr. Coggin said to bring it down further. That's the reason she asked the question, about going lower with dampening technologies or building things around the facility."

Mr. Foster said it was talked about at the earlier meeting. You can go lower with the sound wall. An example is the one that they did at Ocean Shore. It's a 16-foot sound wall, and because it is on a small parcel, it looks like a big old brick sitting in the middle of the field. The structures are about 10 feet tall. Ms. Cheek said, Maybe you can put public art on it to make it look nicer. She feels that the Commission should think about this ordinance that we're establishing, the basis, and not just this great company that's coming before us.

Mr. Foster said that the ordinance sets out the minimum requirements. Just like the setbacks, if a project comes in and is near a neighborhood or near some sensors or receptors, you can always require additional and more stringent standards in the conditional uses. Mr. Foster noted on page 20, Ms. Cheek's suggestion of modifications regarding lighting. They made it to be dark sky compliant. Everything must be lumens facing down, and in this case, a motion sensor activated.

Mr. Foster said that the last change in the solar ordinance does not allow an offset for salvage, and he would appreciate that being put in. At the end of the day, these things become a part of the electric grid, just like a substation. The salvage value of these projects is exceptionally high. Asking for special dispensation relative to solar, given that the use is different from your previous solar ordinance, and allowing for the inclusion of salvage value. Mr. Foster said on pages 22 and 23, section two, five, are all his changes.

Mr. Brock asked how long the battery lasted. He said they look like a C-van. Mr. Foster said that, unlike a solar project, each individual battery units, which looks like a computer server, are closely monitored. When one starts degrading and malfunctioning, it is pulled out and replaced with a new one. The individual units age out and are constantly being retrofitted. Mr. Hardy asked if the batteries were refurbished, and Mr. Foster said yes because of their super high value to recycle.

Mr. Coggin asked, "How does the County make money?" When someone asked him, he told them that, to his understanding, they buy it at a low price and then sell it at a high price. Every day, it's purchased and sold basically on electricity, and then stored. Mr. Coggin then asked, "How does the County get revenue from what's being produced? Does the County get it by buying and selling, or by the machinery?"

Mr. Foster said federally, for a project of 150 megawatts or less, you would get just machinery and tools taxed, and it is taxed the same as a solar project. You use the local real estate tax rate, which is subject to certain tax exemptions under 58.1-3660. For a new project, one that's not operating on an old interconnection, you would get 20% of the total value for the first five years, 30%, and then 40% for the life of the project, taxed just like a solar facility. The difference is that the battery units are of exceptionally high value, and they're often set on 30 acres. You could get maybe a sixty-to-800-acre solar facility value out of 30 acres. They're also eligible for a siting agreement. "There are opportunities for additional payments above and beyond the statutory tax obligation." Mr. Foster said he would hate to be the accountant because every time you replace a part, you start a new depreciation schedule. You change five units out of 500 every year and have different depreciation schedules running on each one.

Mr. Berryman asked whether the projects were subject to Substantial Accord Determination. Mr. Foster said exactly, and they are public utility facilities, just like a Solar Facility. Mr. Berryman asked Mr. Wade if the guidance for the location of these projects would be subject to the solar amendment, the energy amendment, or the comprehensive plan. Mr. Wade said yes and is subject to the siting agreement. More than likely, at this point, the Board of Supervisors has chosen to go through a siting agreement instead of a Substantial Accord Determination.

Mr. Foster also informed Mr. Berryman that the battery units, which offer the option of voluntary payment, differ from a solar facility. It employs a different economic model, primarily because energy is not generated; instead, it is purchased and sold. There is voluntary payment money to be made, but it is not on the scale of a solar project and less of the County because they have a small footprint.

Ms. Cheek asked again about having a field trip to one of the facilities. Mr. Wade said there was one in Sussex under construction. He would have to check with Ms. Perkins about visiting a site that is under active construction. Ms. Cheek asked whether the ordinance amendment should be tabled until the Commission was able to visit a site. Mr. Wade said that he believes it wouldn't be a good idea because he thought, "The best thing to do wouldn't add value to pause a project because every project is site specific." His advice tonight is to make a recommendation to the Board of Supervisors for the ordinance, but at the same time prepare a field trip before we consider a project in the County."

Ms. Perkins said that the complication with scheduling a site visit is that this applicant does not own the existing site. You would have to ask for permission. She said, as Mr. Wade had said earlier, that there's a site in Chesterfield that Dominion owns. Ms. Perkins said that Mr. Wade recommends that the site visit is most beneficial in evaluating a particular project versus the Ordinance. The site visits will hopefully provide some valuable perspective in developing the conditions for the CUP, and that is where their recommendation is coming from. Ms. Perkins said that until the Board of Supervisors adopts the Ordinance, no application can be received.

Mr. Brock said personally, he didn't need to go inside, but go to the fence and listen to what it sounds like after hearing the main concerns about the noise and buffer. His next question is about the value. Is it based on your machinery tools? "For solar panels, wasn't the rate raised according to the value and not because the County changed the zoning to M1, having them at a higher tax rate. We are at 71 cents a hundred. Will the battery facility be appraised for more than 71 cents a hundred?"

