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TO: Mayor Nevill and Town Council Members

FROM : Chris Martino, Town Manger

DATE: December 13, 2022

RE: SUP 2022-03 Amazon Data Center Application Status

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### Executive Summary

As requested, the Town of Warrenton Town Council will consider the status of Special Use Permit 22-03 Amazon Data Center on December 13, 2022. At the November 22, 2022, meeting, the Planning Commission acted outside its authority by failing to act through a motion of a recommendation of approval or denial to the Town Council as required by the Town of Warrenton Zoning Ordinance 11-3.10.7. Due to the Planning Commission's failure to act, the Town Council requested the Town Council consider the status of the application at its next meeting. Subsequently, the Planning Commission advertised to continue the public hearing at its December 20, 2022 Regular Meeting.

### Background

The Owner/Applicant, Amazon Data Services, Inc., seeks a Special Use Permit under Article 3-4.12.3 of the Zoning Ordinance for an approximately 220,200 square foot data center on Industrial zoned parcel consisting of approximately 41.793 acre parcel identified as GPIN 6984-69-2419-000. Designated in the New Town Character District on the Future Land Use Map located off Blackwell Road and Lee Highway.

The proposed Special Use Permit was accepted on May 6, 2022, and proceeded to a Planning Commission Work Session on July 26, 2022 and again on October, 25, 2022 after the applicant requested a deferral. Per the Planning Commission By-Law requirements, the applicant submitted their Public Hearing materials on October 28, 2022, for a November 15, 2022, Planning Commission Public Hearing. This public hearing was continued, per the request of the applicant, to November 22, 2022.

### Planning Commission Action

At the November 22, 2022, Planning Commission meeting, the agenda called for a continuance of the SUP 2022-03 public hearing from November 15, 2022. Almost 50 new speakers were signed

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up to provide public comment. However, after the Chair opened the meeting the Vice Chair made a motion to amend the agenda. Commissioner Lawrence moved “to postpone indefinitely the review of SUP 2022-03.” The motion was seconded for discussion purposes. Commissioner Lawrence stated during discussion he made the motion due to *“The Virginia Code that was cited as a reasoning for going to this public hearing references rezoning, not special use permits...The second reason to postpone this discussion is in regards to the incompleteness of the application before us.”* The Planning Commission voted 5-0 to approve the motion. The meeting adjourned shortly thereafter with no one from the public speaking on the record.

### **Planning Commission Authority**

The Town of Warrenton Zoning Ordinance states Special Use Permits shall “be processed in the same manner as for zoning amendments.” The Town Attorney’s guidance provided to the Planning Commission on November 4, 2022, before the public hearing stated:

*“Local governments can limit or delay property owners’ use of their property only in accordance with the law. Where state statutes and local ordinances do not impose a time limit for review of applications, the law imposes a reasonable time. The period for a Planning Commission to review and make a recommendation on a rezoning is 100 days from the date of the meeting when it was first considered, under Virginia Code § 15.2-2285 (B). Special use permits and rezonings are similar in that both are legislative actions where the locality’s discretion is constrained by applicable law and the locality’s own comprehensive plan. These considerations suggest that 100 days is a reasonable period for a Planning Commission to review and act upon a special use permit application. Accordingly, my advice is that the Planning Commission issue its recommendation on the Amazon special use permit application within 100 days of the date of its first meeting to consider the application, unless the applicant requests a deferral past that date. If the applicant does not request a deferral and the Planning Commission is not satisfied with the application, then the Planning Commission’s recourse is to vote to recommend denial. In that event, it should put the reasons for recommending denial on the record.”*

Furthermore, the Town Attorney and legal advertisement stated the application may only be continued to a future meeting per the request of the applicant. The applicant did not make such a request. Legally, the Planning Commission motion to postpone indefinitely is invalid for the following reasons:

- No provision in the Town of Warrenton Zoning Code authorizes the Planning Commission to determine if an application is incomplete. The application was deemed to meet the minimum submission requirements and officially accepted May 6, 2022.
- The Planning Commission is nowhere authorized to postpone a public hearing “indefinitely.” A motion to postpone indefinitely is, under Robert’s Rules, an action that kills the main motion by declining to take a position. The Zoning Ordinance requires the Planning Commission under Section 11-3.10.7 to hold a public hearing and “shall forward its recommendation to the Town Council.”

- If the Planning Commission could postpone its decision on a recommendation indefinitely, it could effectively veto any Special Use Permit. This is not within the Planning Commission power because it only makes recommendations on Special Use Permits. It is solely the authority of the Town Council to decide whether to grant or deny a Special Use Permit.

### **Next Steps**

Town Council may consider the status of the application and provide direction to the staff. The current situation is the Planning Commission is advertising to continue the public hearing at its Regular Meeting on December 20, 2022. Citing the Town of Warrenton Zoning Ordinance Article 11-3.9.9, if the Planning Commission fails to provide a recommendation to Town Council on December 20, 2022, and the applicant does not request a deferral, the Town Council may deem the Planning Commission failed to act and direct staff to schedule a Town Council public hearing on January 10, 2023.

Staff may draft a resolution for Council consideration based on the outcome of the work session.