Mr. Wade said he thought, as Mr. Foster had mentioned, that "basically, the value would be the same as you get from the solar real estate value." Mr. Wade noted that it is called M&T. Whatever the rate for equipment is, it is valued. As for being done at an M1 rate, he didn't know if the zoning was taken into consideration for the value of the project. At one of the previous Planning Commission meetings with Mr. Jenkins, he shared, for example, that it didn't matter whether Strata was M1 or AR; it was the actual panels that provided the value.

Mr. Brock asked, "Who set the price for the panels, and does the state dictate that they will pay $1,400 a megawatt?" Mr. Foster said battery units or solar, the initial calculation of machinery and tools, is based on the actual sale value of the equipment. "If it costs a million dollars to build the project, that's what your machinery tools tax is based on. In this case, it would be 71 cents per hundred on a million dollars of assessed value. This decreases over time pursuant to the depreciation schedules that the State Corporation Commission puts out. The $1,400 per megawatt is what they call revenue share, which energy storage is eligible for. To assess, the County would have to adopt a revenue share ordinance, which increases 10% every five years, starting in 2026. Revenue share curve does this. M&T starts here and goes down, and then usually, depending on the project, between years 20 and 30, the two revenue curves cross and one becomes better than the other." Mr. Foster said you could adopt a revenue share ordinance, applicable only to storage.

Mr. Foster said that the Spring Grove approvals were done before the rezoning to M1. For real estate tax purposes, those projects are taxed the same as those that require rezoning to M1. The reasoning is that the assessors do a use value calculation on the underlying real estate in solar use. They've said, "It's worth it if it's 13 to $15,000 an acre. If a battery project is built here in the County, a use value calculation is done, saying, well, they're leasing it from this landowner at X rate, it's worth X per acre, and they pay real estate taxes based on that assessment."

Mr. Wade had one question for the Commission. On page 23, under "decommissioning", the proposed language from the applicant says, "The estimated salvage value component shall be used to offset the decommissioning costs." His suggestion would be, may instead of shall, forcing the County to accept salvage value. Ms. Perkins said if it is changed to May, it leaves a question mark. And when would that determination be made? "The use of the term may also cause concern, because it could provide an avenue for disparity between the treatment of one project versus another project." Ms. Perkins said that we do have the ability to do or not to do it. What criteria would be available in helping the Planning Commission make that decision? Ms. Perkins said that if changing the language to may, it may be used to offset the decommissioning costs, and the Planning Commission will make that determination. Ms. Perkins said that wouldn't hold up tonight's decision by the Planning Commission, but the change will need more work before it is brought before the Board of Supervisors.

Mr. Berryman asked if it could be addressed in the conditional use permit later, whether it's "may" or "shall." Ms. Perkins said it can and that she didn't want to say definitively until she has the chance to do more research. Mr. Pierce moved that we approve Ordinance Amendment 2024-04, "with the changes recommended by staff as well as the stipulations made by the Company."

Ms. Perkins said to clarify for the record that Mr. Pierce's motion is for the Planning Commission, "To recommend approval correction of the Ordinance, as the presented version that is currently in front of us, which incorporates amendments brought forth by the applicant, who brought us the ordinance. In addition to the changes that were discussed about the fence, the line, and in sections three, seven, and two, five, to go from shall to may. Vice-chair Hardy seconded it.

Chair Wooden said that it's been properly moved and seconded that the motion that Ms. Perkins mentioned be approved. All those in favor signify by saying aye. Those opposed. The ayes have it. The motion is carried.

In favor: (9) Brock, Wooden, Newby, Hardy, Berryman, Lunsford, Judkins, Coggin, Pierce
Opposed: (1) Cheek
Abstain: 0

NEW BUSINESS: None

PUBLIC COMMENTS: None

COMMITTEE UPDATES:

Mr. Wade said as we get into the new year, let's start working on our comprehensive plan five-year update. There are a significant number of things that have changed in those five years. HRSD is moving through Surry and has accomplished everything that they set out to do in 2020. HRSD has added elements for sewer in Surry County and is actively working on a water and sewer master plan. There may be other areas for consideration for residential development that weren't previously proposed in 2020.

Mr. Wade said our Comprehensive Plan update should address those concerns. One of the areas that has not necessarily been thought of for future residential/ commercial development is on Bacon Castle Road, off Hog Island Road. We need to develop a plan to ensure that we capture the public's and the Board of Supervisors' wishes ahead of time.

Mr. Wade asked who was interested in being a part of the committee for the Comprehensive Plan Update. There are plans for a Data Center project coming and a need for housing here in Surry. We need to make sure that we address having water and sewer for people to live here in Surry County by making sure to amend our Future Land Use Plan. Mr. Wade said he would like to break out into different areas of responsibilities instead of a meeting of five.

ADJOURNMENT:

Chair Wooden entertained a motion to adjourn at 8:15 PM until the March 24, 2025, meeting. It was moved by Mr. Pierce and seconded by Mr. Newby. It was moved and properly seconded that the meeting be adjourned. All those in favor signify by saying Aye.

Commissioners: Aye